

# BOOK OF SOLIDARITY

PROVIDING ASSISTANCE TO UNDOCUMENTED MIGRANTS  
IN FRANCE, SPAIN AND ITALY

VOLUME/02



PLATFORM FOR INTERNATIONAL COOPERATION  
ON UNDOCUMENTED MIGRANTS



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Michele LeVoy, *Project Researcher*  
Nele Verbruggen, *Project Coordinator*

# Introduction

“Results, not causes; results, not causes. The causes lie deep and simple – the causes are a hunger in a stomach, multiplied a million times; a hunger in a single soul, hunger for joy and some security, multiplied a million times; muscles and mind aching to grow, to work, to create, multiplied a million times.”

John Steinbeck, *The Grapes of Wrath*

In many countries in Europe, undocumented migrants live in a situation of marginalization. As they do not possess a legal residence permit, they are often excluded from basic social services that help to meet a decent standard of living (e.g. food, shelter, clothing and health care, as well as legal advice, education and training).

Many citizens<sup>1</sup> and civil organisations provide humanitarian support to undocumented migrants. Volume II of the *Book of Solidarity* aims at highlighting the manifold ways solidarity is extended to undocumented migrants in France, Spain and Italy. The focus of this book is on assistance to undocumented migrants and the rights of help providers. The reason for focusing on help providers and conditions in which assistance is provided (as opposed to the rights of undocumented migrants themselves) is due to the alarming tendency to criminalize assistance to undocumented migrants, which albeit in an indirect way strongly affects undocumented migrants themselves. Some Member States of the European Union have provisions in their Aliens laws that penalise assistance to undocumented migrants. The European Union recently approved of this approach by reaching political agreement on a text that includes the same provision.

The *Book of Solidarity* aims to counteract what appears to be a general tendency in certain parts of society to criminalize undocumented migrants and everything related to them. This book also aims to be a networking tool for organizations that can possibly inspire them in their daily work by giving some input on ethical and organizational questions.

## A Word on PICUM<sup>(1.1)</sup>

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization that aims to promote the respect for human rights of undocumented migrants. PICUM seeks to achieve this aim by providing its members and other interested parties with expertise, advice and support, by strengthening networking amongst organisations dealing with undocumented migrants in Europe, and by formulating recommendations for improving the legal and social position of these immigrants, in accordance with the national constitutions and international treaties.

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<sup>1</sup> The term “citizens” as used throughout this book refers to a moral rather than to a legal concept. The concept refers to all residents of European countries, regardless of their nationality and legal or residential status. It thus includes irregular residents and individuals who are not from countries in the European Union.

## Project Partners (1.2)

PICUM has been the lead agency in executing the Book of Solidarity project. The following two organizations have acted as partners: *BAG "Asyl in der Kirche"* (Germany) and *ASKV Steunpunt Vluchtelingen* (Netherlands).

*ASKV Steunpunt Vluchtelingen* is a non-governmental organisation that actively supports and campaigns for the rights of both documented and undocumented refugees. The organisation has existed for fifteen years. During this period, *ASKV Steunpunt Vluchtelingen* has acquired experience in individual assistance for undocumented refugees and in campaigning. *ASKV Steunpunt Vluchtelingen* participates in different networks and platforms on the local, regional, national and international levels.

The *Bundesarbeitsgemeinschaft (BAG) "Asyl in der Kirche"* has been actively involved in supporting undocumented migrants since 1994. Religious communities, individuals and regional groups belong to the network and the coordination council of the *Bundesarbeitsgemeinschaft (BAG)*. The *BAG* organises seminars on the living conditions of undocumented migrants in Germany and initiates discussions with experts and members of the German parliament in order to raise public and political awareness on the subject. The *BAG* also cooperates with lawyers, doctors and different aid groups with the aim of improving the situation of undocumented migrants.

## Methodology (1.3)

This book is part of a three-volume series, focusing on different geographical regions in Europe: Germany, the Netherlands, Belgium and the United Kingdom (Volume I); France, Spain and Italy (Volume II); Sweden, Austria and Denmark (Volume III).

### Research Questions

The main aim of this book is to highlight the many different ways solidarity is extended to undocumented migrants in Europe. PICUM wishes to support and contribute to the work of organizations that provide assistance to undocumented migrants. In developing the project, it was determined that an inventory of existing initiatives would be superficial and would have no added value for organizations. Thus, in addition to presenting various thematical areas of assistance, the book also aims to present a discussion of various organizational and ethical issues that come into play in providing assistance to undocumented migrants.

Organizations were asked the following questions on organizational and ethical issues they come across in their work:

- What is the target group of your organization?
- What is the aim of your assistance? Do you advise people to legalize their status?
- Does your organization work with other organizations or is it linked to a network/umbrella organization?
- How does legislation affect your work? Is it legal/illegal to provide assistance to undocumented migrants in your country?
- How long do you provide help? Do you reach a limit and decide that providing help no longer makes sense? What is the importance of a perspective?
- Does your organization have a particular vision on making a balance between providing direct assistance and working on policy issues?
- How do you raise awareness and create public support on the issue of undocumented migrants?
- What kind of relationship do you have with official institutions?

## Research Methods

The methodology consisted mainly of visits to organizations and in-depth, qualitative interviews. Written information on organizations was also analyzed to complete information gathered in the interviews.

The Working Group on Ethical Guidelines developed the questions of an ethical nature (see annex for participants). This working group gathered people from different countries with experience on the ethical issues at stake in working with undocumented migrants. This working group exchanged information by correspondence, and had a meeting in Brussels to discuss several ethical dilemmas that had been put forward. Their brainstorming session resulted in some discussion statements that were presented to participants at a workshop on “Ethical Guidelines for Social Workers Assisting Undocumented Migrants,” held in March 2002 in Oirschot, the Netherlands. The result of these workshops was a draft version of ethical guidelines. The final version was adopted at the PICUM General Assembly on 11 October 2002 (see Annex for final version).

For the chapter on legal provisions, an analysis of the national Aliens Laws has been combined with consultation of resource persons in the different countries as to their view on the interpretation of the various laws.

In December 2002, PICUM held several “feedback” workshops to discuss the draft version and relevant issues for each country concerning undocumented migrants. Organizations that were interviewed during the course of the research were invited to participate, as well as researchers working on the theme of undocumented migrants in the respective countries. Workshops were held in Madrid (12 December 2002), Rome (14 December 2002) and Paris (16 December 2002). Thanks to the high degree of involvement and constructive criticism of the participants, the workshops proved to be very productive, and elements of the discussions were incorporated into the final version.

## Sample of the Organizations

Various types of assistance and thematic issues were taken into consideration in determining the organizations to be included in the project. An attempt was made to achieve a sample that included organizations that provide direct help in areas of basic social rights, as well as those that work on a more structural level. The size and level of work were two important elements: small, local organizations were included as well as large ones whose scope of activities often extended to regional or national levels. There was an equal interest in visiting organizations that worked only with volunteers (and received no funding) as well as those that were almost entirely funded by the government. It was also deemed important to interview migrants’ groups in the various countries. Although the project timeframe and means did not allow for extensive visits, an attempt was made to achieve a balanced view by visiting three cities in each country.

It should be noted, however, that the above-mentioned criteria are not exhaustive, and have mainly been guiding principles. Moreover, in practice it was often the availability of contact persons, the workload of the organizations, their confidence in PICUM, and their desire to cooperate that have been decisive.

It should also be noted that there is a huge variety of organizations that provide assistance to undocumented migrants in France, Spain, and Italy, and due to certain constraints, we were forced to make some choices. It is not the intention of this book to cover the whole range of organizations in Europe. In this sense we would also like to point at the importance of community networks. Empirical research has proven that the assistance that is given by established organizations such as the ones interviewed covers a rather small percentage of the assistance undocumented migrants can rely on, as they often receive help from networks of family and compatriots.



## Course of the Research<sup>(1.4)</sup>

An Editorial Committee composed of people with experience in providing assistance to undocumented migrants and active members of PICUM had several meetings to discuss the proceedings of the book (see Annex for listing of Editorial Committee members).

A Steering Committee composed of academics working in relevant fields was consulted on theoretical questions, and met in Brussels to reflect on development of the second phase of this project (see Annex for listing of Steering Committee members).

The first step in this project was to make an inventory of organizations that provide assistance to undocumented migrants. To expand the inventory, we relied on our existing network and attendance at several conferences. This was carried out in June 2002. Visits were made to organizations in June and September 2002. The Steering Committee met in July 2002 and the first results were presented for discussion. The Editorial Committee was consulted in September 2002 for the complete results. The analysis was carried out in October 2002 and the draft version was presented to organizations at workshops in December 2002. After further discussion with members of the Editorial and Steering Committees during meetings held in January 2002, the final version was completed in February 2003.

## Overview of the Book<sup>(1.5)</sup>

Chapter II aims to shed light on the context in which undocumented migration takes place and in which undocumented migrants live. It reflects on the reasons why undocumented migrants are in Europe, and it presents an overview of the social and economic aspects of living conditions of undocumented migrants in France, Spain and Italy.

Chapter III presents some key elements of legislation in the three countries that concern assistance to undocumented migrants, aiming to reveal the strategies of criminalisation of assistance to undocumented migrants intentionally or unintentionally used by authorities. The chapter concludes with a discussion of the discourse on the European level concerning assistance to undocumented migrants.

Chapter IV is an analysis of the information gathered in the interviews with the organizations. It begins with assistance in the area of basic social rights, and continues with special groups of concern. Different types of activities of a structural nature are presented. Migrants' groups are highlighted, and the chapter concludes with a discussion of organizational and ethical issues. Various examples are highlighted in many areas of assistance.

Finally, Chapter V offers some elements for reflection on arguments for assisting undocumented migrants.

# The Context: Undocumented Migrants

At the beginning of a book that aims to reveal the solidarity that exists with undocumented migrants in Europe, it is necessary to clarify the context that creates undocumented migration and in which undocumented migrants live. In this first chapter, we therefore put forward the following three central questions. First, who are undocumented migrants? Second, what brings them to Europe? Finally, how do they go about their daily lives, and what particular difficulties do they face?

## Undocumented Migrants: Who Are They? (2.1)

The number of undocumented migrants residing in Europe is unknown. Whichever method of assessment is used, estimated numbers of irregular migrants are based on assumptions. The fact remains that irregular migration is, by its very definition, unquantified and, indeed, largely unquantifiable (Clarke 2000).

### Illegal Entry Versus Illegal Residence

When referring to undocumented migrants, a difference should be made between irregular entry and irregular residence. Irregularly crossing a border does not automatically lead to illegal residence, nor does illegal residence mean that the entrance has been illegal. Many asylum seekers have crossed Europe's borders clandestinely, and have regularized their status by applying for asylum. Many illegal residents have been legal for some time (e.g. they may have had an entry visa at one time). When discussing the phenomenon of undocumented migration, it is important to bear this in mind and to maintain this distinction.

In the public and governmental debate on irregular migration, undocumented migrants that enter a country without governmental permission usually receive greater attention than migrants that are currently residing within Europe in irregular situations. Yet the number of undocumented migrants living in Europe is very high. Moreover, there seems to be no 'typical' undocumented migrant. The ways these migrants become undocumented are varied, and so are the ways they lead their undocumented lives.

### Differences Amongst Undocumented Migrants

There are many different situations that can cause an individual to become undocumented. These include: rejected asylum seekers, rejected candidates for family reunification, labor migrants without residence permit (foreigners who lose their labor/annex residence permit after their work contract ends), students who have lost their study permit, tourists who have overstayed their tourist visa, embassy staff who have lost their diplomatic/consular status through dismissal or other circumstances.

Empirical research shows that there is a wide variety of people and careers represented among irregular residents. There are differences amongst undocumented migrants in terms of ethnicity, gender, educational level, and knowledge of the host country language prior to arrival, just to name a few. All of these and other factors play a role in adaptation. On the level of coping with problems of daily life that irregular residence can bring about, a difference can be observed between migrants who once had legal status and those who never did. Research in Belgium on survival strategies of undocumented migrants pointed out that rejected asylum seekers who have had a legal position in Belgium seem to be better informed about their rights and the procedures to be followed than people who have never legally resided in Belgium. One possible explanation is that rejected asylum seekers on average have more contacts with NGOs that inform them of their rights (Adam et al).

Many other distinctions can be made, for instance between migrants who willingly choose an irregular status, and those who have been forced to this situation. Indeed, many undocumented migrants do not intend to live irregularly, but are tempted, forced or trapped. Individuals who come to Europe with the intention of legally obtaining a residence permit are often discouraged by all the difficulties this brings about. For example, the fact that one is not allowed to work as long as any claim for a residence permit is pending, seems to tempt many people to give up their procedure, find a job in the informal labour market, and assume daily life as an undocumented migrant. Some people are forced to an illegal situation when their asylum claim is rejected, but have serious and well-founded fears of returning to their country of origin. Others wish to return but their country no longer allows them entry. Individuals who resort to trafficking organizations as a means to flee face a very particular situation. These include children who are sold to trafficking organizations, and women attracted by false promises of a bright future. They often find themselves in desperate situations. They did not choose a life in illegality and are unwilling and unable to cope with the very hard survival conditions.

### Center of Life

In his extensive study on undocumented migrants in the city of Leipzig in Germany, Jörg Alt distinguishes two main types of undocumented migrants: those who have decided to remain in Europe on a permanent basis, and those who keep their center of life in their country of origin while commuting to and from Europe regularly (Alt 1999). Alt's research reveals that the biggest groups of undocumented migrants present in Germany are "undocumented refugees" and "undocumented workers"<sup>2</sup>, and to a lesser extent individuals who come to Europe for family reunification. Undocumented refugees mainly consider their host country as their new center of life. It is not surprising that refugees consider return to their country of origin impossible, as they do not see a perspective for the future. Accordingly, their fear of discovery and expulsion is very high and they make every effort to remain hidden and inconspicuous. Migrants who are in Europe due to family reunification usually plan to stay for an indefinite period of time. On the contrary, according to Alt, many of the undocumented workers still consider their center of life to be in their country of origin. Their motivations for migration are material needs and loss of perspective. Many of them are married and have relatives who are still living in their country of origin. A common example is of individuals who have work in their country of origin but can barely earn a living. A considerable group of people migrates to Europe only temporarily to earn enough money to carry out a major undertaking, such as building a house. These migrants still have their center of life in their country of origin and therefore commute occasionally, according to their financial possibilities, between their country of origin and their place of employment. They are less afraid of discovery and deportation, and because of various reasons they achieve re-entry into Germany rather easily.

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Alt, Jörg. *Illegal in Deutschland*. Karlsruhe: van Loeper, 1999.

Clarke, J., "The problems of evaluating numbers of illegal migrants in the European Union." In *Regularisations of Illegal Immigrants in the European Union*, edited by Philippe de Bruyker. Bruxelles: Bruylant, 2000.

## What Brings Them Here? (2.2)

At the beginning of the presence of undocumented migrants in Europe is the "decision" of the migrant to leave his or her country. Whatever has been presumed and said about the motives of undocumented migrants, organ-

2 In this text, the term "undocumented refugees" refers to rejected asylum seekers (individuals who have applied for political asylum but who have been refused) as well as undocumented migrants who have not applied for asylum but who may face persecution upon return to their country of origin. The term "undocumented worker" in this text refers to employed individuals who do not have a legal residence permit to reside in the country and/or do not have a legal working permit.

izations that maintain contact with them on a daily basis generally have no doubts about their well-founded reasons to be in Europe. Undocumented migrants are only “illegal” by verdict of the country they end up in, not by the verdict of the reasons why they leave. These reasons will be addressed in the following section on the root causes of migration.

### **The Root Causes of Forced Migration<sup>3</sup> (2.2.1)**

It is difficult to summarize the experience of 130 million of the world’s people - one in every 50 human beings - living outside their country of origin, as refugees, migrants or permanent immigrants. Motives for human migration include political, economic, social and environmental factors. Generally, the decision made by individual human beings to uproot themselves, leave their homes and homelands and migrate elsewhere, is based on a number of factors rather than one simple reason.

It is important to go beyond explaining migration as a rational choice by persons who evaluated the costs and benefits of relocating and made a choice they felt most likely to fulfill their needs. This text will concentrate on analysing seven “macro” factors that drive migration. In particular, several features of globalization today that accelerate migration pressures will be reviewed. These factors are (1) increasing armed violence, (2) ethnic and racial conflict, (3) certain features of globalization, (4) environmental degradation, (5) development-induced migration, (6) denial of democracy, and (7) large-scale corruption. These causal factors are certainly not the only reasons for migration, but this short contribution cannot pretend to be an adequate treatment of these complex issues.

#### **Armed Conflict; a Pervasive “Culture of Violence”**

War, civil conflict, human rights violations and persecution for political, religious, ethnic or social reasons have not diminished since the end of the Cold War. Instead, there are today 40 major armed conflicts (defined as those with deaths exceeding 1,000 during the course of the conflict). The number of armed conflicts with deaths below the 1,000 threshold is estimated to be somewhere between 75-150. Two significant characteristics of wars today are that with very few exceptions they are waged within countries and that they have a huge number of civilian deaths.

#### **Ethnic and Racial Conflict**

Most existing states are inhabited by peoples of various ethnic, racial, linguistic, cultural and religious traditions. Some 40% of the world’s countries have five or more different ethnic groups. This is partially the consequence of histories of migrations and colonial partitions. Recently there has been a virulent resurgence of violent efforts to re-divide territories and create new states based on exclusive, single-ethnic identities. The resultant armed conflicts, “ethnic cleansing” and brutal expulsion of peoples have become major causes of forced human displacement today.

While almost two-thirds of contemporary armed conflicts can be defined as conflicts of ethnicity, this should not be confused with identifying the causes of these conflicts. Behind ethnic or national identity struggles are basic economic and social grievances that need to be redressed.

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<sup>3</sup> This section is a summary of a paper entitled “Seven Causes of Migration in the Age of Globalization,” presented by Patrick Taran, International Labor Organization, at the International Migration Policy and Law Course for Asia-Pacific in Bangkok, November 1999. Permission has been granted by the author for this summary, which has been made by PICUM, to appear in the Book of Solidarity.

### **Globalization of the Free Market Economic Model**

“Globalization” has become the catchword to describe the trends and initiatives restructuring national and international economic life. These initiatives seek global integration of economic activity, including production, services, marketing and consumption of goods. A major component of globalization is the elimination of restrictions on the free movement across borders of capital, goods, resources, technology, and services, but not of labour. Globalization has been promoted on the basis that this process will maintain economic growth, and therefore standards of living, in the developed, industrialized countries. Proponents of the current model of globalization have also asserted that this process will be key to the eventual improvement of conditions in the rest of the world.

However, the experience of an increasing number of people around the world over the last several years has been of growing unemployment or underemployment, stagnation or decrease in earnings for those employed, disappearing job security, increasing poverty, reductions in access to health care, education, public transportation, housing, elimination of public benefits or “safety nets” for those without access to employment - in short, increasing marginalization and exclusion.

At the same time, gaps between affluence and poverty are growing dramatically. From 1960 to 1991, the ratio of income shares between the richest 20% of the world’s population and the poorest 20% went from 30:1 to 61:1. Over this same period, the share of the total global income taken by the richest 20% grew from 70% to 85%. Meanwhile, the shares of all other four-fifths fell; the share of global income for the world’s poorest 20% dropped from 2.3% to 1.4%. Thus one-fifth of humankind, mostly in the developed countries, controls well over four-fifths of global income. And some one billion people survive on daily cash income equivalent to less than one USA dollar.

### **Environmental Degradation and Disasters**

Migratory consequences of the destruction of our natural environment are just beginning to be identified. Every year some eight to ten million acres of forestland are lost. It is generally estimated that at least 25 million people (i.e., 1 person in 225 worldwide) are among today’s international migrants who could be considered environmental migrants. They generally migrate within their own countries in search of “environmentally clean” regions for resettlement. Environmental migrants fall into three broad categories: those temporarily displaced because of local disruptions or natural disasters such as volcanic eruptions and earthquakes; those who migrate because environmental degradation undermines livelihood and/or poses unacceptable risks to health; and those who resettle because of permanent and untenable changes of habitat. The latter are the fastest growing population of displaced.

Environmental factors for displacement can be viewed in four categories: land-use abuse, global warming, militarization and armed conflict (manufacturing, testing and deployment of weaponry in “peacetime” military exercises and in war have serious effects on the environment), and disasters.

### **Development-Induced Displacement**

Migration is also now acknowledged as a direct and tragic human result of misdirected development. While these circumstances may not be as immediately life-threatening as warfare, they are equally compelling motivations to migrate if no viable options remain to provide for the basic needs of millions of people in many countries. The interrelationship of industrial development projects on the environment and the displacement of people from their traditional lands is becoming of increasing concern.

Many environmental and development factors need to be taken into account when considering industrial development projects. Among the important factors are the socio-economic effects of forced displacement from traditional lands, flooding of large land areas by dams, and schemes to colonize and “develop” areas considered “unpopulated” - usually forest or savannah lands inhabited by indigenous peoples who then are displaced.

### **Denial of Democracy**

Oppression, tyranny and violations of economic, social and cultural as well as political and civil rights remain a global scourge. The 1996 annual Amnesty International report identifies two global trends that undermine efforts to establish government accountability to comply with international human rights standards and principles of humanitarian law:

First is the proliferation of human rights abuses associated with armed conflict and civil strife in many parts of the world. Torture, arbitrary killings and “disappearances” become mere tactics to be used for military or political advantage. Second is the rapid technological development in the industrialized countries of new security equipment which is now spreading, fast, to all corners of the world.

### **Abuse of Power/Corruption**

Part of the answer to understanding the conditions that have uprooted millions of people around the world is recognizing the connection between the appropriation of public resources for private profit and the loss of those resources to meet the basic development and service needs of people in affected countries.

### **Conclusion**

With this summary presentation, seven key root causes of human displacement and international migration today have been sought to identify and describe: pervasive warfare, ethnic conflict, certain features of globalization, environmental degradation, development induced displacement, denial of democracy, and corruption. These root causes are by no means the whole picture. However, both research data and the direct experience of millions of people suggest that these are both the most urgent and most destructive causes. And they are causes that require government action and international cooperation to alleviate.

## **General Tendencies in Undocumented Migration to Southern Europe** (2.3)

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This section presents a brief overview of undocumented migration to France, Spain and Italy. There are important differences in the migration experiences of these three countries. France has an experience of immigration going back well over a century, initially restricted to its former colonies but now diversifying considerably. In contrast, for much of this century the migration history of Spain and Italy has been one of emigration and they became countries of net immigration relatively recently (1972 for Italy and 1975 in the case of Spain) (King et al 1997). For this reason they are often considered separately. Undocumented migration is, however, a relatively recent development in all three countries and the current situation is increasingly one of common experience. Though important differences still exist in the historical background, of France on the one hand and Spain and Italy on the other, the challenges posed by undocumented migration and the policy responses of these three countries provide an increasingly similar context in which to consider the situation of undocumented migrants. This section is split into two parts which will consider first the size and national origin of the undocumented population in these three countries, and secondly focus on the important issue of employment patterns of undocumented migrants.

### **The Size and National Origin of the Undocumented Population**

Any estimate of the size of the population of undocumented migrants is inevitably tremendously uncertain and often of politically questionable motivation. As Godfried Engbersen (1995) has shown, the clear demarcation of undocumented migrants that occurred through legislative developments in the 1980s and early 1990s is indistinguishable from the process by which they come to be defined as a social and economic threat. Estimates of the number of undocumented migrants from different sources vary by a factor of five. Recent middle range esti-

mates are 200,000 in France (Assemblée Nationale 1996), 300,000 in Spain (King and Konjhodzic 1995) and 250,000 in Italy (Ministero dell'Interno 1998). These figures should be taken only as vague indications of the number of people involved. The boundary between documented and undocumented status is increasingly fluid in all three countries. When undocumented migrants are granted legal status it is increasingly only temporary and migrants may move back and forth between documented and undocumented situations. In Italy and Spain particularly it is common for documented migrants to continue work in the informal economy, which further blurs the distinction.

All three countries have had significant regularisation programmes since these estimates. There is some disagreement about whether regularisation programmes decrease the number of undocumented migrants by providing them with documents, or increase the numbers by encouraging further migration. Regularisations at different times and in different countries also applied very different criteria and there are suggestions that many of those eligible for earlier regularisation programmes did not even apply (King and Konjhodzic 1995). Despite disagreements over their effects, and the nature to which they reflect undocumented populations, data from regularisations is the best indicator of the number and origin of undocumented migrants present at any given time. The rest of this section will trace the characteristics and development of undocumented populations using regularisation data taken directly from Reyneri's recent ILO study (2001).

1986-'87		1990		1995-'96		1998-'99	
Morocco	21.7	Morocco	49.9	Morocco	36.2	Albania	35.0
Sri Lanka	10.7	Tunisia	25.5	Albania	32.2	Romania	20.9
Philippines	10.7	Senegal	17.0	Philippines	28.1	Morocco	20.0
Tunisia	10.0	Ex-Yugoslavia	11.3	Peru	14.0	China	17.0
Senegal	8.4	Philippines	8.7	China 1	3.6	Nigeria	10.2
Ex Yugoslavia	7.1	China	8.3	Romania	9.3	Senegal	9.5
Other	50.1	Other	97.1	Other	104.0	Other	80.6
Total	118.0	Total	217.0	Total	238.0	Total	193.0

Table 1: *Numbers of most significant nationalities (1,000s) regularised under regularisation programmes in Italy 1986 – 2000 (Reyneri 2001).*

Data in Table 1 illustrates both the tremendous diversity and the unpredictable origins of the undocumented population in Italy. The largest group never accounts for more than 20 percent of those regularised and the largest six groups barely make up 50 percent of the total. The presence of some groups is easily explainable; Moroccans and Tunisians due to geographical proximity or Filipinos due to the connection through the Catholic Church. The arrival of Albanians in two dramatic episodes in 1991 and 1997 (King and Mai 2002) can be seen from the regularisations in the years that followed. The presence of other groups indicates how restrictions elsewhere in Europe are partly responsible for migration to Italy. For example, the presence of Sri Lankans in 1986 is surprising until we consider that 1986 was the year the UK imposed visa controls for all Sri Lankans and entry to Britain was suddenly much harder for them. The growth of the Romanian population is similarly linked to increasing controls in Germany. The only groups that we may have expected to see, the Somalis and Ethiopians, have not figured significantly in any of the regularisation programmes detailed here, indicating the unpredictable nature of undocumented migration.

1985-'86		1991		1996	
Morocco	7.9	Morocco	48.2	Morocco	7.0
Portugal	3.8	Argentina	7.4	Peru	1.9
Senegal	3.6	Peru	5.7	China	1.4
Argentina	2.9	Dominican Rep	5.5	Argentina	1.3
Great Britain	2.6	China	4.2	Poland	1.1
Philippines	1.9	Poland	3.9	Dominican Rep	0.8
Other	21.1	Other	33.4	Other	7.8
Total	43.8	Total	108.0	Total	21.3

Table 2: Numbers of most significant nationalities (1,000s) regularised under regularisation programmes in Spain 1985 - 1996 (Reyneri 2001).

Unfortunately data from the most recent regularisation programme in Spain in 2000/01 is missing from Table 2. The available data shows a similar diversity to Italian regularisation schemes. Again the dominant presence of Moroccans is easily explainable, but here the similarity to the origins of the undocumented population in Italy ends. Spain appears to attract Poles, rather than Romanians, from Eastern Europe, though they may be less significant in the 2000 regularisation, following the readmission agreement between Poland and the Schengen countries. Spain attracts more undocumented migrants from its zones of influence than Italy does, though it is difficult to explain why Argentineans and Dominicans in particular should be so significant. Initial data from the 2000 regularisation suggests that the presence of sub-Saharan Africans is growing slowly (Barros et al 2002) though their presence is still small compared to Latin American countries. Latin American migrants are more likely to arrive with a visa and become undocumented when their visa runs out, whereas sub-Saharan Africans are generally only able to arrive clandestinely. This data supports claims that clandestine routes, such as across the Straits of Gibraltar may be highly mediated due to the human drama involved, but actually account for significantly fewer undocumented migrants than overstaying visas.

1981-'82		1998-'99	
Tunisia	17.3	Algeria	11.3
Morocco	16.7	Morocco	8.9
African	15.0	China	8.9
Portugal	12.7	Congo	6.4
Algeria	11.7	Mali	5.6
Turkey	8.6	Tunisia	4.0
Other	39.1	Other	35.5
Total	121.0	Total	80.6

Table 3: Numbers of most significant nationalities (1,000s) regularised under regularisation programmes in France (Reyneri 2001).

Finally France is something of a “reluctant regulariser”; conditions for both of these programmes were far more stringent than any of the Italian or Spanish regularisations (Collyer 1998). This data is therefore likely to be less representative of the undocumented population as a whole than data from Spain and Italy. The same diversity is obvious but, with one or two exceptions, these are nationalities that are also strongly represented in the documented population, a significant difference from either Spain or Italy. Brachet (1997) has suggested that the undocumented population in France is mostly made up of rejected asylum seekers. Data for asylum seekers shows far more diverse origins, most significantly Iraqis and Kurds, and this is perhaps a more accurate indication of the nationalities present within the undocumented population. In the 1998-99 regularisation success meant a one year residence permit (*carte de séjour*) which was not necessarily renewed. *Le Monde* (20.11.99) suggested that many of those who had been “regularized” did not have their year permit renewed and lapsed again into a precarious undocumented existence.



### Employment Patterns of Undocumented Migrants

There is an ongoing debate over the dominance of demand or supply in the provision of undocumented labour in Southern Europe. Russell King and his colleagues (1997) have shown how key industries in the economy of Southern Europe have been built on migrant labour. Traditionally this labour was supplied domestically through internal migration from the poorer regions of Spain or Italy. As these regions became more economically successful internal migration fell away. The rise of international migration coincided with this unmet labour demand. The labour market has become increasingly segmented such that certain jobs now have a status associated with immigrant labour and unemployed nationals would not consider them. This explains the paradox of significant immigration into areas with high local unemployment, such as Southern Spain or France (King 2000). The French labour market has traditionally been far more industrialised than the labour market of much of Spain or Italy (with the exception of Northern Italy and Catalonia). However the process of de-industrialisation and growing flexibility, casualisation and segmentation of the labour market has ensured that there is now a high demand for undocumented labour in France too.

The supply side of undocumented labour is also extremely important. Wage differentials between countries of origin and destination are such that even salaries well below the minimum wage of the country concerned are often many times more than migrants could have earned in their home countries. For example, in some occupations wages are as much as 21 times higher in Spain than in Morocco. Migrants' lack of legal status also puts them in an increasingly precarious position. In France, Spain and Italy undocumented migrants are entitled to free emergency health care and all children are entitled (in Spain, obliged) to attend school. Beyond these two basic services, however, state support is denied to undocumented migrants and increasingly stringent systems are in place to ensure that only those eligible are able to benefit. Undocumented migrants must work if they are to survive. The fact that they are often prepared to work for very little and have very little choice in the matter anyway makes them very easily exploitable in the labour market.

There is a growing literature on undocumented workers in informal sector employment. Employment is so central to their lives that the individual characteristics of undocumented migrants vary most predictably according to employment practices. Unfortunately, as with data on the origin and size of undocumented populations, there is no reliable information on undocumented employment and what data exists offers little basis for international comparisons. Work in this area has highlighted a number of sectors of the economy in which undocumented labour is significant. This section will consider agriculture and domestic service in more depth which together account for the majority of undocumented employment.

Work in agriculture obviously implies a rural location, for example Andalusia in Southern Spain or the Italian Mezzogiorno. Thirty percent of all work permits issued to migrants in Spain from 1993 to 1999 were issued for agriculture (Barros et al 2002). Most recipients of permits under the Spanish system of quotas were previously undocumented so this is a good indication of the importance of this sector in undocumented employment. Mingione and Quassoli (2000) estimate that 50 percent of agricultural workers in Italy were undocumented. Conditions for undocumented migrants are extremely bad. A report from the area of El Ejido, an area of very significant concentration of agricultural employment, particularly of Moroccan migrants, found workers lodging in abandoned houses, without heating or running water, excluded from local communities and often going many weeks without pay (*Le Monde Diplomatique* March 2000). Workers in the agricultural sector are almost exclusively male. In Spain and France they are most often Moroccan, sometimes West African.

Domestic service is also a very significant sector for domestic employment. In contrast to other sectors such as agriculture or construction, it is dominated by women. Over 50 percent of permits issued in the Spanish quota system from 1993 to 1999 were for domestic employment, though Solé et al (1998) quote figures indi-

cating that 80 percent of immigrant women with permits in Spain do not have job contracts. Even obtaining a permit in this sector does not, therefore, make workers immune to exploitation. The fact that it is hidden in private homes makes this sector extremely difficult to regulate. As with agriculture, domestic service is associated with particular nationalities, mostly women from Catholic countries, though increasingly Muslim women are also migrating independently across the Mediterranean (King and Ribas 2002).

Space does not permit a full review of the variety of employment sectors here. These two examples have briefly illustrated the diversity of locations and gender roles involved in undocumented employment in France, Spain and Italy. It is also worth mentioning that the educational profile of undocumented migrants also varies considerably and recent research has shown that undocumented populations in all three countries include both working class rural migrants and highly educated, often younger migrants from urban areas (King and Ribas 2002). The question of the dominance of supply or demand must be answered with a balance between the two. There is certainly plenty of evidence that sectors such as agriculture or domestic service depend very heavily on poorly paid undocumented labour and it is clearly in their interests to maintain this system. However there are other sectors, such as street traders who are not apparently filling any pre-existing demand for employment (King 2000).

This brief consideration of the background and employment situation of the undocumented population has sketched available information for France, Spain and Italy. The first section emphasised the diversity of origin of undocumented populations. The second section considered the employment situation which faces them in Europe where a considerable demand for labour in certain sectors combines with the imperative that they find work to produce a situation in which they are easily exploited and often work in difficult and insecure situations.

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## Social and Economic Aspects of Living Conditions of Undocumented Migrants (2.4)

This section begins with an overview of the highest standards of social rights, as outlined in various international treaties and conventions. The situation on the national level is then presented, with a discussion of the social and economic situation of undocumented migrants in France, Spain and Italy. These texts focus mainly on access to basic social rights such as housing, health care, education, and on ways to earn a living through employment and conditions of work, as well as access to social assistance.

### International Standards: How It Should Be (2.4.1)

The rights of undocumented migrants are defined in several international instruments. Most general international instruments apply to all human beings within the territory of a state party and initially do not make a difference between legal and illegal foreigners (Houben 1999).

In the following sections, we present a summary of what is stated in various treaties, declarations and conventions on the right of undocumented migrants to housing, education, health care, social assistance, and fair conditions of work. It should be noted that the list of international legislation that has been consulted is not exhaustive, but rather aims to be an overview of relevant instruments in the area of social rights of undocumented migrants.

#### Right to Fair Working Conditions

There is a difference between the right to work and the right to fair working conditions. Concerning the right to work, Article 23 of the Universal Declaration of Human Rights (UDHR), for example, is said only to apply to workers ordinarily residing in a country. But since many undocumented migrants are workers (who work in the informal labour market), the right to fair conditions of work is very relevant and important. The principle of safeguarding at least safe and fair working conditions such as remuneration for all workers, also for those who are undocumented, is expressly protected in instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families (ICMW) and the ILO-Convention No. 143, all of which attempt to promote equality amongst migrant workers and nationals. Houben (1999) refers to research carried out by Hammer (1999) on migrant workers in Israel to highlight that remuneration should not be dependent on legal residence in a country:

By contrast, the right to just remuneration codified in Article 23(2) UDHR, while relative to the work performed, applies to all individuals equally, given the development of the right by the International Labour Organisation (ILO) and the notion of equality in other UDHR articles (Houben 1999).

The ICMW is a very important instrument for the protection of the rights of undocumented (and documented) workers and their families. The convention has not yet entered into force. However, the 20th ratification required for entry into force is expected to be forthcoming. Nineteen states have now ratified or acceded to the

Convention.<sup>4</sup> As of the entry into force, the convention will be binding only for state parties. This convention will be a powerful universal instrument for upholding the human rights of all migrant workers.

In the ICMW, inhuman living and working conditions and physical abuse that many migrant workers endure are covered by the reaffirmation of their right to life (Article 9) and prohibition against cruel, inhuman or degrading treatment or punishment (Article 10) as well as the prohibition of slavery or servitude and forced or compulsory labour (Article 11). Migrant workers are to be treated as equal to the nationals of the host country in respect of remuneration and conditions of work (Article 25), and have the right to join trade unions and any other associations with a view to protecting their economic, social, cultural and other interests (Article 26).

International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families

Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
  - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
  - (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.
2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in Paragraph 1 of the present article.
3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

Reference to the right to fair and just working conditions for all workers is also made in the International Covenant on Civil and Political Rights (ICCPR), which forbids any forced or compulsory labour (Article 8) and attributes to the right to everyone to recognition everywhere as a person before the law (Article 16).

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<sup>4</sup> Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka Tajikistan, Uganda and Uruguay. Eleven states have signed the Convention, the first step towards ratification: Bangladesh, Burkina Faso, Chile, Comoros, Guatemala, Guinea-Bissau, Paraguay, Sao Tome & Principe, Sierra Leone, Togo and Turkey.

### Right to Social Assistance and Social Security

In the ICMW, the equality of undocumented migrant workers to nationals also extends to social security benefits (Article 27), but is stated in such a way that the sovereignty of the state prevails.

International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.
2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

According to Hasenau (1990), who made a comparison between the ICMW and ILO standards for migrant workers, Paragraph 1 implies a minimum standard only for *documented* migrant workers and their families, despite the generality of the terms and the placement in Part III (Human rights of all workers and members of their families) of the draft. The reason is that the requirements of social security benefits are left to the states' legislative discretion (except distinctions on the basis of nationality), so different provisions according to the regularity of the migrant worker's situation are not excluded. According to Hasenau, this is confirmed by the legislative history of the article. In the course of the second reading, the General Assembly working group first discussed a version which contained a reference to migrant workers "who are documented or are in an irregular situation" in Paragraph 1. These references were subsequently dropped with regard to a more precise formulation of the text. A change to the content was not intended.

The right to social security for everyone is also referred to in Article 22 of the UDHR, Article 9 of the ICESCR and Article 26 of the Convention of the Rights of the Child (CRC). The ILO Convention No. 143 (Article 9.1) states that undocumented migrants shall enjoy equal treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits. Upon closer investigation this article only guarantees rights to migrant workers who were once legally employed, and continued to pay taxes after losing their residence permit. For all other undocumented workers it guarantees the right to receive financial compensation in the case of an industrial accident.

### Right to Housing

The right to housing is interrelated to the right to health care, since adequate housing is fundamental for living in dignity, for one's physical and mental health, and for the overall quality of life. The UDHR recognises that everyone has the right to a standard of living adequate for the health and well being of an individual and of his/her family, including food, clothing, housing, and medical care and necessary social services (Article 25). This is also referred to in Article 11 of the ICESCR. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states in Article 14 that "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas ... to ensure ... the right ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications...". This is also confirmed in the Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and in Article 27 of the CRC.

### Right to Health Care

The ICESCR provides the most comprehensive article on the right to health in international human rights law. According to Article 12(1) of the Covenant, States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, while article 12(2) enumerates, by way of illustration, a number of “steps to be taken by the States parties [...] to achieve the full realization of this right”. Article 12 is specified in the “Comment to Article 12 of the ICESCR.” The latter was mainly developed during an international conference on the “Right to Health” with the Committee of the ICESCR, organized by the International Federation of Health and Human Rights Organisations. It was adopted in May 2000.

Additionally, the right to health is recognized, inter alia, in Article 5 (e) (iv) of the ICERD, in Articles 11 (1) (f) and 12 of the CEDAW and in Article 24 of the CRC. Several regional human rights instruments also recognize the right to health, such as the ESC (Article 11). Similarly, the right to health has been proclaimed by the Commission on Human Rights, the Vienna Declaration and Program of Action of 1993 and other international instruments. Article 28 of the ICMW states as follows:

International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

### Right to Education

The ICESCR (Article 13) and the CRC (Article 28) both foresee that primary education should be compulsory and free for all and that secondary education should be made generally available and accessible to all by every appropriate means. In addition, Article 2 of the First Protocol to the European Convention on Human Rights (ECHR) states that no person shall be denied the right to education.

International Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families

Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child’s stay in the State of employment.

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Universal Declaration of Human Rights (UDHR) (GA res. 217A (III), UN Doc. A/810, at 71 (1948)), adopted 10 December 1948.

### **Additional Information**

#### **Portal for the Promotion and Protection of the Rights of Migrants:**

<http://www.december18.net>

DECEMBER 18 is an online organization named after the International Day of Solidarity with Migrants, initiated in 1997 by Asian migrant organizations. On December 18, 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was approved by the UN General Assembly. On December 4th, 2000, the United Nations proclaimed the 18th of December as International Migrants Day. The mission of December 18 is to promote and protect the rights of migrants with dignity and respect as basic values. The organization's goal is to support the work of migrant organizations in different regions by using the Internet as a tool for advocacy, networking and the dissemination of information.

## **Social and Economic Aspects of Living Conditions of Undocumented Migrants in France (2.4.2)**

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Before discuss the living conditions of undocumented migrants, it is important to be aware of two points:

- 1) We should bear in mind that we only have very partial quantitative data and that interpretation is always unreliable. The "numbers" of undocumented migrants, (made from observations, and even more when they are projections) are subject to all kinds of fantasies. An assessment based on the number of infractions or sanctions essentially indicates the work of the control services. As for estimates based on regularisation programmes, they only allow us to have a minimum figure at a specific moment, that the individual and periodical applications (or new applications) do not even permit to re-evaluate. In 1997 in France, this figure amounted to approximately 140,000.

2) The social situation of undocumented migrants could be described based upon references to the law. These references would only poorly reflect their situation. Concretely, an undocumented migrant is constantly exposed to threats from the repressive side of the law although s/he does not always benefit from its effects. For instance, very few municipal deportation orders to the border are applied; undocumented migrants do not have the right to work but they work. But they have integrated this repressive side enough not to be tempted to use the protective side, which in theory gives them some rights and in practice does not offer much. To have access to these rights, they have to face several obstacles: language problems, transport problems, (they fear identity controls), weak position at the different “desks” and simply the fear (and real risk) to claim these rights.

### **Demographic Framework**

The nationalities represented by undocumented migrants do not seem to be very different from those represented by legal foreigners. Indeed, many legal foreigners have previously spent “periods” in an irregular situation. With all the precautions that are necessary in dealing with quantitative data, we can gather from the regularisation requests that North Africans are the most represented, that many undocumented migrants also come from Sub-Saharan Africa and that Turkish, Chinese and Comorians are very present, in addition to other nationalities that are not very highly represented. The proportion of Eastern Europeans seems to be growing among illegal foreigners.

Usually, this population is young (often younger than 30 years old, seldom more than 40) but there tends to be more and more younger migrants and women amongst undocumented migrants.

Despite the law that has a provision for regularisation after 10 years of residence, the duration of their stay may be longer because of the difficulties in obtaining documents that the local authorities recognise as evidence of their presence.

### **Family Situation**

Family situations are pretty different. A study could show typical cases as different as a single Malian, a separated North African woman, a Chinese family with children born in France and others in China who are waiting for a family reunification, etc. But no correlation between nationality and family situation can be strongly established. The situations are extremely diversified, with only one common factor: aspiring to a stabilised family life, through de facto family reunification (arrival of the husband/wife, children, and/or parents, brothers or sisters...) or through new acquaintances in France.

Undocumented migrants can, as a rule, get married in France. Marriage is recognised as a basic right which is completely independent of legal status. However, they always run the risk of denunciation by a council worker<sup>5</sup> or are exposed to the trouble linked to suspicion of a convenience marriage.

As opposed to the common belief that if your child is born in France, it does not make you “undeportable”<sup>6</sup>.

Finally, minors or young people of age who have more or less broken off relations with their families and are alone, represent a part of undocumented migrants that, according to some observations, is said to be growing.

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<sup>5</sup> This is a risk that is linked to every procedure. For instance, there has been a case of an undocumented migrant who was denounced by a postal worker when he went to the post office to pick up a registered letter, and was arrested at the post office.

<sup>6</sup> As well as according to the law no one is “unlegalisable”.



## Housing

Regardless of regular or irregular arrival in a country, migrants prefer choosing a country where relatives or friends are able to welcome and help them. This support is first of all in the area of housing. According to a study carried out on approximately 200 foreigners who were regularized following the 1997 *circulaire*, more than 50% were sheltered by their relatives or friends at the time of the regularisation. Regularisation is all the same an opportunity to have access to individual accommodation, as living together during several years can often be difficult and incompatible, if not conflictive with the private life that young people especially wish to have.

Some single people also live crowded together in shelters. This is especially common amongst Sub-Saharan Africans. On the other hand, except for emergency housing centres, admission into facilities such as housing and social rehabilitation centres is usually jeopardised due to the lack of an “integration plan”, since the undocumented migrant is not able to respond to this common demand of housing facilities.

## Health

Living conditions of undocumented migrants do not favour good health.

Three factors must be taken into account:

- *Living and working conditions*: these are of course very harsh. The irregularity of the workload involves big timetable changes, with very high peaks.
- *Difficulties in accessing healthcare*: as they cannot benefit (except in some concrete cases) from universal health care (Couverture Maladie Universelle – CMU) which all French and legal foreigners now have, undocumented migrants may in theory ask for state medical aid (Aide Médicale d’Etat - AME)<sup>7</sup>. It is however logical that they are not necessarily willing to make themselves visible (as this procedure implies) nor are always capable of taking the necessary administrative steps, especially when some social security funds try hard to complicate the situation. That is why the Services for Access to Healthcare (Permanences d’Accès aux Soins de Santé), a free healthcare service created within the framework of the law against exclusion, sometimes receive a majority of foreigners in an illegal situation. These undocumented migrants prefer going to the Services for Access to Healthcare than asking for AME. The problems of a “two-tier” healthcare system are thus not avoided. In addition, language, which is a common obstacle to access to rights, (an illegal situation does not of course facilitate learning the language) also makes dialogue with medical staff more difficult.
- *Psychological suffering*: exile, fear, and uncertainty about the future are highly pathogenic, not only in terms of mental disorders. Of course, no epidemiological study allows us to demonstrate this, but several frequent types of psychosomatic problems are observed. If we refer to the WHO’s definition of health, “a *state of complete physical, mental and social well-being*,” then the health conditions of undocumented migrants seem terrible.

## Education

Children of illegal foreigners have the right to education and in reality, this right is often respected. The risk of denunciation at school is indeed relatively small; it is not very common, for example, for a mayor to refuse registration at a particular school. On the other hand, migrants aim at sustainable integration and social progress, and are therefore truly conscious of the opportunity that school represents for their children. In addition, all hopes for success tend to be placed on the second generation.

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<sup>7</sup> Only undocumented migrants that can prove that they have spent three years in the country have the right to state medical aid (AME) for health-care such as consultations and medicine, optical and dental costs, etc.; other undocumented migrants only have hospital medical aid limited to meeting the costs of services in health centres or prescriptions following an external consultation.

However, it is evident that the children's living conditions are not conducive to their schooling. Even if the parents often have been to school and have acquired a cultural background in their country of origin, they can seldom help them. On the other hand, in addition to doing their homework, children must help their parents with many tasks (i.e. domestic tasks, administrative tasks, since they speak the language better, and sometimes housework). Actually, we note that the many difficulties faced by these children throughout their schooling are similar to those faced by all children of working class families.

Finally, the special condition of being "illegal" can lead to loneliness, difficult relationships with their classmates and teachers, and suffering due to the feeling of being different and having to hide. Parents therefore hesitate (not only due to financial reasons) to allow their children to take part in school trips abroad, even if the group travelling document (valid for EU countries) guarantees them as minors the return to France because it works like a group passport<sup>8</sup>.

### Work

Most undocumented migrants work. However, needless to say that unless they have a fake residence permit (which is only the case for very few), they cannot be declared. There are three main consequences of this:

- *A greater risk of repression*: theoretically, employees cannot be charged for working illegally<sup>9</sup>, but since no contract binds them to the employers, many courts consider them as freelancers (mainly for domestic work which is underpaid and raises the fear of being controlled) and sue them as such for working illegally. Being an irregular resident (which alone is liable to one year in jail and a three-year ban from entering French territory) makes the crime even worse. Whether working in workshops, kitchens, on site or in their homes, undocumented workers are always under pressure and fear being controlled.
- *Exploitation by fear*: being afraid, undocumented migrants are not in a position to use their labor rights, even via articles that supposedly defend them. Even if they knew about these articles, they wouldn't dare to go to the Labor Relations Board. Trade unions that support undocumented migrants' regularization requests rarely include them in their organization and don't often fight for the right of undocumented migrants to work. Considering the situation, undocumented migrants are fully dependant on the conditions fixed by employers. They accept any pay, working hours and rates. If a particularly dishonest employer refuses to pay, undocumented migrants have no appeal. If they have an accident at the workplace, undocumented migrants very rarely risk telling about it, even though they are entitled to get free health treatment that is not linked to a residence or work permit. In the private service sector, there have been some cases of "modern slavery," sometimes by kidnapping, but these are extreme examples.
- *Lack of security*: considering that there is no work contract, an undocumented migrant has more tasks to carry out than if s/he were legally employed. These tasks may or not be renewed from day to day, which leads to a type of work that is even below casual work. Undocumented migrants know that employers can get rid of them overnight if they are not satisfied with their work, or if there isn't enough work for them. An undocumented worker is the dreamed-of employee for an employer who likes flexibility.

Undocumented migrants are concentrated in a limited number of activities, but especially in the building industry, catering, seasonal work in the agricultural sector, the clothing industry, and in private services. The way they are recruited is also the reason why some jobs are locally concentrated in certain communities. This situation

<sup>8</sup> Except for UK and Ireland that demand an individual passport.

<sup>9</sup> According to the Labor Code, an undocumented migrant working in the informal sector can even receive compensation for being a victim of illegal employment. Even if s/he could prove an existing working relationship, s/he is of course usually not ready to go through the adventure.

results in customs which are implicitly accepted within the milieu of undocumented migrants. These customs are then used instead of rights.<sup>10</sup> This is another factor that explains the absence of protests concerning working conditions. When these customs are deeply rooted in a profession, they can extend to regular workers. The presence of large numbers of undocumented migrants as a forefront of deregulation is sacred for employers in such sectors. For the undocumented worker, it results in growing work opportunities, but also a stronger determination of the sector of employment, regardless of his/her choice: Chinese from Wenzhou will rather sew garments for subcontractors of the Sentier (the textile industry area in Paris), whereas Comorians will do the washing-up in restaurants in Marseille.

At the fringe of the labor sector, prostitution only reflects the impasse in which other categories of the population that are excluded from employment are also relegated. Isolated minors represent an extremely vulnerable category.

### **Social Rights, Assistance and Collective Action**

Social rights for undocumented migrants are legally limited but are even more limited in reality, as is the case of many other rights. Although some services aren't dependent on residence status, such as the *Aide Sociale à l'Enfance* (social help for children), there are some obstacles to providing social services such as the inability to prove a lack of resources. Usually, such hindrances may be circumvented legally, but it is very disheartening.

However, a number of undocumented migrants do make tax declarations; some pay housing taxes if the housing contract is in their name, some receive negative taxes through the "employment premium" despite the fact that work is prohibited to them. They may also benefit from different kinds of assistance, but this depends on the administration they take the risk of going to. But they have few arguments they can assert when acting alone. The irregular situation exacerbates exclusion problems that are in fact largely extended: undocumented migrants have to get out of the face-to-face approach, organize to defend their rights, and join collective actions in order to find a way out.

Many different organizations can help them. Some focus on defending human rights in general; others focus more specifically on immigrant groups; some focus on legal assistance, others on health and housing issues or training. Organizations that are mainly composed of French citizens have close contacts with organizations that mainly work with immigrant residents (that group together on a national or regional basis). Family associations also include organizations that are active in defending foreigners, including undocumented migrants.

Some *collectifs* supported by French individuals or organizations allow undocumented migrants to meet in a different environment than work and home, where they can struggle together to obtain residence permits. In such places, personal relationships between locals and undocumented migrants develop and French citizens sometimes become the real or symbolic godfather or godmother of an undocumented migrant. Those French citizens help them by gathering evidence and making files; they may also accompany undocumented migrants to the prefecture, etc. Activities in the *collectifs* are cyclical and depend on the political situation, and on the more or less rational feelings of hope and despair. According to those fluctuations, the media sometimes puts the issue into the spotlight, whereas the week afterwards it doesn't even mention it.

Consequently, at least three factors must be taken into account when analyzing the prospects of the undocumented migrants' movement:

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<sup>10</sup> In the textile industry, for example, workers are paid by piece of cloth on a basis that most of the time does not allow for obtaining the minimum wage set by law.

- *The state of opinion* that ranges from indifference to sympathy. Most French citizens consider undocumented migrants as part of the “sans” (“without” documents, housing, social rights, etc.) and thus have a feeling of compassion for them, as they often confuse undocumented migrants with the homeless. In this sense, the humanitarian reaction is to their benefit. Nonetheless, the fate of undocumented migrants doesn’t interest the bulk of the population. However, in the past years, activists and citizens aware of political problems have paid more attention to the issue, though they have only acted in a limited way. Many thought that the expected assignment of the political party in charge of the main governmental tasks until 2002 was to carry out a global regularization. Its small defeat might have been partly caused by its weakness in this topic, resulting in the demobilization of a part of the traditional electorate. However, parties more engaged in defending undocumented migrants didn’t see this as a priority that could cause a breaking-off of the governmental pact.
- *Mobilization of undocumented migrants*: their desire for living what they simply call “a normal life” is such that even the slightest sign of hope makes them move; but the danger of mobilizing while facing daily problems makes them be careful and back away. Actually, for the most active ones, there is permanent tension between the fact that on the one hand, they know they have to take part in collective action, while on the other hand, their natural desire is to take every opportunity to improve their own fate as well as their families’ fate. Those less active must first fight against fear. What is more, as is the case of the media, supporters contribute to the fluctuation of undocumented migrants’ mobilization: sometimes they are very supportive and remain at their side during critical moments (such as in 1996, when undocumented migrants occupied the Saint-Bernard church), but supporters can also be the first to disappear when nothing really happens.
- *Authorities’ attitude*: despite changes in the majority, authorities’ attitude towards undocumented migrants has been remarkably constant; regularization processes are only partial and new arrivals imply that they have to be periodically renewed. Successive modifications of the 1945 Order, which defines the conditions of entry and stay in France, haven’t changed the basis of the law. Beyond the rhetoric, these regulations pragmatically surf on the waves of the economic, social and possibly even political situations. Undocumented migrants only suffer the jolts of this. Nevertheless, prefectures still largely manage the principle of “controlling migration flows”. Regularization is being more and more directed by international conventions. Indeed, it is hard to imagine a European government making radical decisions on its’ own.

Therefore, if in France and in other countries, the fate of undocumented migrants still depends on the quirks of the prefectures for individual cases, or on governments’ good will for collective cases, only a joint will of European governments can put an end to the factory of undocumented migrants that their migration policies create.

## Undocumented Migrants In Spain (2.4.3)

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### Introduction

The Emigration Law 4/2000 was reformed when, on January 23rd 2001, Law 8/2000 came into force, a law which represented a serious attack on human rights. One of the declared aims of this law was to “put a stop to” the so-called illegal immigration in our country.

After the general election of 2000, which saw the People’s Party (*Partido Popular*) win by an absolute majority, - after the slight step forward introduced by Law 4/2000 - the passing of this reform set the path for an extremely stern policy on immigration, especially in terms of harassment of undocumented migrants.

Throughout 2000, in the course of a negative publicity campaign, the public was bombarded with relentless official statements and news, aimed at creating the necessary climate of social alarm in order to justify the reform of

the law. This caused a shift for the worse in public opinion.

These media campaigns have continued through 2001 and 2002, focusing on different aspects of immigration but always portraying illegal immigration as the cause of a great deal of the ills in our society.

Unfortunately, little by little, public opinion has been swayed towards an increasingly generalised acceptance of the government's policy whose leitmotiv is "No to illegal immigrants." This, perhaps, is the government's main achievement: it has secured considerable support in society for its immigration policy, as opinion polls show, paralysed the opposition – since fundamentally it endorses the government's arguments - and created the current social climate felt on the street.

Raids targeting undocumented migrants are being carried out in numerous cities, whilst the budget for deportation is being doubled. The legal status of legal immigrants is increasingly threatened as renewing their permits is ever more difficult. The message being sent out to them is very clear: if you don't have a job, you might as well go back home.

In a nutshell, immigration is going through one of its grimmest periods in Spain. The situation of undocumented immigrants is increasingly more precarious and their future increasingly more uncertain.

### **From Law 4/2000 to Law 8/2000**

Law 4/2000 on *Rights and Liberties of Aliens in Spain and Their Social Integration* (Immigration laws) was passed by the Parliament in 1999 and came into force in January 2000. The said law replaced Law 7/1985 and, for all its imperfections, represented a certain step forward from the latter, especially in terms of acknowledging the rights of undocumented migrants. In short, it was part of a more "progressive" approach to the phenomenon of migration.

The victory by absolute majority of the People's Party (*Partido Popular*), which had included the reform of Law 4/2000 in its electoral manifesto, changed this scenario. In December 2000, Law 8/2000, which reformed Law 4/2000, was passed by Parliament and came into force on January 23rd, 2001.

This law represents one of the biggest steps backwards since the establishment of the Rule of Law in terms of liberties and constitutional rights for those who, in theory, are supposed to be under its protection.

The main characteristic of the law is the difference it sets out between the restricted entitlement to rights for legal immigrants and the denial of all rights for undocumented migrants.

According to Article 7.1 of Law 8/2000, the rights to demonstrate, to public meeting and to associate are subject to the foreigner being a resident or being authorised to stay in the country. In other words, the migrant is devoid of a fundamental right because of mere administrative authorisation.

In the same way, Article 11 of the law makes the right to form or become member of a trade union or the right to strike conditional upon the migrant's legal status, thus depriving undocumented migrants of their employment rights. This violates Article 28 of the Spanish Constitution and ILO agreements.

On the other hand, several articles abolish the "effective judicial protection" as well as the right to "free legal assistance" for undocumented migrants. This violates Article 24 of the Spanish Constitution, which sets out these rights for "all persons."

Undocumented migrants are condemned to five years' illegality by Law 8/2000 before they can regularise their situation, even if they have already provided reliable evidence which demonstrates their uninterrupted stay and solvency during those five years.

The law also seriously limits access to education and other social services, rights enshrined in the prior Law 4/2000.

In short, Law 8/2000 has meant an effective "social and civil death" for all those whose papers are not in order, rendering the 1948 Universal Declaration of Human Rights and International Covenants on Political and Civil Rights and Economic, Social and Cultural Rights of December 19th, 1966 empty rhetoric.

### **Regularisation Processes**

Two regularisation processes have been carried out: one in 2000 and another in 2001. In addition, 24,089 Ecuadorians were regularised in 2001 for "humanitarian reasons".

From March 21st to July 31st, 2000, with Law 4/2000 coming into force, a first regularisation process was set in motion, for which 246,089 applications were received. In 2001, applications which had been rejected in this first process were reassessed.

The second process was carried out in 2001 and ended in August of that same year. It should be pointed out that this second regularisation process was a result of pressure from the support movement for the "sit-ins" that took place during the first half of that year and from the widespread opposition caused by the passing of Law 8/2000. For this second process 350,158 applications were received.

These regularisation processes revealed the existence of a considerable undocumented population in our country (a sum total of 621,131 applications), a shocking number in terms of size, both for the government and even for the trade unions and NGOs working with immigrants.

After these regularisation processes, foreign nationals regularised in Spain (both EU nationals and immigrants from other countries) increased from 801,416 in December 1999 to 1,301,342 in December 2002, according to official sources from the Interior Ministry. This means that the "foreign" population in Spain is approximately 3% of the resident population (41.1 million).

An initial consideration of these figures clearly shows that Spain is still far from the immigrant population levels in other European countries such as France, Germany, Belgium or Austria. Therefore, there is no objective reason why the government should continue insisting on the fact that migratory flows are out of control.

### **Border Closure Policy: Source of Illegal Immigrants**

If one pays special attention to the figures revealed by the regularisation processes, two additional consequences can be inferred: the first one is that, given the fact that the vast majority of immigrants have entered the country legally, there are many, often insurmountable, obstacles, to overcome in maintaining their legal status. More attention will be given to this matter further on.

The second consequence has to do with the failure of the Border Closure Policy and its repercussions. The Spanish Government has made its tough policy on immigrants its hallmark for the rest of European countries. The closing of borders is the policy's main plank.

The Spanish government has allocated over 24 million Euros to this policy of controlling and closing borders.

The cost of sealing off the Ceuta and Melilla borders and the SIVE (an integrated system for monitoring the Gibraltar Strait) is included in this amount.

The requirements to be met make it impossible for migrants who wish to exercise their right to emigrate from third countries to enter Spain legally. Such measures have forced a considerable number of immigrants to turn to underground networks (which are the true beneficiaries of this policy) and to emigrate illegally, which most of the time involves enduring terrible conditions and risking their own lives.

Around 250 people may have lost their lives in these attempts to enter Spain illegally during 2002. This figure rises to several thousands if the last 12 years are considered. In only the first two months of 2003, 65 people lost their lives. The border closure policy thus becomes the source of undocumented migrants. Far from curbing “illegal” immigration, this policy has had the paradoxical effect of increasing it.

### **In Spain All the Doors Allowing Illegal Immigrants to Obtain Legal Status Have Been Closed.**

In practice, it is impossible to make a reliable estimate of the number of undocumented migrants living in Spain. According to NGOs and other sources, this figure could be in the hundreds of thousands in spite of the various regularization processes.

Throughout 2001 the government maintained a very restrictive stance regarding granting permits through the general scheme. The administration has been systematically rejecting all work and residence permit applications (even if a valid work contract was submitted) since January 14th, 2002 (Circular 1/2002 of the Labour and Social Affairs Ministry). As a result, no immigrant has been able to regularise his/her situation in the country for the last year and a half.

On the other hand, despite the failure of the measure - since hardly any applications have been submitted from the country of origin - the government has continued its quantitative restriction policy for 2002. According to the decree regulating the 2002 Quantitative Restriction Policy, eligibility depended on the application being submitted from the country of origin. In this way, the Government has done away with one of the few ways which in past years enabled immigrants already in the country to regularise their situation.

The quantitative restriction policy (quota) for 2003 remains fundamentally along the same lines. The main structural problem of this quantitative restriction arises when it is considered to be the only system, the sole procedure immigrants have to enter the country and join the labour market. The Government has turned this sheer quantitative restriction (aimed only at people who are in their countries of origin) and the blocking of the general scheme into the essential core of its whole migration policy.

In spite of the improvements made and although its stated aim is “to meet the companies’ real needs” (overlooking any other consideration that might take into account immigrants or other needs and international cooperation and solidarity commitments), it is unlikely to achieve its goal. Indeed, Spanish and international experience have shown that the quota as a single and fundamental control system of entry into the country to work with a contract - signed in the country of origin - and guaranteed labour rights is pure myth. The underlying problem is that neither international migration nor a sizeable share of the internal labour market work this way. As a result, the quantitative restriction put into practice is contrary to the speed and the needs of the labour market and a more globalised economy.

Squeezing these contradictions within the tight quota is a clear offence to those immigrants already in the country and to those who will continue to arrive. It would mean condemning the thousands of undocumented

migrants in the country and in Andalucía (from 60,000 to 100,000) to an irregular status, forcing them to resort to trying to regularize their situation based on having been in the country for three continuous years (for those who can) or based on having been in the country for five years in an irregular situation (for those who manage and are not caught by the police during that period). It would also mean strengthening the provisions as well as the policing structures that are used for deportations. The budget for these kinds of operations is 186% larger than it was in 2002.

Finally, it should be stressed that there are thousands of people whose applications for permit renewal are being rejected due to the highly restrictive requirements which are necessary (possession of a valid work contract and payment of social security contributions to the Social Security for at least ten consecutive months in the previous year). Many immigrants cannot meet these requirements, especially those who work in the agricultural sector, since employment is seasonal, thus thousands of people are slipping back into an illegal status, increasing, in turn, the number of undocumented migrants in the country.

### **Employing Undocumented Migrants**

Although this is forbidden by law and employers who contract undocumented immigrants can be severely fined, the reality is a different story: there are tens of thousands of immigrants who work illegally.

Such a phenomenon is not only due to the permissiveness and incapacity of the administration to control the issue. Employing illegal immigrants is widespread because there are many employers who have no qualms about increasing their turnover by means of illegal exploitation of illegal immigrants, often in inhumane conditions, since they are submissive employees who fear being reported to the authorities and are thus easier to exploit.

Though the very nature of this phenomenon makes it difficult to evaluate its extent, illegal work is widespread, especially in the domestic help and agriculture sectors.

There are a considerable number of agricultural areas that thrive on employing undocumented migrants. Examples of this are fruit and vegetable growing in Murcia, olive picking in Jaén, the greenhouses in Almería, strawberry picking in Huelva, fruit harvests in Lérida, garlic in Ciudad Real and fruit and vegetable growing in the Catalan region of Maresme.

The situation of these immigrants, which in many cases can be defined as genuine exploitation, brings to mind the 19th century: terrible working conditions, wages below the minimum established by collective union agreements, working days which exceed legal stipulation, no access to housing (workers often sleep at their work place), failure to comply with basic measures on health and safety at the workplace, etc.

As their jobs are seasonal, workers are forced to alternate periods of intensive work with long periods of inactivity and are thus forced to lead an itinerant life based on the dictates of the agricultural calendar. This hinders social integration and interaction with the host society.

These people's situation is so hard that as soon as they have their papers in order, they immediately try to find sources of income other than the agricultural sector. Perhaps one of the keys to why the current policy prevents them from regularising their situation lies here: they are tied down to carrying out jobs which otherwise are extremely difficult to find workers for, thus maintaining current wage levels and working conditions.

Another important "black hole" where a significant number of undocumented migrants are employed is in the domestic help sector, especially in big cities. Increasingly, research into this issue is approaching an under-



standing of the true magnitude of this problem, which is a source of serious human rights violations, worsened by the fact that most of these workers are women. Although in some cases friendly, supportive relationships are formed, the blurring of the distinction between private and professional life in the case of “live-in” help and over-work under the threat of being reported to the authorities, personal clashes for family reasons and sexual abuse are all in a day’s work for female immigrants working as domestic help.

### **The Social Situation**

The coming into effect of Law 8/2000 was a big leap backwards in terms of undocumented immigrants’ social rights, which they had been granted by Law 4/2000 on the sole condition of being registered with their local authority.

This is the case with public health services, provision and assistance for housing, access to education or access to community social services in general.

In any case, since the Spanish government transferred its powers in this area to each of the different Autonomous Regions, the current situation in each one varies and could even depend on the towns in question, since they share part of the responsibility in this matter.

In general it can be said that there is a serious lack of educational and health care services. However, the situation regarding housing and access to community social service benefits is even worse, although, as mentioned above, it varies according to Autonomous Regions and local councils.

Whatever the case may be, when talking about the social situation it is essential to consider the opinions and attitudes towards immigration, and especially towards illegal immigration, of the host society.

Although generalisations cannot be made, an increase in attitudes of suspicion and rejection has been observed, and this attitude is more strongly marked in the case of undocumented migrants.

Negative publicity campaigns, both from some media sources and from public officials as well as from the government have doubtless contributed to this.

Particularly negative was the government’s campaign linking immigration in general and especially illegal immigration, to the increase in crime in Spain.

There are many studies (Wagman, 2000) as well as several police unions that reject this link. Even the official figures are contradictory. These sources (even official ones, as mentioned above) question both the actual increase in crime and its link with immigration and undocumented migrants. However, Spanish society has already assimilated the message, which was the main aim. An increase in racism is therefore not surprising, and institutional campaigns to fight it therefore come across as hypocritical. As a matter of fact, the modifications envisaged for the penal code on tougher punishment for mafias and immediate deportation of immigrants who have committed a petty crime, are enshrined within the framework of criminalizing immigration and persecuting undocumented migrants. The practical results, which are more than questionable, do indeed influence public opinion, which is increasingly aware of the problems linked to safety.

### **Undocumented Migrants: The New Face of Exclusion and Marginalization**

Societies at the beginning of this new century are creating new faces of exclusion and social isolation. Zero Migration and Border Closure policies have led to millions of people throughout Europe swelling the ranks of the excluded in these new dual societies.

Undocumented migrants are already part of the new face of social marginalization, of the homeless population, of the shantytowns in big cities, of sub-standard housing, of the lack, and very often impossibility to access the rights that the Welfare State provides for its citizens to a greater or lesser degree.

As a result, undocumented migrants do not even have a right to exist, a right to be acknowledged as human beings. And their situation is increasingly wretched. On top of the tragedy of social exclusion, there is also the constant fear of the police, of being deported, of living in hiding. Distressing situations which lead to mental disorders are already beginning to arise.

At the beginning of this new century human rights have encountered a new barrier that needs to be overcome: immigrants must have “a right to have rights”. Without this, everything else is merely words - vacuous, sterile discourse.

## Social and Economic Conditions of Overseas Citizens without a *permesso di soggiorno* in Italy (2.4.4)

*Elisa Favè and Matteo Danese, CESTIM – Centro Studi Immigrazione*

1. Accommodation
2. Health
3. Education
4. Minors
5. Work and Amnesties
6. Asylum Requests
7. Public Opinion
8. International Standards

### **Preface: Some Numbers**

A look at the figures for recent years shows that, whatever the type of government, migratory pressures have been constant, as has been the vigilance of the forces of order. **In 2001 more than 40,000 people were denied entry at state borders, and another 34,000 were expelled with accompaniment.**

**Experts estimate the number of those without a *permesso di soggiorno* who have not been expelled to be around 25 - 33% of those who have obtained a regular *permesso di soggiorno* (i.e. around 300-350,000 people), up to October 2002.**

**Following the coming into force of a new law of “legalisation” (which will be discussed in the following), up to now about 700,000 requests for regularisation of jobs concerning citizens from outside the European Union have been received.**

### **1. Accommodation**

- a. Private rented accommodation: although not expressly forbidden, renting private accommodation to overseas citizens without a *permesso di soggiorno* falls into the area of the informal economy, due to the existence of certain regulations.

In particular, whoever hosts a foreign citizen is required to notify the authorities of their presence; this means, obviously, that the making a formal contract between an overseas citizen and the owner of the property would make the owner liable to the sanctions for those who do not declare the presence of an overseas

person in their property, or alternatively, would certainly make the overseas person liable to expulsion.

The clandestine nature of the market for rented accommodation for foreigners without a *permesso di soggiorno* obviously exposes the overseas citizen to a series of abuses and dangers: the rent is naturally outside of normal controls, since the needy conditions of the foreigner and his lack of contractual power allow the owner to charge higher-than-average prices. The conditions of hygiene and safety are often below average, since the accommodation provided to an overseas citizen without a *permesso di soggiorno* is often in need of restructuring work while, once again, the informality of the agreement stops the foreigner from being able to expect the owner to carry out the repairs which are his responsibility. One finds in many cities that properties occupied by irregular overseas citizens are concentrated in certain areas of the city (where properties in need of restructuring work would seem to be concentrated).

Overcrowding in such properties is a frequent consequence of the high rent of such accommodation: obviously, the rent can be divided between a greater number of people, but with the consequence of worsening the living conditions and safety of the occupants.

Italian law punishes anyone who facilitates the illegal staying of foreigners in order to make an unjust profit. This could also happen in the case of rental to irregular foreigners of rented accommodation at exorbitant prices, not declaring their presence to the authorities.

In some cities (e.g. Verona) the “solution” found by the authorities to the problem of overcrowding has been in the house-by-house checking of a specific communal regulation which for reasons of security prohibited the use of a property for accommodation if the number of square metres per person fell below a certain limit: this has led to forced closures.

- b. Public housing: overseas citizens without a *permesso di soggiorno* are completely excluded from public housing (rented properties provided by local authorities for accommodation at reasonable prices).
- c. Accommodation with relations, friends, co-nationals. The network of family and co-nationals undoubtedly represents an efficient way of getting initial accommodation. Except for cases of reuniting families, however, merely staying with family does not in itself give the right to a *permesso di soggiorno*.
- d. Accommodation on the part of the employer. The (informal) performing of work can also be a channel to acquire accommodation. This happens above all for domestic workers and those who look after children and old people in the house, where the employer’s home coincides with the place of work, often 24 hours a day. The practice of offering workers accommodation is also found in some smaller industrial environments, or else in agriculture. Such arrangements, even if on the one hand they offer a foreigner without a *permesso di soggiorno* the advantage of accommodation, can also leave the foreigner more open to “blackmail”, in that if they lose their job, they also lose their accommodation.
- e. Occupancy of abandoned housing. The occupancy of abandoned houses or disused factories by foreigners without a *permesso di soggiorno* is not uncommon. This often occurs with people who are working (obviously informally) but are not yet able to afford rented accommodation. Apart from the obvious difficulty of living in an environment without electricity and often also without running water, this type of arrangement has the further disadvantage of not constituting appropriate accommodation for such time as work regularisation might be approved, since as well as the promise of being given or already having a job, this usually requires that the person have available recognized accommodation.

- f. Accommodation at private shelters: private shelters can also host foreigners who can be without a *permesso di soggiorno*. The law does not prohibit providing succour or anyway providing the means of sustenance (food, shelter, clothing, etc.) to a foreigner present irregularly on Italian territory. What is in fact alone prohibited is the exploitation of situations of clandestinity for one's own financial ends. The Northern League, part of the current government, has however recently accused certain organisations (e.g. Caritas) of offering help (also) to foreign citizens without a *permesso di soggiorno* to make their illegal stay easier, to further the ends of the organisation (!).

## 2. Health

### a. The law

Through a specific measure (Article 35 T.U.), Italian law, through the public health infrastructure and with agreements with the public sector, assures health care to foreigners without *soggiorno* permits in the following areas: outpatient and hospital care which is urgent or otherwise essential even if continuous; medical programmes which are preventative or which safeguard individual and collective health; maternity coverage on an equal basis with Italian citizens; coverage of the health of minors; vaccinations covered by law; diagnosis, treatment, and prevention of infective diseases; activities of international prevention.

The right to health, then, is guaranteed not just in the form of intervention of absolute urgency and limited to assistance of an immediate nature, but also in the form of ongoing care (essential for the health of the person) and of all services associated with a state of chronic illness or which otherwise require assistance over an extended period of time (for example maternity).

The law in question also expressly makes provision that access by foreigners to the health infrastructure should not encompass any type of notification to the authorities, except in cases of obligation to report (that is, whenever the doctor encounters signs of a crime committed against a foreigner, for example knife wounds, etc.).

For mothers, in particular, their expulsion is not allowed until a child is six months old (in fact, a *permesso di soggiorno* is given "for health reasons" until a child attains six months). Furthermore, the Italian constitutional court (judgement no. 376, 27<sup>th</sup> July 2000), has sanctioned the right of a husband who lives with the mother of the child not to be expelled from Italian territory, notwithstanding his state of being clandestine or irregular, for as long as the *permesso di soggiorno* of the mother for health reasons is valid.

Finally, the law makes provision that charges related to health services are borne by the state only in cases where the foreigner who avails himself of them is in a state of poverty; fees incurred in using health-related services are payable by the foreigner, the same as they are by Italian citizens.

### b. In practice

The guarantees covered by the Italian law on rights to health are quite wide and positive. The practical application of the law is, however, impeded above all by lack of awareness on the part of foreigners without a *permesso di soggiorno*, but also on the part of health workers themselves.

There is a particular diffidence on the part of women who arrived in Italy irregularly to use the public health infrastructure to give birth in safety: there is often the mistaken assumption that, once they have made use of the public services, they will be made known to the authorities, and therefore deported.

Informative campaigns, both public and private, have contributed to improvement in the use of public structures, and continue to do so: obtaining a specific "*permesso di soggiorno* for health reasons" also helps a foreigner to stop being clandestine, allowing him to work autonomously, whenever "quotas" might be available.

c. Private services

The relatively recent regularisation of this area (1998), and the current diffidence towards public services have led some organisations to make available centres for diagnosis and care, organised by volunteer medical staff, specifically for foreigners, mostly those without a *permesso di soggiorno* (e.g. NAGA in Milan and CESAIM in Verona).

The services offered here go beyond essential and urgent interventions, covering all aspects of health care.

Having a clientele consisting almost exclusively of foreigners without a regular *permesso*, these centres have also had the function of investigating particular pathologies associated with the living and psychological conditions of their patients.

Milan also has a centre for psychological assistance for overseas citizens (both regular and irregular).

The activities of these centres are obviously permitted by the law, within the limits normally defined for the professions involved.

### 3. Education

a. The law

Article 38 T.U. on Immigration expressly states that overseas minors present in Italy, even if without a *permesso di soggiorno*, are subject to the same scholastic obligations, and have the same full rights to instruction as Italian minors.

As well as a right to formal equality, the norms establish a general obligation, on the part of public services (at state, regional, and local level), to make provision to guarantee effective equality between overseas and Italian minors, by making available special Italian language courses.

Furthermore, the norms establish the principle of recognition and valuing of linguistic and cultural differences, tasking schools with encouraging common “intercultural” activities.

Since the law expressly talks of “scholastic obligation”, however, administrative practice holds that minors without a *permesso di soggiorno* should have access to schools only within the age range of compulsory education (now raised to the age of 16).

As for an overseas adult without a *permesso di soggiorno*, the law makes no provision.

More precisely, the law covers exclusively the rights to instruction of foreign adults with a regular *permesso di soggiorno*, thus expressly distinguishing between minors (any present in Italy) and adults (with a regular *permesso*).

There is nothing which forbids giving instruction to adults without a *permesso di soggiorno*, nor on the other hand is there an obligation on the part of the teacher, whether of a public sector or private school, to declare the presence of an adult without a regular *permesso*.

In practice, some private organisations, and also some public sector ones, have allowed adults access to basic literacy courses.

#### 4. Minors

Article 19 of the law on Immigration forbids denial of access at the border, or expulsion from state territory of overseas minors without an entry visa or *permesso di soggiorno*, except for the right to stay with a parent or guardian being deported.

A special *permesso di soggiorno* for minors is thus available to minors without a *permesso*.

The current law makes provision that on reaching the age of eighteen, the *permesso di soggiorno* for minors can under certain circumstances be converted into a *permesso di soggiorno* for study or for work. This can happen if the minor has been staying with people with a regular *permesso di soggiorno* or with Italian citizens, or else in the case of unaccompanied minors (i.e. for whom there is no trace of either parents or relatives to whom they could have been entrusted), only if they have been in Italy for at least three years and have attended a “project of social integration”, whose duration is not less than two years, arranged by a public body or another organisation with appropriate characteristics covered by the law.

A minor, therefore, can constitute a “legitimate” way of being able to remain in Italy including for parents without a *permesso di soggiorno*. Article 31, Paragraph 3, of the act on Immigration in fact states that, on authorisation of the appropriate judiciary authority (minors court), a parent without an entry permit or *permesso di soggiorno* can be allowed to enter or stay in Italy “for serious motives associated with psycho-physical development, bearing in mind the age and state of health of the minor on Italian territory”. Recent judgements, however, have established that this norm should be interpreted rigorously, that is in permitting the temporary presence in Italy strictly necessary to guarantee the safety of the minor, excluding, for example, that a minor attending school and in Italy for several years should become a motive for “delay” of the deportation of a parent for the duration of the period of compulsory schooling.

#### 5. Work and Amnesties

Overseas citizens without a *permesso di soggiorno* are absolutely excluded from the (formal) work marketplace.

Indeed, the use of labour by foreigners irregularly present on Italian territory is in itself a crime, punished quite severely by the penal code (arrest from 3 months to 1 year and a fine of 5,000 euros for every foreigner irregularly employed).

Apart from anything else, the Italian work market in general is characterised by a strong “submerged” (i.e. not regular) element.

In the two years 2000-2001, about 25,000 companies were inspected each year, and these had about 11-12,000 immigrant workers as employees. On average over the two years, it was found that 40% of the immigrants were involved in some sort of irregularity regarding payments, and that between a fifth and a quarter of the workers engaged by the companies inspected were without a *permesso di soggiorno*.

If one considers declarations to the judiciary authorities as an index of the presence of overseas workers without a *permesso di soggiorno*, and administrative reports as an index of black market labour, this would show that about one company in 20 (4.9% in 2000 and 5.7% in 2001) does not provide regular cover for workers from outside the European Union and a similar percentage (3.8% in 2000 and 6.7% in 2001) uses workers without a *permesso di soggiorno*.

Regarding regional differences within Italy, it can be said that the cases of irregularity in the north are higher than average (42%), while in the south those of clandestinity are above average (35%). In the centre, the figures are

below the national average (irregularity 34.5% and clandestinity 18.4%). However, with respect to the past, the numbers are down by several percentage points, both for the level of irregularity and that of clandestinity.

Going to the root of the phenomenon, the position of those who have suggested that the fluidity of mechanisms of access to work (arriving with sponsorship being one of these), not to mention inspections and sanctions, would be a deterrent against black market and clandestine labour, would appear to be reasonable. From this point of view, the fact that entry quotas have not been fixed for 2002 has also been a negative factor. It is not said officially, but a level of clandestinity notoriously makes the overall system of Italian labour more flexible, and this also leads to clandestinity being accepted normally. The proposal to facilitate access to work could resolve this embarrassment and legitimise an appropriate rigour with regard to clandestinity. (*Us and them. The overall governance of immigration in a global world*, Research by CERSDU- LUISS, June 2002).

ITALY :			
Irregular and clandestine workers : the results of an inspection (1993-2001)			
Year	Immigrant employees	% with <i>permesso de soggiorno</i>	% without <i>permesso de soggiorno</i>
1993	48.300	6,52	34,8
1994	56.700	5,14	48,6
1995	37.100	6,52	34,8
1996	31.600	5,03	49,7
1997	33.800	6,72	32,8
1998	31.200	7,19	28,1
1999	21.695	8,82	11,8
2000	11.172	7,27	27,3
2001	12.186	7,81	21,9

SOURCE: Elaboration of a Statistical Dossier on Immigration Caritas/Migrantes with data from the Ministry of Labour

Currently (under article 33, law 189/02 and law 222/02), provision for the “legalisation” of irregular work is in force. This is a procedure which permits a foreigner without a *permesso di soggiorno* to obtain one for employed work.

The mechanism envisaged by the law also distinguishes this from all the preceding “regularisations”.

**The law in question, in fact, is aimed (not at the foreigners, but) at employers** who have engaged, over a certain period of time, foreign workers without a *permesso di soggiorno*. The employer “can” (sic!) make a declaration to the public authorities in which he affirms to have employed the foreigner, pays a non-variable amount to regularise the administrative irregularities committed, sees these penal irregularities committed regularised, and finally, undertakes to enter into a “contract of *soggiorno*”, an act which allows the worker to be issued with a *permesso di soggiorno*.

The ‘regularization’ regarding the situation of irregularity or clandestinity of the foreigner is, then, dependent merely on volition on the part of the employer.

Different interpretations, inspired by principles of equality and non-discrimination, are proposed to the courts, and on occasions accepted: it is thus not possible today to identify a reliable judicial interpretation.

## 6. Asylum Seekers

It is not surprising that, when one talks of disembarkations, one always thinks of clandestine immigrants, forgetting that many of these are asylum seekers who have come fleeing from situations of great danger, as has happened with the Kurds or those from various countries in Africa and Asia. **Asylum seekers numbered about 10,000 in the course of 2001**: the majority of the requests presented were rejected, while one should not forget that many of these did not intend to remain in Italy.

The recent legislative innovations (law 189/02) have been accused of being unconstitutional precisely because they wouldn't guarantee the effective right of asylum.

Indeed, according to the new measures, the asylum seeker can be kept in special centres to establish his identity (a person who flees from a war will rarely have his documents with him!), with limits to his personal freedom; the request, examined by a special committee, is if rejected re-examined by a commission composed of the same members of the initial commission with just one further member. Finally, if his request is rejected and an expulsion order follows, the principle invoked for the asylum seeker is that in which recourse to an 'ordinary judge' does not suspend the execution of the expulsion (enacted by accompaniment to the border), so that an asylum seeker illegitimately expelled can find himself trying to defend his reasoning... in the same country from which he fled for violations of his own human rights.

These are some of the aspects of the new law that have been criticised by legal experts (Asgi - Association of Judicial Studies on Immigration; Arci; Caritas).

## 7. Public Opinion

An exhaustive discussion of this subject would require excessive space. It seems appropriate to us in this organisation to recall an episode which took place in Italy in a town called Novi Ligure a couple of years ago, a terrible family tragedy which for several days kept up an "Albanian alarm", which had for some time been emphasized by the press. This particularly tragic story is that of a girl who, together with a friend of the same age, both of them minors, killed her mother and younger brother.

What we should reflect upon, however, is the contents of the first version of events the girl told when her father returned to the house: "Some Albanians arrived, they got in and stabbed everyone, but I was able to hide".

For several days, the papers did little more than talk of brutal crimes committed by Albanians on Italian soil, build precise anthropological profiles of the knife-wielding Albanian, etc..

Once the terrible truth was discovered, hardly any journalist made any attempt to say sorry to the Albanian community for what had been written with such a know-all and at the same time scaremongering tone.

Above all almost no-one asked themselves about the very dangerous mechanism that had been invoked in the girl to supply herself with an alibi: the first thing that springs to mind is that of the foreigner who kills, an image that indeed people and more importantly the press immediately latch onto uncritically as the only possible explanation (who, in our society, could so viciously kill a mother and her child?!).

We would like to report what was written and published several days after the events by the sociologist Dal Lago, one of the few who was struck, more than the family tragedy (an unfortunately recurring episode in every society since the dawn of time), by the ease with which the means of communication immediately took up the thesis of the malice of such "others", depicting the foreigner, he not of "our" society, as the only one capable of such brutality.



The article concludes recalling electoral posters, in themselves very significant, present in Italy during that period. On both sides of the political divide, the slogan was “security”, thus feeding the alarmism with regard to an affirmed (if unsubstantiated by police data) rise in criminality associated with the rise in the number of foreigners.

**“Chi fa Paura” (Who makes us afraid) by Alessandro del Lago**

But why on earth should we be struck dumb or vacillate over the killings of Novi Ligure? And what is there to understand in this ordinary but tragic family episode, similar to so many others in recent years? (...) And, ultimately, what is new under the sun? We have in recent years read about family stories in which greed, jealousy, stupidity, or more simply nothing have led fathers, mothers, children and siblings to cut each other's throats. Where we should expect a little shame (I'm obviously thinking about the press), we are submersed by the usual front-page moralism, by banner headlines done for effect. (...) If there's something to be afraid of in this story, it is rather yelling citizens. A woman interviewed two evenings ago for television news declared, “We are no longer safe. Even after the Bilancia affair, the number of prostitutes has increased and criminality is rising.” As if to say “not even if they were to be killed would they go away.” But citizens can be reassured. For some time in Piedmont, someone has been killing white and black prostitutes. And since it's rather improbable that it is the ferocious Albanians themselves who are killing their own women, we should deduce from this that on those streets, it is indeed the foreign women who should fear the citizens, and not vice-versa. But let's not demonise the citizens, who have their own family problems. It would seem that in recent days the front pages of some top-selling newspapers were furiously redesigned, in the middle of the night, to give weight to the Albanian hypothesis. This is a hypothesis which the right and the Northern League in particular, has thrown itself at, with its usual elegance. But why, dear ex-rib of the left, give up such a wonderful opportunity? And what if it should happen that maybe in the next family homicide there should be some homosexuals involved? Here, one is being ironic in order not to shout. (...) Our independent daily newspapers, in a position of neutral judgement, haven't wasted a second to reflect on their role in this incessant, predictable, automatic deformation of foreigners – a work of disinformation that's been hammering at us for years, which at first bowed to local paranoia, then ended up feeding it, and which dedicates entire pages to Albanian pirates, but finds little space for foreigners who are assassinated. Disinformation so poisonous as to reuse the same words which, forty years ago, were used to attribute to migrants from the south of Italy all the wickedness which today is associated with foreigners. (...) As an ethical code for the press when it speaks (or doesn't speak) of foreigners, of murders, and of security, this really would be quite reassuring. But let's not demonise the press either, in which at least some reasonable voices, if in a minority, can sometimes be heard. (...) It's been years that we've been saying in these pages that the left started to lose elections when it decided to follow the right on the path of alarm over insecurity, confirming citizens in their irrational fears. It is too late now to direct that flood somewhere else. And also, let's admit it, although it's easy to lay this on cynical exploitation by the right, this doesn't add up, and there's something embarrassing for us. In less than a week, we will forget about Novi Ligure and its tragedies. But the big, fresh, seductive face of Berlusconi, and the big, fresh, seductive face of Rutelli, up there on the twin colossal election hoardings, will continue to promise security for everyone.

## 8. International Standards

Finally, it is interesting to compare the contents of the International Convention for the Rights of Migrant Workers with current Italian legislation.

INTERNATIONAL CONVENTION ON THE PROTECTION OF RIGHTS OF MIGRANT WORKERS AND OF MEMBERS OF THEIR FAMILY	SINGLE TEXT ON IMMIGRATION WITH THE MODIFICATIONS INTRODUCED IN LAW NO. 189/02 (“BOSSI-FINI LAW”)
<p>The target of the intended guarantees is the ‘migrant worker’, without reference to the regularity or not of the presence of the worker in an adhering state, being subject to and deserving of particular guarantees and safeguards with regard to the potential weakness of his situation.</p>	<p>The law n. 189/02 – thanks also to the new ‘contract of sojourn’, which in the intention of the legislators inseparably ties the ability for a foreigner to stay in Italian territory to his capacity to produce revenue – takes into consideration the migrant worker if and as far as a functional factor in the national economy.</p>
<p>A worker without a <i>permesso di soggiorno</i> is subject to particular guarantees and safeguards because of the higher risk of encountering abuse.</p>	<p>A foreigner without a <i>permesso di soggiorno</i> (whether he is actively working or not) is subject to repressive norms and not of safeguards (except obviously the safeguards offered by general arrangements in terms of fundamental rights). In particular, the crime of presence or re-entry to Italian territory after an expulsion order is introduced.</p>
<p>With the conviction that only a major safeguard of rights can represent an efficient incentive to place oneself in a situation of ‘regularity’, the convention establishes a series of fundamental rights applicable to the generality of migrant workers (with or without a <i>permesso di soggiorno</i>) and some supplementary rights for those who possess a <i>permesso di soggiorno</i>.</p>	<p>The decree n. 195/02 deprives the ‘irregular’ foreigner of some fundamental rights (in particular the right to effectively safeguard certain rights in a trial), and diminishes some rights of ‘regular’ workers, making more difficult staying legally in Italian territory.</p>
<p>The migrant worker is seen as part of a nuclear family: the guarantees of the convention are always aimed at the migrant worker and the members of his family.</p>	<p>The migrant worker is always seen as ‘ready to leave’ (the obligation that the employer must assume towards payment of the cost of repatriation is significant) and isolated from a family context (reuniting with parents, for example, is made much more difficult).</p>
<p>The convention is expressly concerned with the whole process of migration: preparations, travel, transit, the stay, and repatriation. Throughout, the workers have rights to information and safeguards.</p>	<p>The migration process (above all departure, travel, and repatriation) is taken into consideration by Italian law as a defensive function of the state: the navy is entrusted with the task of surveillance of the Italian coast, conferring also the power to inspect and stop ships suspected of transporting clandestine migrants; a possibility of stipulating special conditions with the country of origin is envisaged, so that they can impede the departure of ‘clandestines’, and procedures can be established which make repatriation easier.</p>

<p>The expulsion of an 'irregular' worker can take place exclusively through application of a decision taken by the competent authorities. The person to whom that measure is applied has the right to contest it, and in the period in which his position is examined, he has the right to obtain a suspension of the measure.</p>	<p>The decree of expulsion is immediately applicable, and contesting it does not allow its suspension. If the foreigner stays in Italian territory, he commits a crime, even if a procedure is under way to evaluate the legitimacy or not of the expulsion.</p>
<p>Migrant and national workers must have the same rights in matters of social security. When national legislation deprives migrants of a service, they must be reimbursed what they have paid towards that service.</p>	<p>The "Bossi-Fini" law eliminates a pre-existing norm under which social security payments made by foreign workers to the Inps system, during the period spent in Italy were repaid with matured interest in the case of permanently leaving Italian territory, without the pension rights having matured.</p>
<p>Migrant and national workers must benefit from the same rights in matters of lodging. It is indeed expressly recognised that there is a need to protect foreigners from possible situations of exploitation (exaggeratedly high rentals), and to introduce special programmes of lodging to counter the extra difficulty for the foreigner in finding lodging.</p>	<p>The problem of lodging is 'resolved' by committing the employer to guaranteeing lodging to extracomunitary staff. An employer who has sustained expenses to guarantee lodging, moreover, can automatically keep up to a third of the employee's wages to recover the sum spent: the dominant party in the work contract can thus coincide with the dominant party in the accommodation contract, in complete contrast to needs for protection noted in the convention.</p>
<p>If a migrant worker loses his job, he must be able to lawfully stay in national territory in search of new employment for the residual period of validity of his <i>permesso di soggiorno</i>, and in any case for the period in which he would have the right to draw unemployment benefit.</p>	<p>The new arrangements reduce from 12 to 6 months the period of time in which it is possible to stay in national territory in search of new work. In Italy, it is possible to draw unemployment benefit for a number of days equal to those worked in a solar year, up to a maximum of 312 days.</p>
<p>When the state decides to issue arrangements for the 'regularisation' of the presence of migrant workers without a <i>permesso di soggiorno</i>, it must take into consideration the mode of entry, the length of the period in the country, and the family situation of the migrant.</p>	<p>The Decree n. 195/02, converted by parliament into Law 222/02, states that the only condition for concession of a <i>permesso di soggiorno</i> 'under amnesty' is the presentation on the part of the employer of a declaration which attests that the foreigner has been in his employment for a certain period of time, and the subsequent drawing up of a 'contract of sojourn'. The ambiguity of the law doesn't even allow any certainty that the procedure can be initiated by the employee. The family situation is not taken in any way into consideration.</p>

A campaign is currently under way for the ratification of this convention, which is also the handiwork of Italy (which was one of its promoters), a ratification which would authorise a revision of internal legislation.

## Conclusion (2.5)

There are many different ways of becoming undocumented and leading daily life as an undocumented migrant. The one thing all undocumented migrants in Europe have in common is the lack of official authorization to legally reside in the country where they are. It is impossible to generalize the reasons why undocumented migrants come to Europe. Nonetheless, when analyzing the causes for the presence of undocumented migrants in France, Spain and Italy, the fact that there is a considerable demand for their labor should be taken into account. In his discussion of employment patterns of undocumented migrants in these three countries, Michael Collyer points out that the large demand for labor in certain sectors of the economy coupled with undocumented migrants' necessity to find work in order to survive creates labor conditions in which exploitation and insecurity are prominent.

When considering the socio-economic situation of undocumented migrants in France, Spain and Italy, it is important to bear in mind provisions in national legislation concerning access to certain services. In the area of health care, legislation in all three countries states that undocumented migrants have access to urgent health care, as well as other general services in some cases. Unaccompanied minors may also receive protection by the government until they reach the age of 18 and may attend primary and secondary school. This is also the case for children of undocumented parents, who may enroll in the educational system. In addition, there is an article in Italian law that grants protection to victims of trafficking, which does not exist in many other national legal frameworks in Europe.

Nonetheless, the aforementioned provisions in legislation concerning access to certain services may work quite differently in reality. In the area of health care, for example, a combination of ignorance, fear of authorities and public institutions and poor quality of public services lead many undocumented migrants away from accessing such services. Protection offered to unaccompanied minors and victims of trafficking is not always easy to obtain in practice. Placement of undocumented minors within the educational system is not always straightforward and may be faced with many obstacles, especially at the secondary level. Although most other social services are barred to undocumented migrants due to their lack of official residence, they may qualify for some (e.g. social help for children in France), but once again, other factors often prevent them from effectively accessing these services. Undocumented migrants face a high degree of social exclusion and marginalization in other areas as well. Housing and work are two examples of basic social rights that are very difficult for undocumented migrants to realize due to a high degree of exploitation and poor conditions.

The attitude of society at large towards undocumented migrants in France, Spain and Italy may vary from being very supportive to very negative, according to time and place. The media can play an important role in showing the human side of the story, but often "borrows" incorrect language and negative information from governmental policies. Organizations thus play an important role not only in helping migrants to meet their basic social rights, but also in raising awareness and advocating on behalf of undocumented migrants towards the general public and policy makers, as will be further elaborated in Chapter IV.

# Hindrances to Solidarity: Problematic Elements

The aim of this chapter is to discuss the current dynamics in France, Spain and Italy concerning the penalization of solidarity and assistance to undocumented migrants. Recent developments in European policy on assistance to undocumented migrants are also presented. As throughout the *Book of Solidarity*, the focus is mainly on assistance provided by citizens and civil organizations, and less on services provided by official social institutions.

This chapter has an explorative character, and does not intend to provide an in-depth legal analysis. By pointing out some examples in these countries, we aim to reveal some components of strategies that legislators intentionally or unintentionally use to criminalize assistance provided to undocumented migrants.

First and foremost it should be mentioned that there is serious confusion concerning the legality of assistance provided to undocumented migrants. The Aliens laws of many countries contain an article or paragraph on the penalization of smugglers and traffickers, as well as on the penalization of those who assist undocumented migrants in their irregular residence. It is often unclear if social and humanitarian support also falls under these restrictions. The following examples shed some light on how this type of support has been interpreted by the legislation in the three countries examined.

## France <sup>(3.1)</sup>

### **Article 21 of the Revised *Ordonnance N° 45-2658 du 2 novembre 1945***

In the revised governmental decree of 2 November 1945, Article 19 states that any individual who enters or resides illegally in France (without a valid residence permit) will be sentenced to one year of prison and a fine of 25,000 FF (€3.811,00). In addition, the convicted individual may receive a three-year ban from entering French territory.

Providing assistance to an undocumented migrant is also a crime. This is clearly stipulated in the first section of Article 21 of the governmental decree of 2 November 1945:

#### **Article 21 - I**

Any individual who, while s/he is in France, facilitates or tries to facilitate the entry, circulation or irregular residence of a foreigner in France, either directly or indirectly, will receive a five-year prison sentence and a fine of 200,000 FF (€30.490,00).

The third section of Article 21 stipulates that family members of the undocumented migrant will not be punished for providing assistance:

#### **Article 21 - III**

No criminal proceedings on the basis of the present article can be brought against irregular residence of a foreigner when it is carried out by:

1. Parents or descendants of the foreigner, their spouse, brothers and sisters of the foreigner or of their spouse;
2. The spouse of the foreigner, or the person that manifestly lives in a marital situation with him/her.

### Application of Article 21 in Recent Years

There have been two highly controversial utilizations of Article 21 in recent years. The first was in 1997, and was invoked concerning housing of an undocumented migrant. Jacqueline Deltombe was arrested on November 26, 1996, for housing Tony M'Bongo, an undocumented migrant from Zaire. The court in Lille applied Article 21 and sentenced her on February 4, 1997. The sentencing brought forth public protest, notably the immediate reaction of 66 film directors who made a declaration against these laws and encouraged citizens to do civil disobedience. The declaration appeared in *Le Monde* and *Libération* on February 12, 1997:

#### Manifesto of 66 Film Directors – 11 February 1997

We are guilty, every one of us, for recently providing housing – for personal or professional reasons – to foreigners in an irregular situation. We haven't denounced our foreign friends. And we will continue to house, to not denounce, to get along with and to work without checking the papers of our colleagues and friends.

Following the 4 February 1997 sentencing of Ms. Jacqueline Deltombe, "guilty" of housing a Zairean friend in an irregular situation, - and based on the principle that the law is the same for everyone – we also demand to be indicted and sentenced.

Finally, we call upon our fellow citizens to disobey and to not subject themselves to inhumane laws.

The manifesto was signed by numerous artists, writers, theater directors and actors, but did not have the desired effect of preventing the sentencing of Jacqueline Deltombe. On December 17, 1997, the Court of Appeal of Douai confirmed the sentencing, and Ms. Deltombe was found guilty for housing a foreigner in an irregular situation, but was exempted from punishment. The Court of Appeal found that:

Ms. Deltombe was perfectly aware of the irregular situation of Tony M'Bongo... It is with deliberate knowledge of cause that she did what was in her power to prevent him from being inspected, ensuring that he would have regular sanctuary at her home (Manifeste des 66 cinéastes - 11 février 1997).

Article 21 was used for a second time in 1999, when Michel Beurier, the departmental secretary of the CGT trade union, was sentenced for helping an undocumented migrant to resist a deportation order during a session of the *Tribunal Administratif* (tribunal dealing with internal disputes in the French civil service) in Clermont-Ferrand in August 1998:

Michel Beurier was accused of manhandling a policeman after a judge had told a young Senegalese man that he would be taken from the courtroom, via police escort, for deportation. The Senegalese had successfully fled the courtroom. Fourteen people who had witnessed the "scramble" at the courtroom came forward to give evidence to support Beurier's assertion that he had nothing to do with the escape. The trades unionist told the court that he was a significant distance from the police officer, who claimed to have suffered "subdislocation of the shoulder," when the scramble took place. After the verdict against him, Beurier told a press conference that "The policeman determined that I was guilty from the moment he saw that he was unable to catch up with the *sans papier*. From the outset it was clear that politics was involved in the matter" (IRR European Race Bulletin 1999).

Michel Beurier was given a two-month suspended prison sentence and fined 3,000 FF (€457,00). The decision brought forth a large-scale demonstration in Clermont-Ferrand, attended by nearly 10,000 people from throughout France who protested against the criminalization of solidarity towards undocumented migrants.

## Spain<sup>11</sup> (3.2)

Unlike legislation in France, Spanish legislation does not contain an article that explicitly forbids assistance to undocumented migrants. The necessary legal provisions to enact the Council Directive 2002/90/CE of November 28, 2002, have not yet been adopted. This Directive aims to define help for entry, circulation and presence of undocumented migrants so as to make these infringements of the law punishable by means of criminal sanctions, with the possibility, as stated in Article 1, Section 2 of this Directive, of leaving the Member State in question to decide not to punish such conduct, defined under Subparagraph a) of Section 1, when its aim is to provide humanitarian aid to the undocumented migrant. Nonetheless, the law establishes administrative sanctions for those residing illegally in Spain. After the due administrative procedure has been carried out, these sanctions can take the form of a fine or expulsion from Spanish territory.

The current Spanish penal legislation penalizes promoting, helping or facilitating illegal trafficking of foreigners, which is defined as the moving of one foreigner from one country to another through a third party, both to protect the exclusive control of the state to regulate the movements of population and to protect the right of foreign citizens to have their freedom and security respected and, ultimately, their dignity as human beings. As can be seen, the definition is so vague that it leads to legal and security problems, so its interpretation plays an important role. This is noteworthy in the case of Francisca Gil García, who, with her German husband, provided accommodation to an undocumented worker in their country home for a month (IRR European Race Bulletin 2000/2001). On the night of September 16, 1997, as Francisca Gil was driving with her husband and the undocumented worker near Tarifa, she was stopped by the Civil Guard and all three were taken into custody. The undocumented worker was deported, and the *Subdelegación del Gobierno* (office of the government delegate to an autonomous community) of Cadiz fined Francisca Gil 250,000 pesetas (€ 1.503,00) for:

“... helping an “undocumented Moroccan subject in an illegal situation in Spain (Ordaz 2000).”

In June 2000, the Andalusian High Court upheld the fine, and further stated that the behavior of Francisca Gil was not:

“casual or accidental, but motivated to collaborate with the foreigner (Ordaz 2000).”

The case attracted the support of the *Asociación Pro Derechos Humanos de Andalucía*, which launched a big solidarity campaign. The press discussed the case on the national level, and it was emphasized that Francisca Gil, mother of four children and genuinely concerned about the welfare of undocumented migrants she sees in her daily work in the Maritime Rescue Center in Tarifa, could not possibly be considered in the same way as mafia traffickers. The case has since been brought to the Supreme Court and is awaiting final judgment.

## Italy (3.3)

Although former and current legislation in Italy contains no article that states that it is illegal to provide assistance to undocumented migrants, there is a desire of the current government to introduce such legislation

Nonetheless, a recent case has attracted attention due to the interpretation of the law concerning assistance to undocumented migrants arriving by boat. In August 2002, the Italian fishing boat “Cico” went to the rescue of

11 Part of the information in this section has been provided by Red Acoge (Spain).

151 boat migrants that were in danger of sinking off the southern coast of Sicily. The crew of the “Cico” was placed under investigation for participating in illegal immigration. Four days later, another group of boat migrants in danger was spotted by the “Bon Orient” fishing boat, but due to the experience of the “Cico”, crew members of the “Bon Orient” did not intervene and alerted the Italian coast guard to the presence of the undocumented migrants. An inquiry was promptly made by the public prosecutor’s office in Palermo to determine if the crew of the “Bon Orient” could be charged with not helping people in danger at sea. The cases are still pending, but the current context basically leads to the “lesser of two evils” in terms of possible outcome for fishermen who provide help to undocumented migrants at sea:

Sicilian fishermen who come across a vessel carrying irregular migrants and in a situation of distress apparently have two “choices” of being prosecuted: either they assist the migrants, and, in doing so, take the risk of being charged with trafficking in migrants or they ignore the distress signal and risk being charged with refusing to go to the rescue of people in danger (Cruz 2002).

This case received a lot of attention by the mainstream media at its outbreak. It also attracted the attention of civil society. A call to defend those who support or protect undocumented migrants was launched by *Carta*, a social communication media that aims to provide information, network and discuss amongst all social actors. Numerous individuals and organizations throughout Italy have signed the call (*Punire chi soccorre I clandestine?* (21.08.2002)).

Regarding helping to find a job, however, one must not forget that according to Article 22 TU of the Law on Immigration, employing a foreigner without a *permesso di soggiorno* constitutes a crime. The activity of any intermediary, between a clandestine person and an employer, could then potentially constitute behaviour subject to sanction.

So in more general terms, one can today ask if the introduction into the Italian legal system of the crime of staying on Italian territory, even after having received an expulsion order, could bring with it an accusation of aiding or abetting a crime for those who offer such people services (except those of accident and emergency), if they are aware of that person’s situation, thereby assisting their illegal presence in Italy. To date, there has been no legal ruling in this area.

## Discourse on the European Level<sup>(3,4)</sup>

European harmonization of migration has been very limited until now. Member States seem to be very reluctant to hand over their sovereignty to decide who can enter their states.

The right to propose legislation in the field of migration is presently held by the European Commission and the individual Member States. Proposals have to pass the European Parliament before they go to the Council – without the latter having the obligation to accept the parliamentary amendments. The Council is the inter-governmental element of the decision-making process and votes on the basis of unanimity on every proposal. This means that in practice, every Member State has to agree before a proposal can be accepted. This will most likely change from 2004 onwards, when the Council will decide upon proposals on the basis of a qualified majority and the Parliament will have the right to co-decision making in matters of asylum and immigration.

During its presidency in 2000, France made four proposals relating to undocumented migration. The first proposal concerned “Carriers’ sanctions”, while the second was on “Mutual recognition of expulsion orders.” The two other proposals concerned the prevention of facilitating unauthorized entry and residence. These last two proposals are the few proposals in which the theme of illegal residence is more or less directly considered. The



text that the Council reached political agreement refers to the following sanctions in Article 1:

Each Member State shall adopt appropriate sanctions on:

- a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
- b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens (EC 2000/C253/03).

Regarding Paragraph a), ECRE (European Council on Refugees and Exiles) noted in its comments on the proposal that both the draft Protocols on Trafficking and Smuggling and the Schengen Implementing Agreement require that the facilitation be “for gain.” The French Presidency initiatives do not mention this.

Indeed, the draft directive and Framework Decision are very broad in the scope of people they seek to define as ‘facilitators’ and will have the result of criminalizing lawyers, non-governmental organisations and church organisations which give advice to refugees. Insofar as the draft framework decision speaks of legal persons this appears to be the intentional result of the initiative (ECRE [2000]).

Although there has been some discussion in the beginning whether or not to leave out the wording “for financial gain” in Paragraph b), the final text contains this wording, thus excluding NGOs that provide help to these migrants from penalization.

The text also contains a “humanitarian clause” (Article 2):

Any Member State may decide not to impose sanctions with regard to the behavior defined in Paragraph 1(a) by applying its national law and practice for cases where the aim of the behavior is to provide humanitarian assistance to the person concerned (EC 2000/C253/03).

However, this clause is optional, so every member state is free to decide to adopt or reject it.

The European Parliament rejected the proposals twice. Nonetheless, the Council ignored the European Parliament on this matter, and reached “political agreement” on the proposal in May 2001. The proposals were adopted at the Justice and Home Affairs Council meeting on November 28-29, 2002.

### **Recent Developments**

It is also alarming that in recent developments on the European Union level, nothing has been done against the criminalization of solidarity. In the recent Commission Communication on Clandestine Migration (COM (2001) 672 final), no exception was made for citizens and NGOs providing social and humanitarian help to undocumented migrants. The Commission does not explicitly recognize the fact that humanitarian considerations rather than financial gain drive many European citizens to help and support undocumented migrants.

## **Conclusion** (3.5)

It is alarming that solidarity towards undocumented migrants has been criminalized and penalized on several occasions in France, Spain and Italy. We presently witness that as migration policies are developed on the national and European levels, every repressive measure is replaced by even more repressive measures, in the aim of stopping migrants from coming to Europe. As migration controls do not effectively work at the borders, a

growing tendency is to try to carry them out within the countries themselves, by prohibiting undocumented migrants' access to basic social rights, and penalizing those who provide humanitarian and social assistance to undocumented migrants. Within this logic, such measures are undoubtedly not weighed against any ethical standards.

On the European Union level, this development is affirmed rather than discouraged, in spite of the fact that "solidarity" is one of the indivisible, universal values on which the European Union is based, as stated in the Preamble of the Charter of Fundamental Rights of the European Union.

Nonetheless, organizations in France, Spain and Italy extend their solidarity in various ways towards undocumented migrants, in spite of legislation that may be very explicit concerning penalization of assistance. This will be further elaborated in the following chapter.

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# Providing Assistance To Undocumented Migrants: The Reality

As mentioned previously in the discussion on methodology, interviews were carried out at organizations in France, Spain and Italy. The results from these in-depth discussions on providing assistance to undocumented migrants are presented in this chapter. The first section focuses on various types of assistance in the areas of basic social rights (food, health care, housing, work, education and legal advice). Special groups of concern amongst undocumented migrants, including women, unaccompanied minors, and undocumented migrants in detention, are given attention. The development and methods of migrants' groups in all three countries is highlighted, and the diverse methods that organizations use to work on the structural level are presented. The final section is a discussion of various organizational and ethical dilemmas organizations are faced with in their daily work.

## Basic Social Rights (4.1)

The basic social rights of food, health care, housing, work, education, and legal advice are often very difficult for undocumented migrants to properly meet, due to their irregular situation. Organizations offer these services themselves, refer migrants to other organizations that provide them, and/or work with social services to try to integrate undocumented migrants into the public services (this is particularly the case for health care, as well as for housing and education).

One type of assistance in the area of basic social rights is the solidarity extended by people all over Europe's southern coasts to those who arrive irregularly by boat. This is especially visible in Spain and Italy, where many local residents spontaneously offer food, clothing, blankets, and even accommodation in their own homes to undocumented migrants who have survived treacherous crossings by sea. This type of assistance covers several areas and has not been included as a specific category, but is nonetheless a crucial element of the assistance provided to undocumented migrants in the area of basic social rights:

“This weekend there was a massive arrival in Cadiz and the local population helped the immigrants that arrived on the coast. We have here a phenomenon that is very interesting, very peculiar within the area of undocumented migrants due to the help they receive from the local population upon arrival. This isn't so much political help but rather a sense that this situation is intolerable and these people who arrive in this situation can't be treated like dogs. The local population themselves support them by giving them coats and there was also the case of a Spanish woman who breastfed a baby that arrived in a *patera* (small boat). This phenomenon occurs in all the zones where the *pateras* arrive.”

*(Human rights activist in Spain)*

## Food (4.1.1)

The basic human need of food is often very difficult for undocumented migrants to properly meet, due to their precarious living conditions and marginalized situation. Unable to obtain public assistance for food vouchers or financial help, undocumented migrants are forced to be self-sufficient in finding adequate food. Many rely on their own earnings from work in the informal economy to buy food. However, not all migrants are able to maintain steady work, and even with a regular job, it is not always easy to fulfill the need for adequate food.

Recognizing the importance of this basic social right, many organizations dedicate their efforts to providing food for undocumented migrants. One of the most common initiatives is to run a soup kitchen that provides meals several times a day or week, depending on the organization's availability and capacities. In Rome, many undocumented migrants know of the soup kitchen run by *Comunità di Sant'Egidio*, which is open three days a week and serves 1,300 people per day, of which approximately 1,000 are immigrants. Another soup kitchen run by the *Centro Astalli* in Rome serves fewer people per day but is open 6 days a week. Soup kitchens run by *Caritas* are widespread in Spain and Italy, and provide food on a daily basis to many people in need, many of which are undocumented migrants.

Another way that organizations provide food is through the distribution of food packets. The food pantry program run by *SSIM* is what the organization is most well known for in Barcelona:

#### **SSIM - Servei Solidari I Missioner Caputxins de Catalunya I Balears (Barcelona, Spain)**

*SSIM* was created on July 5th, 1991, in the provincial chapter of the Capuchin Fathers of Catalonia and the Balearics, to enhance volunteer work based on fulfilling the needs of the so-called 3rd world and 4th world (especially immigrants). *SSIM* began its activities in 1992 when a Capuchin priest who had initially worked in Colombia returned to Spain and wanted to continue working with Latin Americans. He began visiting Colombian prisoners in Barcelona who were imprisoned due to drug trafficking, and started working with their family members, many of whom came to Spain to be with their relatives in prison. After three months they became irregular, and had to look for ways to become legalized to remain in the country. In the beginning it was not difficult to obtain residence permits for them, but with the big wave of Latin American immigrants in 1996-1997, a lot of hardship started to appear, since Spain wasn't prepared to receive so many immigrants. *SSIM* opened a reception center and began to work with a team of volunteers. They began to distribute clothing, especially to Latin Americans who arrived in winter with short-sleeved shirts and no jackets. Afterwards they started to provide food and made contact with the Red Cross and other organizations to provide a food pantry. *SSIM* annually provides 60 tons of food, to approximately 150 families every week. Food packets are distributed every Wednesday. The food packets contain a well-balanced ensemble of food.

#### **Clothing Services**

Many of the organizations interviewed that provide food for undocumented migrants also run clothing services. *Caritas* is well known for its soup kitchens as well as its clothing service. *KARIBU* in Madrid runs a clothing service because many of the sub-Saharan African undocumented migrants the organization works with arrive in emergency situations or cannot enter a protection program. Many organizations that provide food and clothing also have a religious affiliation. They receive much support from religious communities, especially in terms of volunteers needed to run the activities.

#### **Health (4.1.2)**

Legislation in France, Spain and Italy provides various measures for public health care for undocumented migrants. In January 2001 in France, the "Aide médicale d'état" (AME) entered into force. AME provides free health care for those who cannot benefit from health insurance and foreigners irregularly residing in France (it is thus largely directed at undocumented migrants). AME in public hospitals is accessible to all undocumented migrants in France, regardless of how long they have resided irregularly in France. Undocumented migrants who have proof of three years of uninterrupted residence in France can qualify for treatment outside the public hospitals.

In Spain, the law passed in 2001 guarantees health care for pregnant women and minors, and for undocumented migrants who are registered at the town hall. However, this is a national law, and each autonomous community has its own competences in health care. An example of how this works is the case of Andalucía. In 1999 in Andalucía, a special agreement was made by the Department of Health of the Andalusian government, NGOs and trade unions to guarantee access to the health care system. An undocumented migrant can access health centers directly or via the referral card obtained at a participating organization in the protocol.

In Italy, the 1998 migration law established that undocumented migrants can register with the national health service via the STP (*Stranieri temporaneamente presente*) code. Urgent medical care is free for undocumented migrants. Undocumented pregnant women, minors and those with infectious diseases can also receive free health care. As in Spain, the health care system is regionalized in Italy, and there are regions that apply the national health care law concerning undocumented migrants better than others.

Theoretically, the various possibilities of obtaining health care within the public system would eliminate the need for organizations in France, Spain and Italy to cater to undocumented migrants in the area of health care. However, in practice, this is not always the case, since various factors prevent undocumented migrants from accessing public health care services.

### **Facilitating Access to the Public System in France and Spain**

One important element that prevents access is the fear of disclosing irregular status when in contact with public authorities. An activist in France said that in order to register for the AME, an undocumented migrant has to first go to the town hall to begin the procedure. However, many undocumented migrants would never dare to go by themselves because they are too afraid. A health care worker in France also pointed out that many undocumented migrants receive information about their right to health care, but are afraid to use it:

“Undocumented migrants often think ‘I’m in this country illegally and I don’t believe that I have a right’”.

*(Health care worker, France)*

This is precisely where *Médécins sans Frontières (MSF)* in Paris seeks to intervene: providing health care and attempting to integrate the undocumented migrant into the public health care system:

#### **Médécins sans frontières (MSF) (Paris, France)**

*MSF* has a health care center in Paris for general health care consultations, preventive care, treatment and also access to social rights for youth between 6-25 years old and drug addicts. *MSF* aims to provide medical care but also inform these two target groups of their rights and give them confidence and trust. They are often afraid of the administration, since they are foreigners and don’t know if the administration will call the police or not. In general, the undocumented migrants that come to the center want medical care, not information on how they can be integrated within the public health care system. When the doctor at *MSF* feels that a third party can be introduced in the relationship, then the undocumented migrant can be referred to a social worker at the health center, who will provide information on how they can register for health care within the public system.

In Spain, *Andalucía Acoge* participates with several other organizations and trade unions in Andalucía in the protocol which guarantees health care to undocumented migrants in this autonomous region. *Medicos del Mundo-Andalucía* works in a similar manner to *MSF* in Paris by providing social assistance to undocumented migrants to facilitate their access to the public health care system. It also provides general health care and pharmaceutical products to those who cannot easily access the system. *SSIM* in Barcelona also recognizes

that many undocumented migrants cannot easily receive treatment in the public health care system, and even if they are treated, they often cannot afford the medicine. Due to these circumstances, *SSIM* provides free medicine and health care (run by volunteer doctors and medical students).

### **Difficulties of a Particular Target Group in Accessing the Public System**

Another reason for providing health care within an organization is the difficulty of a particular target group to access the public health care system. The health care law in Spain stipulates that undocumented migrants who are registered at the town hall can receive free health care. To register, an undocumented migrant must show a document (e.g. a passport) and a housing contract. However, these two conditions exclude many sub-Saharan African undocumented migrants, many of whom do not have any documentation due to clandestine entry, or lack a housing contract, due to discrimination within the housing sector and general difficulties in obtaining housing. *KARIBU* in Madrid thus recognizes the fact that many sub-Saharan Africans need to receive basic health care but are prevented from accessing the public system. The organization works with volunteer doctors whose previous work experience or knowledge about Africa sensitize them to particular health problems faced by African undocumented migrants in Spain. The doctors can thus work on the preventative level and facilitate contact with undocumented migrants, so that they feel less anxiety about their illness.

### **Implementation of Law on Health Care in Italy**

In Italy, many health centers exist in regions where the government and hospitals have been lax about properly integrating undocumented migrants within the system:

“The problem with the system is that the law has existed since 1998 but it isn’t applied. Thus the voluntary sector intervenes when a law can’t guarantee a service. The aim of the voluntary sector is not to replace the public system, but to integrate within it.”  
(*Doctor in Italy*)

All of the organizations interviewed in Italy that provide health care for undocumented migrants began working before the law was passed in 1998 which guarantees access for undocumented migrants. However, they continue their services due to difficulties undocumented migrants have in accessing the health care system in certain regions, as well as a general fear that many migrants have in revealing their identity to authorities:

“Because of the fear of being recognized, even if the law obliges the operators of the public health services not to denounce the identity of the irregular immigrant when s/he goes to the services for these reasons, the immigrants are still afraid. They thus need a relation with people who are not in the public administration of health services.”  
(*Lawyer in Italy*)

### **Services Provided by Voluntary Sector in Italy**

*CESAIM (Centro Salute Immigrati)* was set up by *CESTIM* in Verona in 1993 as a project where 50 voluntary doctors gave consultations five days a week. The project has since become an autonomous organization, and still provides health care to undocumented migrants in the region. The *Casa Diritti Sociali* in Rome works with various health professionals to provide dental care, gynecology and pediatric care for undocumented migrants. In Palermo, *Poliambulatorio S. Chiara-Caritas per Cittadini Extracomunitari* provides general health care for undocumented migrants, and collaborates with the department of medicine for immigrants at the *Università di Palermo* hospital by referring patients who need specialist treatment. In Milan, the *Ambulatorio Medico Popolare* works in a similar way, by providing general health care and referring undocumented migrants to specialists. Another organization in Milan that provides health care is *NAGA*, which works on both the direct and structural levels concerning health care for undocumented migrants:

### **NAGA - Associazione Volontaria di Assistenza Socio-Sanitaria e per i Diritti di Stranieri e Nomadi (Milan, Italy)**

*NAGA* began working in 1987 and is only present in Milan. It is exclusively a voluntary organization, with 330 volunteers (60 of which are doctors). *NAGA* offers general and specialist health care (surgery, dermatology, gynecology, orthopedics and ophthalmology) for foreigners and nomads. In addition to consultations, which are offered morning and evening, Monday-Friday, *NAGA* tries to reach newcomers to the city who are not aware of their services or of their rights by providing medical care in campers. In Milan, the law concerning health care for undocumented migrants is not properly applied, and only specialist consultations are allowed in the public hospitals. However, since a patient cannot be treated by a specialist without first being examined by a general practitioner, *NAGA* offers general consultations, and works with hospitals to explain the problem of non-application of the law. *NAGA* thus tries to work on the level of direct help, by providing health care, as well as on the structural level, by working with health care professionals and hospitals to influence them to really apply the law. Yet even if the law is effectively applied, *NAGA* maintains its position of making sure that it is correctly applied: “*NAGA* was started with the hope that one day it would be able to shut down. The objective is to make the organization useless. But even if it closes, we will be vigilant in making sure that things are respected.”

### **Mental Health Care Treatment**

Another area of health care that is very important for undocumented migrants is mental health. Many undocumented migrants arrive in Europe after suffering severe personal traumas in their home countries, or witnessing mistreatment against family members. The difficult and dangerous conditions that many undocumented migrants travel in to arrive in Europe also affect their mental health. Even if an undocumented migrant has not undergone such hardship before or during their arrival in Europe, daily life with an irregular status is enough to warrant emotional imbalance. Undocumented migrants are often forced to leave family members behind, and live isolated lives in Europe. They have to make enormous cultural and social adjustments, as well as get used to a different climate. The exploitative living and working conditions that many undocumented migrants are forced to accept also take their toll. Many undocumented migrants are thus in need of mental health treatment.

Some of the organizations interviewed provide mental health care within their organizations, while others make referrals. *NAGA* in Milan provides psychological help and has a special program for victims of torture. *Casa Diritti Sociali* in Rome also offers psychological treatment and rehabilitation for victims of torture. *SSIM* in Barcelona has a team of psychologists that provide guidance for undocumented migrants that come to the organization. When lawyers at *CITE-CCOO* in Barcelona feel that an undocumented migrant needs psychological help, they refer the individual to the municipal services specialized in psychological and psychiatric help for immigrants in Barcelona. The majority of people that these services treat are referred to them by *CITE-CCOO*. In other provinces, *CITE-CCOO* refers undocumented migrants to professional colleagues and medical and psychological institutes that believe that open their services to undocumented migrants because they have a responsibility in working on these issues. It should be noted, though, that language knowledge is an important factor to be considered in mental health treatment for undocumented migrants, since they must be able to either communicate properly with the psychologist/psychiatrist in a common language.

### **Housing** (4.1.3)

Housing is a basic social right which is often very difficult to fulfill. Undocumented migrants generally face enormous difficulties in finding available, decent, and reasonably priced housing. Yet housing is also an area in which organizations interviewed intervene in a variety of ways, including: referring undocumented migrants to housing shelters in the public sector, providing emergency or long-term accommodation in shelters run by the organizations themselves, acting as guarantors, and working on a structural level by exposing unsanitary housing.

### Emergency and Long-Term Public Shelters

In France, the public sector centrally organizes emergency shelters via a toll-free number (115). These shelters offer one night renewable accommodation. An undocumented migrant can call this number or request emergency housing for the night via the social worker at the town hall of their district. There are also public housing shelters for a longer time period (e.g. two weeks to six months) and shelters for women and children. These long-term shelters aim to achieve social and professional reinsertion of the person in need, and to facilitate the passage to independent housing. However, since undocumented migrants lack residence permits (and also working permits), many shelters do not want to accept them because “social and professional reinsertion” is not probable. To request housing in these shelters, undocumented migrants have to go via the social worker of their district. Faced with the enormous demand for housing in such shelters, as well as the improbable reinsertion of the undocumented migrant, it is not uncommon for social workers at the town halls to inform undocumented migrants that they don’t have the right to access these shelters:

“The social workers think that it’s a lot of work for hardly anything. If they do the same work for a French person or someone who has documents, then it’s a difficult procedure but they know that there is a possibility, while for an undocumented migrant, this would require 10 times more time or energy. At the end, the shortcut they make is to tell the undocumented migrant that they don’t have the right, because they are undocumented. For example, an undocumented mother who is in the streets with her children can usually try to go to an institution that can provide this help. The social workers are usually supposed to ask for the financial social assistance for children, but when we refer the undocumented migrant to the social worker, their response is ‘Undocumented migrants don’t have the right to social assistance in France’, which is absolutely false. They could have this help but it is just more difficult to obtain.”

(Jurist in France)

Organizations interviewed in France, such as *Cimade Poste Ile-de-France* in Paris and “*du côté des femmes*” in Lille mainly try to refer undocumented migrants to the public housing shelters, although this is quite difficult in practice, due to the various obstacles mentioned above. *Droits Devant!!* in Paris has worked in a different way by networking with other organizations such as *Droit au Logement* and *Comité des Sans Logis* to try to link the questions of housing and papers.

### Shelters Run By Organizations

Many organizations work in the area of housing by running their own shelters. This is quite difficult, though, since those that run shelters are often overloaded and keep waiting lists. To try to meet the continuing demand for shelter, many organizations set up time limits for undocumented migrants to stay at the shelter. This may run from nightly, to weekly or monthly accommodation, and depends on the organization’s capacities. For example, the *Centro Astalli* in Rome has 180 places in emergency shelters throughout the city, and establishes a time limit of four to five months for undocumented migrants, while *Caritas Diocesana* in Rome establishes a time limit of four to five weeks.

### Private Sector Housing

Due to the lack of access to public housing and in search of more stable accommodation than what is offered in housing shelters, many undocumented migrants turn to the private sector. Nonetheless, many factors prevent undocumented migrants from finding decent housing in the private sector. There is enormous competition for the little that the private market can offer, especially in big cities. Faced with so many people looking for housing, the immigrant is on the bottom rung of the ladder, and undocumented migrants are even lower. To compound the problem, landlords select their ideal tenant, and very often refuse to rent to undocumented migrants because they don’t have residence permits. When they are able to find housing, undocumented migrants are often exploited, forced to pay high rent for accommodation that may even be unsanitary. Overcrowding is also



very common, and it is not unusual to have extreme situations of several families being forced to cramp into one-family apartments.

To combat the difficulties that undocumented migrants face in the private housing sector, a common way for organizations to provide assistance is to act as a guarantor by signing a housing contract in the organization's name. The organization then rents the flat to the undocumented migrant. Taking advantage of its good reputation, *SSIM* in Barcelona has been able to befriend some real estate agencies and rents 23 apartments in the NGO's name. They provide this service of renting to many undocumented migrants who can't find housing, either due to the fact that they don't have money to rent, or they have money but not papers. *Provivienda* in Madrid works solely on providing housing for those who suffer from social exclusion, the majority of which are undocumented migrants:

#### **Provivienda (Madrid, Spain)**

The organization has existed since the end of the 1980s. In 1993, the government of the region of Madrid asked *Provivienda* to design a program to support immigrants' access to rented housing. One of the few criteria that the organization established was that in no way would undocumented migrants be excluded from the program, since this would be creating double exclusion. This has not changed since the program was started, and the majority of immigrants who participate in the program are undocumented. *Provivienda* acts as an intermediary between the undocumented migrant and the landlord. They ensure that the apartments meet the basic minimum criteria, and act as guarantors for the first year of the contract. They will handle any difficulty that may arise during the first year, and try to establish basic conditions of trust so that after the first year, the contract can run without the organization acting as intermediary. To participate in the program, undocumented migrants must have minimum economic means to guarantee the monthly rental payment, and a form of documentation (e.g. passport). The organization has worked with approximately 235 families per year, but this is only a small percentage of people in need. When the program began in 1993, *Provivienda* put ads in newspapers to attract landlords to participate in the program. Now the program just runs by word of mouth, and the majority of landlords now come by their own initiative. They feel accompanied by *Provivienda* and after having bad experiences in the private market, they prefer working with an institution to rent their flat.

#### **Fighting Against Unsanitary Housing**

Another way of working on the issue of housing is to work on the structural level, to expose injustices, particularly concerning lead poisoning and unsanitary housing. In 1988, *GISTI* in Paris began collaborating with the *CFDT* trade union and the trade union confederation of families to make known the dangers of lead poisoning in children, which is caused by swallowing paint flakes that contain lead. This often occurs in buildings that are old and not kept up. The majority of the victims of lead poisoning are children of undocumented migrants who live in old buildings because they are the only places where they can find accommodation. In 2000, the *AFVS (Association of Families Victims of Lead Poisoning)* led a joint action with *GISTI* and *Médecins du Monde* to support 23 families that were victims of lead poisoning due to "experimental" work aimed at removing the lead painting from the staircase of the building they lived in, which was owned by the City of Paris. Approximately 60 children were affected and some had very high levels of lead poisoning. The families and organizations demanded the end to the paint removal work. The families held a press conference, demanded to be relocated, and registered a complaint for endangering third parties. *GISTI* and *Médecins du Monde* supported the complaint. The families were eventually relocated and some were regularized in the process. *GISTI* also works with other organizations in Paris to support families residing in unsanitary housing by providing support and working to rehouse them if they are evicted.

### Work (4.1.4)

The question of daily survival for undocumented migrants in France, Spain and Italy is undoubtedly linked to work, as it is nearly impossible to survive without any income. However, due to their irregular situation, undocumented migrants usually do not have a work contract, social security benefits or insurance. This situation of being almost completely unprotected is very problematic and leads to much exploitation. Undocumented workers commonly have to work extremely long hours, in dangerous and/or unhygienic conditions, do not receive their wages or receive less than was agreed upon, and are fired without being given due notice. If an undocumented worker has an industrial accident, the lack of official proof of employment renders it complicated and often impossible to have any health care refunded. If an undocumented migrant is arrested for working illegally, in most cases s/he will be deported without being able to claim his/her last wages.

#### Dependence on the Informal Economy

The most common type of employment found by undocumented migrants is within the informal economy. Russell King describes the Southern European labor market as characterized by six main segments: agriculture, construction, industrial sector, tourism and catering, street hawkers and domestic service. King points out that:

Immigrants are employed in the six main segments of the Southern European labor market, in all cases doing jobs which are precarious, low-paid, dependent, marginal and lead to multiple exploitation and social exclusion (King 2000).

King further describes the dependent relationship of the Southern European model of labor immigration to undocumented labor:

The model is based on a demand for cheap and flexible workers in the secondary and informal labor markets, where low wages are imposed on migrants because of their often illegal or semi-illegal status and the lack of opportunities in their home countries. The workers are highly concentrated in certain segments or niches of the labor market, some of which are monopolized by migrants of one specific nationality and gender. Hence, migrants are responding to the specific needs and opportunities of the Southern European economy and society, based on tertiary activities, some primary activities (agriculture, fishing, quarrying) and a vibrant underground economy (King 2000).

Many authorities turn a blind eye to the presence of undocumented workers in the informal economy. The unofficial acceptance of work carried out by undocumented workers in many sectors goes hand in hand with the advantages their labor brings in terms of prices of foods such as fruits and vegetables, which can be maintained lower because employers do not pay social security benefits to undocumented workers. An interviewee in Spain points out that undocumented workers' contributions to many sectors of the European economy is tolerated due to the benefits these exploitative labor conditions bring to Europeans:

“There is a double standard, not only in Spain, but in all countries of the European Union. Basically, the underground economy is needed for the development of the European Union, because if not, we wouldn't live so well. And who will maintain the underground economy when Europeans have discovered what it's like to live a dignified life? Those who don't belong to the European Union. The underground economy won't disappear because it is needed.” (*Lawyer in Spain*)

### Employment Offices and Mediation Services

The issue of work for undocumented migrants is complex, and brings forth different types of assistance in France, Spain and Italy. The question of survival being predominant, some organizations run employment services where they try to link undocumented migrants with employers. This assistance usually involves guiding the undocumented migrant through the process of looking for work, providing training or classes or referring migrants to places where they can acquire more skills, identifying job possibilities in the area, setting up interviews and acting as an intermediary between the employer and undocumented migrant. In Sevilla and other areas of Andalucía, employers contact *Andalucía Acoge* to find agricultural and domestic workers. Once the undocumented migrant has a job, intercultural mediators at the organization mediate between the employer and undocumented migrant, which is very important for labor issues because there are often conflicts and misunderstandings which the intercultural mediators try to resolve. In Madrid, there are many training courses that focus on professional skills for women, but to be able to register, the individual must have a residence permit and be officially unemployed. *KARIBU* in Madrid offers professional training courses for undocumented women who would otherwise be ineligible for official courses. Another organization that is very active in the area of employment is *VOMADE* in Madrid:

#### **VOMADE-VINCIT (Voluntariado de Madres Dominicanas-Voluntariado Integración Colectivos Internacionales Trabajadores) (Madrid, Spain)**

*VOMADE-VINCIT* was created in 1992 to provide assistance to domestic workers from the Dominican Republic in Spain, but has since expanded its target group and currently provides assistance to many other nationalities. The organization runs an employment office, which is mainly used by undocumented migrants. The purpose of this service is to act as an intermediary between the undocumented migrant and employer. *VOMADE* sends out flyers to attract employers, who indicate the type of work they want done. The prospective employee fills out a form, and *VOMADE* sends the employer three possible candidates for an interview. The employment office at *VOMADE* then speaks to the employer to see which person was chosen. The personal relationship between the association and the employer is very important and allows *VOMADE* to work in very specific way on the objective of facilitating integration in society through work. *VOMADE* also runs professional training courses for migrants. Nearly 250 women participate in the training courses, which also aim to raise awareness of political, social, and labor rights.

### Work Permits

Many organizations, particularly in Spain and Italy, provide legal assistance to migrants to help them obtain work permits. Spain has an annual quota system that establishes how many workers are needed per year. In the past this has served as a regularization of people already in Spain, although it has never been very extensive, with only approximately 30,000 people per year. However, this hasn't worked in 2002 for undocumented migrants already in Spain, because the new criteria established that the work permit had to be requested in the country of origin. And even this doesn't work very well, because each embassy decides how it will work. The other negative aspect to such a quota system is that once it is set up, then no other work permits can be issued except the 30,000 established in the quota. Many of the undocumented migrants that go to *Comisión Española de Ayuda al Refugiado – CEAR* in Madrid seek legal assistance in processing an application for a work permit. Yet due to these recent restrictions concerning work permits, *CEAR* and many other organizations in Spain that provide legal assistance in this area cannot propose many legal options to undocumented migrants who request help.

In Italy, both the recent Bossi-Fini law on migration (September 2002) and the Turco Napolitano (Law 40 of 1998) have measures for quotas of migrant workers. When undocumented migrants ask the trade union *CISL-CESIL* for advice about the quota system, legal advisors in the trade union may advise the undocumented migrant to remain in Italy, establish a relationship with their employer and wait until the decree is announced with

criteria for the quota system. They could then return to their country of origin and request the employer to make a nominative work permit. This is of course not applicable to all situations, but legal advisors in the trade union may consider it as an option in some cases.

### **Trade Unions' Policies on Undocumented Migrants**

Trade unions play a very important role in assistance to undocumented workers. Many provide advice and legal assistance for claims of non-payment of wages, exploitation, abuse, accidents at the work place, etc. In France, Spain and Italy, it is common for trade unions to openly support undocumented migrants. In her research on the immigration preferences of Italian and Spanish trade union leaders, Julie R. Watts explains the reasons why these leaders prefer moderately open immigration policies:

Moderately open immigration policies are measures that permit legal avenues for immigration through employment-based quotas and family reunification, and enhance the immigrants' legal and employment status through long-term work and residence permits and legalization of illegal immigrants. Labor leaders want to reduce illegal immigration and precarious forms of employment by way of more moderate immigration policies, which ultimately, they believe, help immigrant and native workers (Watts 1998).

Trade unions' positive immigration policies can also be seen in the issue of membership of undocumented migrants. In all three countries, all of the trade unions interviewed stated that undocumented migrants could be members. The *Confédération Générale du Travail (CGT)* in France doesn't differentiate undocumented migrants from other employees, since what characterizes the status of "employee" for the trade union is not the work contract, but the worker.

Workers rights' in Spain were seriously curtailed with the introduction of the *Ley de Extranjería (Migration Law)* in August 2000. This law forbids undocumented migrants from the right to assembly, demonstration, association, unionization, and going on strike. In January 2001, three major trade unions in Spain, the *UGT (Union General de Trabajadores)*, *CCOO (Comisiones Obreras)* and *CGT (Confederación General de Trabajo)* made a public announcement that the law goes against immigrant workers. The *UGT* and *CCOO* consider the law unconstitutional, and the *CGT* stated that the law forces them to do civil disobedience (S.O.S. Racismo 2002). The trade unions stated that they would not follow the law that states that undocumented migrants cannot join, and thus allow undocumented migrants to be members of their trade unions.

### **Support of Undocumented Migrants in France**

Major trade unions in France such as the *CGT* and *SUD-PTT* support undocumented migrants that come together in the *collectifs des sans papiers*. These and other unions have actively endorsed their struggles by providing legal assistance to help process requests for regularization, and by offering material help in arranging for food and shelter for undocumented migrants engaged in sit-ins. During the sit-ins that took place in 1996, the undocumented migrants were forced to vacate various premises that they had occupied, and on one occasion, *SUD-PTT* housed them on the trade union premises. Unions also support undocumented migrants by participating in demonstrations and raising awareness amongst union members of the exploitation faced by undocumented workers, as evidenced by *SUD-PTT*:

#### **Fédération SUD PTT (Paris, France)**

*SUD-PTT* was created in 1989 when in an internal division amongst members of the *CFDT* trade union (*Confédération française démocratique du travail*), the members, who were mainly post office employees, joined together with France Telecom workers and created their own union. *SUD-PTT* thus represents workers in the public sector. The trade union works to raise awareness amongst members that as public sector workers, they are also affected by working conditions of undocumented workers, due to the

common practice of sub-contracting private firms to ensure the maintenance of public buildings, such as post offices. These private firms may often have many undocumented workers.

### **Service Agencies for Immigrants in Spain and Italy**

The way trade unions have organized concerning undocumented migrants is slightly different in Spain and Italy:

The Spanish unions, with the lowest membership density in Europe, have decided that affiliating immigrants is not a priority. Nevertheless, the unions have been empowered politically and organizationally by developing national networks of service agencies for immigrants. On the other hand, the Italian unions, with much higher overall membership rates, have placed more emphasis on organizing immigrants, as well as providing services to immigrants and advocating more moderate immigration policies (Watts 1998).

The following is a description of the type of work performed by the *CITE* service agency for immigrants, which is a part of the *CCOO* trade union:

#### **CITE-CCOO (Centro de Información para Trabajadores Migrantes) (Spain)**

In the late 1980s, *CCOO* was challenged to transform the trade union into a multicultural trade union that would not exclusively refer to Spanish and Catalan workers. Projects were then launched to try to meet the needs of immigrant workers. Among these needs and problems, legal work and residence permits were seen to be a main necessity. A small office for immigrants was opened in Barcelona in 1987, in the same building as the trade union. At this time, the office didn't have a special name, building or structure, but was within the trade union. The development of the trade union was a challenge, and it became bigger and bigger. *CITE* presently has 30 offices in Catalunya, and nearly 300 total in Spain. Every person who comes to *CITE* for the first time is undocumented. *CITE*'s main areas of work are providing information, orientation and processing of visas, family reunification applications, residence and work permits, converting professional titles, nationality applications.

### **Denunciation of Exploitative Working Conditions**

Another area in which trade unions provide much assistance is the denunciation of exploitative working conditions of undocumented migrants. *CISL-CESIL* in Italy will support a worker and will denounce exploitative conditions, even if the worker is undocumented. Many employers don't want to regularize employees who work irregularly, so the trade union has opened up a lot of files to criticize these employers to convince them to regularize their workers. When faced with a case of exploitation, *CISL-CESIL* tries to reach a compromise between the employer and employee to avoid the case being brought to court. *CGIL* also provides help for undocumented migrants to be paid for work, and provide legal assistance in cases of exploitation.

*CGIL* also works on the structural level by focusing on exploitation in its annual campaigns. Past campaigns have focused on work in the informal sector and exploitation of minors. Work in the informal economy is an important issue for the trade union, and trade union leaders try to inform all workers of the exploitation of undocumented migrants.

### **Education (4.1.5)**

Organizations interviewed that carry out work in the area of education for undocumented migrants focus mainly on facilitating access for adults to free language courses. Some organizations also have projects or intervene in facilitating access and integration of children and adolescents in primary and secondary schools.

### Integration of Undocumented Children in Schools

In France, Spain and Italy, it is compulsory for all children to attend school, regardless of their legal status. Organizations interviewed said that in general, undocumented children are usually not restricted from attending school, and if a director or teacher refuses to allow an undocumented child to attend school, then the organization will make a complaint at the town hall or to the particular entity responsible for this area. An interviewee in Italy emphasized the importance of the legislation concerning access of undocumented children to the educational system:

“There are some directors of schools who refuse undocumented children, but the internal directives from the Ministry of Education are very clear on this matter, and they cannot refuse the child. Sometimes the directors make bureaucratic problems, like they say that you don’t have the certificate that proves that you have all your vaccinations, but it is difficult to create too many problems, because the law is very clear about the provisions.”  
*(Jurist in Italy)*

In working with undocumented migrants in Verona, *CESTIM* recognized that access to the school system wasn’t as much of a problem as integration of undocumented children within it, mainly due to problems the children faced in speaking and understanding Italian. *CESTIM* thus set up a “Scholastic Integration Voluntary Service”, which matches volunteers (mainly retired school teachers and other volunteers) to immigrant children, many of whom are undocumented. The volunteers tutor the children in Italian, to help them to acquire a good level of communication and ability to understand at school. *CESTIM* also organizes Italian language classes for children of immigrants.

### Language Classes for Adults

Offering language classes is a very common way that organizations work in the area of education for undocumented adults. A wide variety of approaches are used, from small-scale to large-scale. *Todo Cambia* in Milan began offering Italian classes one year ago when they were able to recruit volunteer teachers through an ad in their bulletin. For a specific time period, a volunteer at the *du côté des femmes* in Lille gave French language classes to some undocumented women the organization supported during a sit-in. *KARIBU* in Madrid provides Spanish-language classes, and *Amici del Terzo Mondo* in Marsala offered Italian language classes for many years, and once also offered Arabic literacy classes for the North African migrants that come to the organization. One large-scale initiative is the Italian-language classes offered by the *Comunità di Sant’Egidio* in Rome:

#### Comunità di Sant’Egidio (Rome, Italy)

The Sant’Egidio community was founded in 1968, after Vatican II. It is a lay organization within a church structure. The main objective is to extend solidarity and friendship to those in need. In the early 1980s, African women who were in contact with the organization and who were working in Italian homes expressed their desire to learn Italian. The community thus began to offer language classes in 1982, as a way to have better contact with the immigrants and to foster their integration, because they believe that integration begins with language. The language classes continue to be one of the main activities of the organization, and in recent years nearly 2,000 students have studied per year in the school.

*Andalucía Acoge* in Sevilla offers Spanish language courses to undocumented adults, and also facilitates their access to other educational services. The organization signed an agreement for the 2001-2002 academic year (which was renewed for 2002-2003) with the Ministry of Education of the Andalusian Government to intervene in 73 adult education centers throughout the region. In addition to offering language courses, these educational centers also offer driver’s education courses and courses for obtaining primary or secondary school diplomas. Although undocumented adults may not legally enroll in such courses, in practice the centers are not very

restrictive and do not make many restrictions for undocumented migrants. *Andalucía Acoge* offers intercultural mediation, consulting and training of teachers on the issue of immigration and also informs immigrants about activities carried out in the centers.

### Legal Assistance (4.1.6)

Nearly all organizations interviewed provide some form of legal assistance to undocumented migrants. One of the most common ways is to process files for regularization of residence. Many organizations also help undocumented migrants to obtain access to certain public services (e.g. health care or public housing shelters). If an undocumented migrant receives a deportation order, s/he usually has a very strict time limit to make an appeal, and will often seek the help of organizations.

#### Regularization

Regularization of residence may be requested via existing measures in the legislation, or via regularization campaigns. Legislation in France and in Spain contains clauses that allow undocumented migrants to request regularization if they have proof of uninterrupted residence in the country for a certain number of years, if a child was born in the country, if they can show deep-rooted attachment to the country, etc. *Cimade Poste Ile-de-France* in Paris dedicates a large part of its work to individual casework of migrants and refugees. Social workers at *Cimade* provide legal assistance by determining if an undocumented migrant can apply for regularization via one of the clauses in the legislation. *CISS-CEPIR* in Palermo and the *Comisión Española de Ayuda al Refugiado – CEAR* in Madrid do a lot of casework in processing regularization files as well. Legal assistance to undocumented migrants is also a very important part of the work of the *Ligue des droits de l'homme* in Marseille.

Organizations also process files for regularization through a specific regularization campaign. When a regularization campaign is set up, it is common for many organizations that do not usually provide legal advice to obtain information about the criteria for regularization so that they can inform undocumented migrants that come to their organization. When *Todo Cambia* in Milan was only able to find two lawyers to provide free legal advice during the recent regularization campaign, they also looked for volunteers who could be trained to give information to undocumented migrants. As the organization is mainly made up of undocumented migrants, an interesting fact about the legal assistance during the regularization campaign is that some of the volunteers were undocumented migrants themselves. Realizing that an essential element to any request for regularization is proof of residence, the *Comunità di Sant'Egidio* in Rome provides a “residence card” to undocumented migrants the first time they visit the organization. This card has an identification photo and the date that the organization began working with the undocumented migrant. When new laws came out in the past for regularization campaigns, the authorities accepted the date on the card as proof of residence in Italy.

#### Legal Assistance to Access Public Services

Undocumented migrants also request assistance to obtain legal access to particular services, such as health care and public housing shelters. As previously discussed in the sections on health care and housing, undocumented migrants in France, Spain and Italy may benefit from certain services but are often unaware of their rights, or are given incomplete or wrong information. Organizations may thus focus on providing correct and free legal advice and assistance.

In Spain, *CITE-CCOO* and other trade unions and organizations provide undocumented migrants with information about registration at the municipality (“empadronamiento”). Undocumented migrants who are registered at the municipality may have easier access to health care, basic schooling and social services. Registration can also help to prove how long an undocumented migrant has resided in the municipality, and thus in Spain, and is taken into account if the person makes a request for regularization. “Empadronamiento” is not a residence per-

mit, and as discussed earlier in the section on health care, many undocumented migrants cannot fulfill the two minimum criteria for registration (passport and housing contract) due to irregular entry into Spain or difficulty in finding proper housing in Spain.

*Droits d'Urgence* in Paris works specifically to make rights more accessible to marginalized groups, including undocumented migrants:

#### **Droits d'Urgence (Paris, France)**

*Droits d'Urgence* is a humanitarian association of jurists fighting against social exclusion. It began working in 1995, by offering legal advice and assistance to disadvantaged groups, to make them aware of their rights, and to exercise their rights. To be most effective in reaching people in need, *Droits d'Urgence* offers free legal consultations in places where disadvantaged people commonly go to receive basic services such as food, health care or housing. *Droits d'Urgence* is present in places such as Red Cross facilities, emergency housing shelters, prisons, at a doctor's office for those in need at the Saint Antoine Hospital (an NHS hospital) and at the Halte Gare de Lyon, a center for emergency housing located near the Lyon Station in Paris. The main beneficiaries of the services are undocumented migrants. The organization works with 380 volunteers, the majority of which are lawyers. When social workers who are present in many types of facilities for those in need detect a legal problem, they may refer their clients to a legal consultation organized by *Droits d'Urgence*. The organization ensures the legal processing of a social case, and its work is a complement to social workers' assistance. *Droits d'Urgence* trains social workers to become familiar with existing structures on access to rights so that they will be able to know where they can refer their clients who have legal problems. The aim is to help the social workers to have their own network and to be able to work in a network, so that the undocumented migrant doesn't have to go to many different places and organizations asking for the same information and assistance.

#### **Appealing a Deportation Order**

Another type of legal assistance is directed at undocumented migrants who have received deportation orders. *CEAR* in Madrid is often faced with cases of undocumented migrants who have received a deportation order and who come to the organization when the time limit has expired to appeal the deportation order. *CEAR* thus tries to look for other possibilities, such as a work permit. If the person received the deportation order just because they were illegal (if they haven't committed a crime), then they ask that the deportation order be abolished so that the person can obtain regularize their status. In Italy, if an undocumented migrant receives a deportation order, then s/he has five days to make an appeal, including Saturday and Sunday. *NAGA* in Milan works on the "S.O.S. Espulsione" project with the *Coordinamento Antirazzista Milanese*. This is a switchboard run by volunteer operators and a lawyer from Monday-Friday, 7:00-9:00 p.m. The aim is to make undocumented migrants aware of their rights and follow up on cases. Victims of acts of racial discrimination can also call the switchboard to receive legal guidance and make a denunciation.

### **Special Groups of Concern** (4.2)

While many undocumented migrants suffer from exploitation and marginalization due to their irregular status, some groups are particularly vulnerable and require more focused attention. Many organizations provide assistance to undocumented women and unaccompanied minors. Undocumented migrants in detention also have very particular needs, and various organizations dedicate their efforts in this area.



## Women (4.2.1)

### Women and Migration

*Beshid Najafi, AGISRA<sup>12</sup>*

Women migrate because of political, economic, social, and personal reasons. According to the International Labor Organization (ILO), almost half of all labor migrants worldwide are women. Furthermore, 80 to 90 percent of all refugees worldwide are women and children. The gendered nature of the labor market forces most women to work only in certain jobs: many have to sell their bodies or their reproductive capacities. These jobs are rarely recognized as professions, are poorly paid and are not socially valued. Examples include work in the informal and unregulated sectors of prostitution, domestic work, the entertainment industry, and “marriage.” Paragraph 41 in the final report of the United Nations Beijing+5 Conference in June 2000 states:

The patterns of migratory flows of labour are changing. Women and girls are increasingly involved in internal, regional and international labour migration to pursue many occupations mainly in farm labor, domestic work and some forms of entertainment work. While this situation increases their earning opportunities and self-reliance, it also exposes them, particularly the poor, uneducated, unskilled and/or undocumented migrants to inadequate working conditions, increased health risk, the risk of trafficking, economic and sexual exploitation, racism, racial discrimination and xenophobia, and other forms of abuse, which impair their enjoyment of their human rights, and in some cases, constitute violations of human rights.

(UN General Assembly 2000)

Women who decide to migrate are courageous, strong, powerful and willing to take the initiative. They leave their country of origin in the hope of finding improved living conditions based on responsibility for their family and children for whom they are usually the sole provider. These women do not fit the stereotypical picture of the “poor woman.”

Despite the active roles women take, they frequently lack information regarding living conditions, social conditions, laws, etc., in the country of destination and need support. Difficulties in legally entering the country of destination make it easier for traffickers to recruit women. Women are often forced to work with a recruiter. More women are increasingly coerced into living in Europe without legal residence or are dependent upon their spouse. Their irregular status prevents (easy) access to health care and education, and is a condition which all undocumented migrants have in common. But a pregnant woman, single mother or woman with children certainly lives under different conditions than a single man.

### Meeting the Needs of Undocumented Women

Organizations working with undocumented women in France, Spain and Italy provide many different types of assistance, depending on the situation and the needs of the women they come in contact with. Assistance ranges from social and professional orientation, legal advice and guidance, to providing accommodation in shelters and also support for victims of trafficking.

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12 The section on “Women and Migration” was contributed by AGISRA - Arbeitsgemeinschaft gegen internationale sexuelle und rassistische Ausbeutung, an organization based in Cologne, Germany and founded in 1993. AGISRA fights against international sexual and racist exploitation and provides advice to undocumented women.

One organization tries to intervene before women even come to Europe and become undocumented. *VOMADE* in Madrid also has an office in the Dominican Republic, and does awareness raising campaigns in the country of origin to inform women of the *real* working conditions and general difficulties faced by domestic workers in Spain.

### **Employment Orientation and Skills Training Courses**

Many organizations interviewed in Spain and Italy provide assistance to undocumented domestic workers. A common approach is to provide professional orientation to facilitate the search for employment and the work in this sector. *KARIBU* in Madrid works mainly with sub-Saharan Africans, and recognizes the cultural and social difficulties these undocumented migrants face when arriving in Europe. The organization thus offers special training sessions for African women who wish to find domestic work, to help them to know the culture, cuisine, and everything that is necessary for working in households in Spain. *Centro Welcome* in Rome also provides home economy classes for immigrant women who will work in Italian households.

Another approach is to teach certain skills to undocumented women in workshops or classes that are also attended by women from the host country. This also has the effect of promoting social integration. At workshops run by the *Centro Welcome* in Rome, Italian women teach immigrant women how to sew. *Mujeres Progresistas de Andalucía* in Sevilla holds cooking classes where 10 Spanish women and 10 immigrant women meet for a month and a half, and teach each other traditional dishes from their respective countries. As a representative from the organization points out, this personal contact can sometimes have very positive effects:

“The women end up being friends, even to the point where some Spanish women whose sons are unemployed say that instead of looking for a job for their own sons, they end up helping the immigrant woman, because she (the immigrant woman) needs it more, and on top of it she's her friend!” (*Activist in Spain*)

### **Support and Guidance**

Personal contact and guidance are often very important for undocumented women who face harsh conditions in their daily lives. *MAFED* in Marseille provides counseling to Algerian women who come to see them because they are usually living in such misery that they need to speak to people who are also aware of the problems in Algeria. The *Collectif 13 Droits des Femmes* in Marseille is also a support point for undocumented women, many of whom recently arrive in the country and have little social support. The women come together to discuss problems or particular needs. *Amici del Terzo Mondo* in Marsala has tried to reach out to undocumented women by gathering them in clubs or associations, but this has not always been easy, largely due to difficulties of the women's husbands in allowing their wives to participate in such activities. The voluntary organization *du côté des femmes* in Lille has actively supported undocumented women in grassroots initiatives:

**“du côté des femmes” association féministe (Lille, France)**

The organization was started as a bookshop on women’s issues in 1976. In 1979, the organization began working with other women’s organizations and had its own office until 1999. The organization presently occupies a room in a building with many other NGOs and works exclusively with volunteers (approximately 8 regular volunteers) to promote women’s rights, feminism, to fight against violence and offer solidarity to women in need. When undocumented migrants in Lille waged a hunger strike in 1997, volunteers at *du côté des femmes* became “godmothers” to several undocumented women strikers. They helped the women in various ways, by accompanying them to the doctor or hospital, or working with other organizations such as the *Ligue des Droits de l’Homme* to provide legal assistance and process files for regularization. If an undocumented woman needed housing, they would help her by looking for housing in public shelters. Volunteers at the organization also did social activities such as playing with the women’s children, going on picnics, etc. Volunteers at the organization continue to provide these various types of assistance to undocumented women in Lille.

**Providing Social Services to Undocumented Women**

Some organizations provide services such as health care and legal or social assistance, but targeted specifically at women. *NODI* in Rome aims to obtain respect for the rights of foreign women in Italy. The organization’s main role is to inform women of existing services. They provide information sessions in 12 different languages and also hold a legal session. *Centro Welcome* in Rome provides special health services for women in gynecology and psychology. *Mujeres Progresistas* in Sevilla provides legal consultations and helps undocumented migrants in administrative procedures.

Undocumented women often face difficulties in finding adequate housing, especially if they have young children or are pregnant. Some organizations have shelters where they offer accommodation specifically for women. *Cáritas* runs shelters for women in several cities in Spain. The majority of the women who stay at the shelters are undocumented, and many have received deportation orders. *KARIBU* in Madrid has a shelter where pregnant undocumented women receive food and accommodation, as well as accompaniment for childbirth.

**Assistance to Victims of Trafficking and Prostitutes**

Victims of trafficking and undocumented women who work in prostitution have very particular needs. The aim of assistance provided in this area is to try to help women who wish to leave this area of work by providing psychological guidance, attending to material needs of food and shelter, and offering protection in a safe place if the women denounce their traffickers. It is also important to note that victims of trafficking are not only women, but are often unaccompanied girls, who as minors, are doubly exploited. A service run by the *Croce Rossa* in Palermo aims to combat trafficking by providing help to victims:

**Croce Rossa (Palermo, Italy)**

The service run by the *Croce Rossa* is a 24-hour toll free number throughout Italy that aims to provide guidance to foreign women forced to enter prostitution. The toll-free number operates against trafficking, by applying Article 18 of the Legislative Decree 25/7/98, n. 286. The law allows for two possibilities against trafficking: 1) Prostitute denounces the trafficker and activates a legal circuit; 2) Prostitute doesn’t denounce but activates a social protection process. She can enter into protected housing and apply for the residence permit based on humanitarian reasons. Many women take the second option. Psychologists who answer the toll-free number are trained to propose all types of solutions alternative to exploitation, by gathering information on the different possibilities of getting out of trafficking (with or without denunciation) and activating a process of social protection by putting the prostitute in a shelter via a liaison on the national level with all the local telephone centers and territorial centers.

VOMADE in Madrid also helps victims of trafficking by providing psychological and legal assistance. The organization is also seen as a pioneer in the area of not just breaking up prostitution rings but also bringing the culprits to prison. One particular case involved a victim of trafficking who was taken in by the organization. VOMADE negotiated with the police to guarantee that the woman would remain in Spain to testify in court if she went to the police. After a lot of work, the traffickers were imprisoned. This was the first network of traffickers that were put into prison.

## Unaccompanied Minors (4.2.2)

Unaccompanied minors are in France, Spain and Italy for various reasons. Political strife and war in their countries of origin may cause some minors to flee and seek a safer existence in Europe. Economic hardship forces many to leave and look for a better way of life elsewhere. Some minors work to be able to send money back to their families at home, while others may have completely severed family relationships and maintain no contact with their families. Despite their reasons for going to Europe, minors above all need special protection, underlined by an interviewee in France:

“These children are generally considered clandestine, but they shouldn’t be considered as such; they’re not clandestine, they’re children. Immigration is continuing to flood Europe and children are caught up in it.”

*(Social worker in France)*

### Public Social Assistance to Unaccompanied Minors

Legislation in France, Spain and Italy has measures to protect unaccompanied minors until the age of 18. Public institutions are theoretically supposed to provide two levels assistance. The first level is emergency help, attending to basic needs of food, clothing and shelter. In the second level of help, the undocumented migrant is placed in a tutelary apartment or residential community, and receives orientation and is referred to training and/or educational courses. In practice, though, public structures are very often insufficient and incapable of meeting the demand for protection of unaccompanied minors, especially in cities that have a high concentration of undocumented minors. Emergency assistance is often more developed than the second level (if emergency assistance is given at all), as an interviewee in Spain explains:

“Concerning minors, the first thing that the administration has to do is look for the family. If they haven’t found the family in 6-9 months or if they feel that it isn’t right for these minors, then they start processing papers for regularization of the minor. During this time the administration is the guardian. They stay in centers in very bad conditions. They sleep there at night, and during the day they try to get by. There are no showers in the hostels, and they receive very little food. So the first, basic ‘assistance’ is very bad. They are then transferred to some centers that work a little better. There are also some closed centers and tutelary apartments where they receive educational programs, training and assistance in regularization procedures. But there are very few of these types of centers. This is what the law stipulates. Many minors come at the age of 16 or 17 and the administration doesn’t make any moves, so they become undocumented at the age of 18. The administration says that these are conflictive minors that don’t want social help: ‘They want to be in the street, so the maximum that we can do is to give them a place to sleep.’ But in reality, these minors have come to work but were not able to meet their objectives. They then have to face these inhuman conditions.”

*(Human rights activist in Spain)*

Organizations interviewed that work with unaccompanied minors offer protection in tutelary apartments, where minors receive help on both the immediate and more structural level. KARIBU founded a house for unaccompanied minors in 1988. The organization receives funding for the house and it is well run, but has a limited amount of places. Similar protection is offered by *Mujeres Progresistas de Andalucía* in Sevilla, which has two apart-

ments in Almería and can provide accompaniment to 12 minors in total.

### **Foster Family Placement**

Another type of placement of unaccompanied minors may be with foster families. This is a very time-consuming and sensitive approach, as it involves working with families that an organization can trust so that a relationship can be built between the family and minor. *Mujeres Progresistas de Andalucía* has developed such a foster program:

#### **Mujeres Progresistas de Andalucía (Sevilla, Spain)**

The foster program is targeted at unaccompanied minors or immigrant children whose mothers are unable to take care of them due to their work. The program aims to place children in a foster family, instead of sending them to a public institution, so that they can have a family life and better living environment. The organization looks for foster families, and if the family meets the basic criteria, they are selected and participate in a training course. There is then a period of accompaniment between the family and child, so that the child can slowly get to know the family. When the relationship is stable, the child is placed within the family. Program workers always seek to obtain a good relationship between the foster family and the child and the mother. This is also a project that has to be carried out very slowly, making sure that each step that is taken is not just with the child but with people who do an enormous act of solidarity by being foster families.

### **Psychological and Educational Guidance**

A different approach in providing assistance to unaccompanied minors is to try to understand the underlying reasons that push minors to leave their families and countries, and provide in-depth assistance through educational and psychological guidance. The target group of *Jeunes Errants* in Marseille is only unaccompanied minors. More than 80% of these minors are estranged from their families, and are isolated in France. The organization thus aims to intervene on a different level:

#### **Jeunes Errants (Marseille, France)**

The organization, whose name means “Young Wanderers”, began working in 1994. Their standpoint is that legal and administrative measures should only be tools: an organization should be able to use them, but what is most important is educational accompaniment. *Jeunes Errants* doesn’t fight clandestinity or mobility, but fights the idea of wandering (hence the name of the organization). A wanderer doesn’t know who he is, doesn’t know who to believe in, doesn’t trust the government and doesn’t think that he has to have an identity, but just survive. Before treating the administrative status of the minor, *Jeunes Errants* tries to find out why the minor left his family and his province. The organization provides counseling and guidance to get to know his identity, his family history, personal story and journey. *Jeunes Errants* works with minors who have been placed by the judge for child protection in a public institution. After 6 months of placement or restrictive measures, the services make their conclusion and if a judge decides that the placement has to be continued, because the child can’t return to his natural environment, then *Jeunes Errants* intervenes on the administrative level to take steps to legalize the residence status of the minor. The organization works with minors’ families in countries of origin to help in the construction of the identity of the minor, and to work towards return of the estranged minor.

### Undocumented Migrants in Detention (4.2.3)

All countries in the European Union have policies supporting the existence of detention centers for undocumented migrants. If an undocumented migrant is arrested due to lack of documentation, then s/he is placed in a detention center. The amount of time that an undocumented migrant can legally remain in detention centers varies per country. France has one of the more “humane” approaches, since detention is 12 days (this can be renewed). An interviewee working on the issues of detention in France did add, however, that it’s hard to say that the French detention policy could be characterized as “humane”, but it is nonetheless the minimum amount in Europe. In Spain, undocumented migrants can be detained for 40 days, while in Italy the limit is 60 days.

Conditions in detention centers are usually very poor. Overcrowding is common and men and women often are forced to share the same facilities. It is not uncommon for minors to be separated from their parents and removed to other centers. The upkeep of detention centers is often highly neglected and buildings may be decrepit. Sanitary conditions are also very bad and inadequate, as few facilities are often shared by very high numbers of detainees. Detainees’ rights to legal assistance, interpretation, visits and contact with outsiders are often not respected.

#### Differing Standpoints on Detention Centers

The existence of detention centers and conditions faced by detainees bring forth different types of responses from organizations. Some organizations try to work on the structural level to close them, while others try to ensure that the rights of detainees are met within the centers. One interviewee summed up a standpoint which takes into consideration both approaches:

“If these centers have to exist by law, then we will continue to denounce their existence. But at the same time that we denounce their existence, we also have to ask that if they have to exist, then they should exist in the best conditions as possible.”  
*(Human rights activist in Spain)*

#### Ensuring Respect for Human Rights of Detainees

In France, *CIMADE* has an official agreement with the authorities to maintain a presence in the centers, to ensure that the rights of undocumented migrants are respected:

##### **CIMADE (Paris, France)**

*CIMADE* has had an official presence in detention centers in France since 1984. The organization currently maintains a presence in 19 detention centers. Until 2001, *CIMADE* did social work in the centers, but the *OMI (Office des Migrations Internationales)* has since been designated as provider of social and psychological help for detainees in France. *CIMADE* thus only takes care of legal questions. Their role is to make sure that the whole legal framework is respected and that detainees’ rights are not violated. Their work includes making sure there isn’t any police violence, that medical exams are correctly carried out, ensuring that interpreters are present and that a standard level of hygienic conditions is met. Although the organization is present to guarantee the respect of rights, there are still many problems in all of the detention centers *CIMADE* works in. However, these conditions could be much worse without their official presence. *CIMADE* also works on the European level in the area of detention, by developing a network of partners in Europe as well as in countries of origin, that can contribute information on Alien laws and on policies which are applied by the relevant administrations concerning immigration. This is aimed at providing complementary and easily accessible information on detention to those doing case-work in this area.

In general, it is difficult for NGOs to enter detention centers, although this may sometimes be facilitated when a parliamentarian or politician makes the request and accompanies the organization. *Federación Estatal de SOS Racismo* in Barcelona was able to occasionally make some visits to detention centers this way, but when the organization made the request itself, it was systematically denied. In Italy, the *Coordinamento trapanese per la pace* in Sicily denounced the tragedy that occurred at the Serranio Vulpitta detention center in Trapani in December 1999, when a fire started in the detention center and six immigrants burned to death. A court case is still pending against the former chief of police, who is charged with multiple counts of manslaughter. At the time of the fire, safety conditions in the center were not properly met. However, changes to improve the structure have not been thorough:

An investigation following the fire found that fire safety regulations were utterly inadequate. For instance, escape routes had been fastened with iron bars; there were few fire extinguishers and fire exits were made of wood. Unbelievably, many of these obvious dangers still exist. There are still no proper fire exits and escape routes do not have locks that can be opened from the inside. There isn't even an emergency plan in the event of a fire.

(IRR European Race Bulletin 2000/2001)

As a result of the tragedy, the *Coordinamento trapanese per la pace* obtained an informal agreement from the authorities to enter the detention center. The organization is thus able to provide legal advice and support to detainees, the majority of which enter Italy clandestinely by boat from Tunisia, Morocco and Senegal.

### **Campaigning to Close Detention Centers**

Several organizations interviewed participate in campaigns to close detention centers. An example is the postcard campaign launched by *Federación Estatal de SOS Racismo*:

#### **Federación Estatal de SOS Racismo (Barcelona, Spain)**

This organization is a federation of NGOs that works to defend human rights and fights against any type of discrimination of people based on their origin, ethnicity, culture or religion. It works on the local, regional and national levels in Spain. *Federación Estatal de SOS Racismo* works in two main areas: public denunciations, and public awareness raising. All of the organization's offices have information and denunciation offices, in which cases of individual or collective discrimination are treated via public denunciations, the legal system, or through mediation. Public denunciations are made of individual cases of racism and awareness raising is done in schools (from primary level to university level). When a restrictive immigration law was enacted in 1985, the organization launched a campaign against the existence of detention centers. "For us, the fact that one could be locked up for 40 days in these centers just for not having papers is a violation of rights." In 2001, the action was launched again, as a postcard campaign, to close the six detention centers in Spain. The campaign consists of an informational pamphlet that explains what the detention centers are, why detainees' rights are violated, and the concrete actions proposed by the organization to be taken by the Spanish government, the ombudsman, press, associations and citizens. Postcards are detachable and are addressed to the Minister of the Interior and the ombudsman.

### **Assistance in Arrival Zones**

Another type of detention is in arrival zones. These are different from detention centers in that they are for people who arrive without the proper authorization to remain in the country (e.g. they don't have a visa, or wish to request asylum). In France, the voluntary association *ANAFE – Association Nationale d'Assistance aux Frontières* is a joint effort by several organizations (*Ligue des Droits de l'Homme*, *MRAP*, *GISTI*, *CIMADE*, *Amnesty International*, *Croix Rouge* and *ACAT*) to provide legal assistance to detainees in arrival zones. *ANAFE* has a phone number that is posted in the arrival zones. Detainees can call and explain their problem, and

receive legal advice. The switchboard is run by 2-3 people from each organization on a rotational system so that each organization contributes one day per week. The Ministry of the Interior gives eight entrance cards per year to each participating association to visit the arrival zones.

## Structural Work<sup>(4.3)</sup>

While meeting undocumented migrants' basic social needs is primordial for many organizations, there is also recognition of the importance of working towards better conditions by working on a structural level. Organizations do this in various different and creative ways, through networking on the local, regional, national and international levels, raising awareness on issues faced by undocumented migrants, working to influence policy, and providing information and training.

### Networking<sup>(4.3.1)</sup>

The many issues that undocumented migrants face in daily life lead them to look for assistance in different areas. Most organizations do not have the resources (nor the aim) to provide assistance in all areas of basic social rights and to work on the structural level to improve conditions for undocumented migrants. Hence the importance of networking with other organizations. Networking may be the very common practice of referring an undocumented migrant elsewhere to receive direct assistance, or working together on policy issues, by participating in meetings or working groups, working together on campaigns, making joint statements, etc. One interviewee summed up the importance of networking:

“We have to say together, with all our types of organizations, that it's possible to show solidarity together.”

(Social worker in Italy)

### Referrals

One of the most common forms of networking practiced by all organizations is to refer an undocumented migrant to a place where s/he can receive help in finding housing, receive health care, enroll his/her children in school or register for courses, obtain legal assistance, etc. All organizations that provide direct help to undocumented migrants know where undocumented migrants can receive assistance in these areas, and may simply refer the individual elsewhere or may also have a working relationship with the place of referral. The main importance of referral is to provide information so that if the organization itself cannot help the undocumented migrant in meeting one of these basic needs, then an effort will be made to try and find help for the individual elsewhere.

### Thematic Work

Numerous organizations network on the local, regional and national levels on thematic issues relevant to undocumented migrants. Some organizations have established working relationships in the area of housing, such as *Caritas Diocesana di Roma*, which meets regularly with a group of organizations to work on the issue; *Mujeres Progresistas de Andalucía* in Sevilla, which works with neighborhood associations, and *GISTI* in Paris which works on unsanitary housing with several organizations. Many joint efforts are made to improve undocumented migrants' access to health care, and the existing measures in Italian legislation in this area were largely the result of the voluntary sector's networking and policy work. *NAGA* in Milan networks with other organizations that provide health care to undocumented migrants in Italy. Some doctors at the *Poliambulatorio S. Chiara-Caritas per Cittadini Extracomunitari* in Palermo are also members of the Italian Society of Immigrant Medicine (SIMI), which aims to promote the concept of social medicine, by taking into consideration and understanding cultural differences when providing health care to immigrants. *Médecins sans Frontières* and *Cimade Poste Ile-de-France* in Paris have worked in networks on foreigners' access to health care. Some organizations that work with undocumented women, such as *NODI* in Rome, participate in networks on women's issues in general, and



also network with organizations that work with immigrant women. *Cimade Poste Ile-de-France* in Paris also networks on women's issues. Migrants' groups have been able to gather support from organizations and trade unions through networking. The *SUD-PTT* trade union has worked together with several *collectifs des sans papiers* in Paris. *Collectif des Sans Papiers de Marseille CSP 13* networks regularly with quite a number of support organizations in Marseille, and also has the support of trade unions. The *Coordination nationale des sans papiers* in Paris networks with migrants' groups throughout the country, and *Todo Cambia* in Milan networks with migrants' groups in Italy that are based in Brescia and Naples.

Many organizations network on the international level, with other countries in Europe or abroad, or with international organizations. On the issue of detention centers, *Cimade* in Paris has brought together French networks to meet British networks to adopt a common position concerning the Sangatte detention center. *Cimade* is also developing a network of organizations on the European level on the theme of detention. *Médecins sans Frontières* in Paris has worked with organizations in several countries in Europe on the "Ideme" project (Intervention for the Rights of Sick Foreigners in Europe) to raise awareness in this area of health care. *Provienda* in Madrid is a member of FEANTSA, a European network that brings together organizations working on housing. *Andalucía Acoge* in Sevilla has networked with other organizations on the elaboration of various projects on the European level, and also participates in political forums. The *CGT* trade union in Sevilla has a relationship with some organizations in Morocco, and has produced information leaflets about the union in Arabic. *Droits Devant!!* in Paris participates in international networks against globalization, in the aim of recognizing a transversality of struggles (linking the *sans papiers* in the North to similar struggles in the South). *Federación Estatal de SOS Racismo* in Barcelona participates in a platform for citizenship and living together, and networks with different *SOS Racisme* groups in France, Austria and Italy. *Amici del Terzo Mondo* in Marsala participates in the European coordination of the Rights of Immigrants to Live in Family, and the *Centro Astalli* in Rome works with the UNHCR on refugee issues.

### **Awareness Raising** (4.3.2)

In addition to raising awareness amongst undocumented migrants of their basic social rights, many organizations recognize the importance of fostering public support for undocumented migrants and work in various ways to raise awareness. Some of the methods used include demonstrating, campaigning, carrying out educational projects in schools, organizing intercultural activities, "sponsoring" undocumented migrants and addressing specific actors, such as the media.

#### **Providing Information to Undocumented Migrants**

Organizations interviewed that provide assistance to undocumented migrants in the areas of basic social rights inform them of their rights and how they can access certain services. Awareness raising may be an ongoing aspect of the organization's work, such as for *Medicos del Mundo-Andalucía* in Sevilla, which finds it important to inform undocumented migrants about the rights that they have for health care access. It may also be for a specific time period, for example when new laws or governmental policies are issued and have specific effects on undocumented migrants. During regularization campaigns, many organizations provide specific information about undocumented migrants' rights and eligibility for the regularization process. Awareness raising can also be directed at a particular nationality represented amongst the target group. As a large percentage of the undocumented migrants that request assistance from *CGIL* in Milan are from Ecuador, the trade union targets special information campaigns for this particular group on the regularization campaign and new law. *SSIM* in Barcelona regularly invites guest speakers to address issues faced by different nationalities amongst the undocumented migrants that go to the organization. It should be noted, though, that some organizations see awareness raising towards undocumented migrants as secondary to providing assistance in housing, health care, food, etc., as an interviewee in Spain points out:

“We do this but of course we only do these kind of activities after meeting basic needs... because with an empty stomach no philosophy is worth anything.”

(Social worker in Spain)

### Collective Actions

In creating public support, some organizations actively participate in demonstrations to bring the issues to a wider public. Many of the *collectifs des sans papiers* in France regularly hold demonstrations in front of the prefecture. The *Collectif des sans papiers 13* in Marseille does this once a week. A certain theme may bring increased participation in demonstrations. When a proposal in the Bossi-Fini law in Italy was made to fingerprint foreigners, *Poliambulatorio S. Chiara-Caritas per Cittadini Extracomunitari* in Palermo and *Comunità di Sant'Egidio* in Rome, as well as many other organizations, went to the streets to protest this discriminatory proposal.

Another way to raise awareness is through campaigning. The *Federazione delle Chiese Evangeliche in Italia* in Rome sees awareness raising, campaigning, advocacy and social integration as the main areas of the organization's work. The *Centro Astalli* in Rome also has a section within the organization that works on campaigns, information and training of Italians on issues faced by undocumented migrants. *CESTIM* in Verona organized a campaign entitled “Nobody is a foreigner in my town”, that grouped together more than 80 organizations concerned about foreigners' access to housing. *CESTIM* was also a partner in a European project to create a “Toll-Free Number Against Racism”, which aims at denouncing racism and providing follow-up measures to combat it. *Asociación Pro Derechos Humanos de Andalucía* in Sevilla also considers campaigning as an integral part of its work:

#### **Asociación Pro Derechos Humanos de Andalucía – APDHA (Sevilla, Spain)**

*APDHA* has existed since 1990 and has delegations in all of the provinces of Andalucía. There are very few employees, but nearly 200 volunteers in Andalucía and more than 1,000 members. The main objectives of the organization are to defend human rights, denounce human rights violations, and raise awareness of social exclusion. *APDHA* works in the following five areas: immigration, prisons, social marginalization, international solidarity and peace and human rights education. The organization works on four levels concerning undocumented migrants: social awareness raising; support of struggles and movements; legal advice and assistance for individual cases; support to people who arrive clandestinely through the Strait of Gibraltar. *APDHA* has launched campaigns concerning undocumented migrants, including “No more deaths in the Strait” and “Papers for everyone”.

### Educational Projects in Schools

Some organizations specifically focus on raising awareness amongst children and adolescents by carrying out campaigns or running projects in schools. *Medicos del Mundo-Andalucía* and *Federación Estatal de SOS Racismo* in Spain work in schools and institutes with youth on themes of intolerance. *MRAP* in Marseille participates in weeks against racism that are held in primary and secondary schools. *Andalucía Acoge* in Sevilla uses a comic book, which describes the story of how conditions in North Africa forced a family to come to Europe to try to earn a decent living, to sensitize adolescents to the reasons why undocumented migrants come to Spain, and the difficulties they face there. *Mujeres Progresistas de Andalucía* in Sevilla runs a competition for stories for children on human rights. The theme of immigration is also discussed, so that the children have the concept that the right to live where one can live better is a right recognized in the Declaration of Human Rights. At the end of the competition, which lasts for three to four months, prizes are given per age group and also for the school that participated most in the campaign. The organization highlights the importance of trying to prevent racism at an early age by targeting children for such campaigns:

“We feel that it’s very important that attitudes change from childhood. It’s more complicated to change the way of thinking of older ones. This is a very different way of doing a campaign, but we think that it’s more effective, because it’s working with the future and making them think about these things.”

(Campaign organizer in Spain)

### Targeting Journalists and the Press

Recognizing the role of the media in conveying information in the area of immigration, *Andalucía Acoge* in Sevilla launched a project specifically aimed at journalists. The organization developed a pamphlet that journalists can use as a guide for writing in an objective and non-discriminatory manner about undocumented migrants and foreigners in general. The pamphlet contains three main parts: the first part presents basic facts about immigration to Spain and underlines many of the root causes that force migrants to flee their home countries; the second part lists very practical recommendations that journalists should consider in writing about migrants; and the last part focuses on language and lists inappropriate ways to describe migrants and gives examples of how to appropriately refer to them in writing.

### Promoting Intercultural Understanding

Intercultural activities are a way for an organization to reach a broad public and promote social integration. For the International Refugee Day, the *Comisión Española de Ayuda al Refugiado* in Madrid organizes a week of different activities that ends with a concert. *S.O.S. Racisme* in Barcelona holds an annual party for diversity that brings together more than 100 associations.

Another way to promote intercultural understanding is to encourage “pairing” of locals and undocumented migrants through a “godfather/godmother” program. This was a widespread action in France that was launched in recent years by *Droits Devant!!* in Paris:

#### **Droits Devant!! (Paris, France)**

The main goal of this organization, which started in 1995, is to organize the “sans” (those who are “without” housing, work, health care, etc.) so that they can take collective action. The main areas of work are expertise, analysis, individual casework, and incentivizing collective action. In 1998, *Droits Devant!!* launched an action to encourage citizens in France to become a “godfather” or “godmother” to an undocumented migrant. This action was meant to reach not only activists, or people working in organizations or trade unions, but also ordinary citizens who could understand what it really meant to be undocumented. In practice, a godfather or godmother would help an undocumented migrant in administrative duties, such as accompanying them to institutions, and also do social activities with the undocumented migrant. The process involved a symbolic declaration made by the godfather and godmother at the town hall in the presence of the undocumented migrant. Thousands of citizens in France acted as godfathers and godmothers and the action gave much public support to the struggles of undocumented migrants.

### Policy (4.3.3)

Many organizations view the need to influence and change policies and legislation that affect undocumented migrants. Working on the policy level may entail different types of approaches, including criticizing governmental policies and laws as well as working with the government on forums on immigration or related areas. Other methods include focusing on countries of origin and root causes, and supporting development projects. All of these methods have in common the desire to not just help undocumented migrants in meeting their basic needs in the host country, but also trying to work on a deeper level to actually influence decision-making on policies and laws that affect them. This is emphasized by an interviewee in Spain:

“The objective of our work is to try to help undocumented migrants obtain documents to live a normal and stable life in our country. We try to help and support them as we can. But of course, without a major change in the legislation and in the migration policy (which aren’t the same), the problem will continue. It’s like a factory of undocumented migrants, because regardless of the increased police control and repressive measures, this (migration) policy condemns those who arrive as well as those who are here. Our objective is to change the migration policy and the legislation that supports these policies.”

*(Human rights activist in Spain)*

### **Criticism of Policies and Laws**

When new policies and laws are established, many organizations make formal statements that criticize certain measures. In Spain, the Ley de Extranjería that was enacted in 2000 brought forth a wave of criticism from many different organizations as well as trade unions that the law was unconstitutional and violated many basic human rights (see discussion in section on “Work”). *Andalucía Acoge* in Sevilla is a frequent critic of governmental policy on deportation. In many cases, the undocumented migrant can’t be deported to his/her country because Spain doesn’t have an official agreement with the country of origin. The undocumented migrant thus remains in Spain with a deportation order, which excludes him/her from obtaining a work or residence permit. The organization criticizes this policy because it feels the government should allow an undocumented migrant in this situation the possibility of working normally and receiving a work permit. The *Centro Astalli* in Rome endorsed joint statements with other organizations that criticize the new immigration law in Italy. The *Fondazione Migrantes* and *Comunità di Sant’Egidio* in Rome often make constructive criticism of laws and meet with politicians to try to influence policy measures. *Federación Estatal de SOS Racismo* in Barcelona also holds meetings with politicians from different political parties to explain the situation of undocumented migrants. When the Emigration Law was approved in August 2000 in Spain, the *Federación Estatal de SOS Racismo* launched a campaign entitled “No to the Emigration law.” The organization is one of the only NGOs in Spain that has systematically criticized all of the Emigration laws that have been made since 1985 for being discriminatory. The *Federazione delle Chiese Evangeliche in Italia* participates in a reflection group on the national level and has taken the lead in political work. *GISTI* in Paris also follows migration policies on the national level, as well as on the European level:

#### **GISTI – Groupe d’information et de soutien des immigrés (Paris, France)**

*GISTI* has been working for the equality of rights for immigrants since 1972. The organization defends the rights of undocumented migrants in various ways, by providing legal advice, training and documentation, and by providing the means for the *collectifs des sans papiers* to argue themselves. *GISTI* has approximately 150 members, of which 40 are lawyers. The organization is often present in courtrooms as well as the Council of State to further Aliens Law. *GISTI* has spoken on the situation of undocumented migrants in France at the Parliamentary Assembly of the Council of Europe, and also follows European Commission policies on immigration. In September 2002 at a press conference in Paris, 17 organizations adopted a “Call for the Regularization of All Illegal Residents in Europe.” *GISTI* took the lead in sending the call to its contacts and asking for translation into various languages. The call was eventually translated into 7 languages and signed by more than 100 organizations in 11 different countries in Europe. *GISTI* also contacted signatories with concrete suggestions for follow-up on the national level.

### **Participation in Governmental Commissions**

Another way that some organizations try to influence policy is to bring their expertise to governmental commissions. In 1996 in France, a consultative governmental commission was set up to examine migratory and asylum issues. Its members included politicians, as well as trade unions and non-governmental organiza-

tions. The *CGT* trade union in Paris collaborated by submitting reports and contributing to a standpoint of the commission. At the same time, the *CGT* also intervened in the parliamentary group and tried to influence the government to modify the law on migration. In Spain, an Immigration Forum was set up in recent years by the federal government to discuss immigration themes. The forum included NGOs, trade unions, politicians and the federal government and acted as a consultative body. When the *Ley de Extranjería* came out in 2000, the Immigration Forum opposed it, and as a result, the structure of the forum changed by law a couple of months afterwards. *Federación Estatal de SOS Racismo* in Barcelona and *Andalucía Acoge* in Sevilla participated in the forum before it changed by law, but are no longer members, because in the new structure the number of NGOs and trade unions that could participate became limited, and the number of government representatives increased. On another note, the regional government of Andalucía has created its own Immigration Forum, in which several NGOs participate, including *Andalucía Acoge*, *Asociación Pro Derechos Humanos de Andalucía* and *Mujeres Progresistas de Andalucía*.

### Supporting Development Projects in Countries of Origin

Some organizations link their work with undocumented migrants in Europe to structural work in countries of origin, by supporting development projects or other activities. An interviewee in France expressed the reasoning for working on both levels:

“It is important for us to know what the machinery is that causes immigration from the South to the North. We don’t want to just look at the consequences, but want to go deeper to the roots. For us, to be undocumented in the North is a consequence of economic globalization, the ravages of globalization that are produced in countries in the South. So it’s not enough for us to say ‘We want the regularization of undocumented migrants,’ but we have to say *why* undocumented migrants have to be regularized.”  
(*Activist in France*)

*SSIM* in Barcelona works on “fourth world” projects in Spain as well as development projects in Latin America. *SSIM* has projects in Colombia (it provides scholarships for 100 university students) and is finishing building a health clinic for AIDS patients in Costa Rica. The organization also grants scholarships to Colombian students to do Master and Ph.D. degree programs at the university in Barcelona. The objective is that the scholarship students return to Colombia to apply there what they learned in Spain. *CGIL* in Milan has developed a program to help with the construction of a hospital in Sierra Leone. When *Amici del Terzo Mondo* in Marsala began working in 1982, the organization’s activities centered on fighting against famine in the world. The organization has since switched its focus from mainly developmental projects to also working on migration issues, but still continues North/South projects such as participating in a fair trade market. They also support micro-projects such as building schools in Ecuador as well as in Africa. *VOMADE* in Madrid has an office in the Dominican Republic and runs awareness raising campaigns to correctly inform potential migrants to Spain of the *real* living and working conditions in Spain (see discussion in section on “Women”). The organization also campaigns for the right to vote of Dominicans in Spain, by using a law in the Dominican Republic that states that Spanish immigrants there have the right to vote (they are given the right to reciprocity). *Droits Devant!!* in Paris and the *Ligue des Droits de l’Homme* in Marseille also support North/South issues and network with various organizations on the international level.

### Information and Training (4.3.4)

Information sharing and training are mainly directed at people working in the field who have direct contact with undocumented migrants. Various organizations produce documentation or hold special seminars, conferences, or training sessions for lawyers, legal advisors, social workers and people working in public institutions, on the latest developments in immigration or other areas of law.

### Publications

Some organizations issue publications that contain a presentation or discussion of issues relevant to undocumented migrants. A large part of *GISTI*'s work in Paris is dedicated to publications, which are grouped in three main areas: juridical books, which give a thorough discussion in a particular area; juridical notes, which give brief information on a current issue; and practical notes, which are a clear presentation of existing legislation and specific advice to foreigners (including undocumented migrants) and those who support them. *Caritas* in Italy annually publishes the *Dossier Statistico* on immigration. This book contains statistical data on the international and European context, the overall Italian context, and data representing various regions in Italy, and also includes a discussion of irregular immigration in Italy for the particular year represented by data in the book. *Federación Estatal de SOS Racismo* in Barcelona makes an annual report of racism in Spain, which brings together individual cases of racism from whole country, as well as press cuttings from more than 100 sources. The report also includes articles on the reality of migration written by academics, journalists and politicians as well as members of the organization. *Federación Estatal de SOS Racismo* also maintains a documentation center, which is open to students (either at the secondary or university level). Many students do their theses on racism or living together in society, and the organization offers guidance on these topics.

### Information Sharing

Many organizations incorporate issues faced by undocumented migrants in information they produce on a regular basis. This may be in the form of newsletters, bulletins, magazines, web sites, as well as other forms. *Cáritas Diocesana de Sevilla* and *VOMADE* in Madrid include articles or commentaries about their work with undocumented migrants in monthly or quarterly bulletins, whereas *SSIM* in Barcelona publishes monthly bulletins and monthly and annual reports and *Fondazione Migrantes* in Rome issues weekly bulletins. In collaboration with two other organizations, *ASGI - Associazione Studi Giuridici Sull'Immigrazione* in Torino maintains a website that aims to gather, organize and make the national, international and communitarian norms on immigration easily accessible, and create information exchange from actors in all sectors. The website is constantly updated and provides general information on immigration and has archives with statistical, cultural and bibliographical materials on the phenomena of migration. *CESTIM* also acts as an information clearinghouse in the field of immigration:

#### **CESTIM - Centro Studi Immigrazione (Verona, Italy)**

*CESTIM* was founded in 1990. The main aim of the organization is to bring together all actors in field of immigration to gather information, elaborate projects and study laws. The organization, which functions as a study center, gathers information and helps to stimulate projects, some of which have later turned into autonomous organizations. One such example is *CESAIM* (see discussion in section on "Health"). *CESTIM* networks on the national as well as international levels, and maintains a website with information on immigration in Italy as well as abroad. The organization also holds training courses that are attended by organizations, lawyers and trade unions, on various topics, including legal advice for foreigners.

### Training Courses in Legal Issues

Some organizations that have expertise in legal issues offer training courses on legislation. *GISTI* in Paris provides courses on Aliens and nationality law for social workers and lawyers, as well as NGO activists, so that they can be equipped to deal with requests for legal advice and assistance from clients. *GISTI* also does more specific training courses on social protection, right to asylum, nationality and on young foreigners. *Droits d'Urgence* in Paris provides training for social workers on how to access certain rights for undocumented migrants (see discussion in section on "Legal Advice and Assistance"), and also tries to raise awareness within the legal world by offering a short-term practical internship (4-5 days) for practicing magistrates within the framework of a continual training program at the National School of Magistrates. *Droits d'Urgence* also receives "auditeurs de justice",

students doing a 1-year program at the National School of Magistrates that have to complete a 2<sup>1/2</sup> month internship at an association or company as part of the preliminary requirements for obtaining the title of magistrate. The organization informs the student of all of the relevant institutions and structures in Paris concerning social exclusion, and puts them in contact with people so that afterwards in their jurisdiction they can develop materials of access to laws.

### Training Courses in Public Institutions

Training is also carried out within several types of public institutions. *NAGA* in Milan is often called on by public authorities to speak in schools and prisons about immigration. The *Centro Astalli* in Rome also does training sessions in schools and NGOs on intercultural issues. *Medicos del Mundo-Andalucía* in Sevilla offers training courses on multicultural and health care issues of working with immigrants for health care professionals and others working in the public system. The intercultural mediator is present in the public health care system in Andalucía, but the authorities have not yet fully contemplated how to effectively integrate this position into the system. *Andalucía Acoge* in Sevilla provides training for public school teachers who would like to know how to effectively work in a multicultural setting:

#### **Andalucía Acoge (Sevilla, Spain)**

*Andalucía Acoge* is a federation that was started in 1991 when the four founding associations (*Sevilla Acoge*, *Granada Acoge*, *Almería Acoge* and *Málaga Acoge*) joined forces to give a more efficient and global response to the growing phenomena of immigration in Spain. *Andalucía Acoge* aims to promote the integration of immigrants in the host society and promote intercultural awareness. The organization provides assistance to undocumented migrants in all areas of basic social rights, and has many different types of awareness raising activities. *Andalucía Acoge* has also developed training modules on how to effectively work in an intercultural setting in schools. In Spain, undocumented children are not restricted from attending school; acceptance is automatic. If immigrant children don't know the language or are not yet adapted, this creates problems for the teacher, who often does not know how to respond to the situation. Since many schools in Andalucía do not have materials or means to deal with intercultural settings, school teachers often contact *Andalucía Acoge*, and ask the organization to give them tools to teach in a multicultural environment and to be better equipped to deal with immigrant children at school.

## Migrants' Groups (4.4)

Restrictive immigration policies and laws in recent years in France, Spain and Italy have created situations in which many people become or remain undocumented. The reasons for living in these countries with an irregular status vary (see discussion in Chapter Two), but a common denominator is that being a foreigner and undocumented leads to mutual experiences of discrimination, exploitation and loss of identity. Many undocumented migrants feel the need to meet other people in the same situation, to be able to receive moral and material support and to lead a collective struggle for regularization and respect of their human rights. The need to come together is often very important in also regaining one's sense of identity, as a member of a migrants' group in Italy points out:

"It's not a question of working separately, because if an immigrants' group is started it doesn't mean that they're only going to work for their own issues. On the contrary, if it is started it can help to work more in groups with support organizations, to create more unity. This question goes beyond politics, struggles, ideological questions. It's a question of identity. When you come here, they deny everything to you, they deny your story, you're nobody in this country. And it's even more than that, because you remember every day that you're not from this country, that you don't speak this language, you have to get used to

this country but there's not an interest in knowing about you, about how your life was back there (in your country), who you are, what things you did there ... You arrive here and if you're a woman, you work as a domestic worker or you take care of elderly people, and that's the job you do. This is even happening with the migrants themselves, that they are putting this into their heads. The girls arrive here and think that there's nothing a Latin American woman can do in this country besides cleaning houses or taking care of people. They put this so much into your head that to a certain point, you start believing it. They create a situation of Class A and Class B citizens. So it's not just a situation of working separately, but understanding that it's our need, it's a psychological need, a spiritual need, but it has nothing to do with politics.”

(Member of a migrants' group in Italy)

## Development (4.4.1)

### **“Les collectifs des sans papiers” in France**

Migrants' groups in France, which are commonly referred to as “*les collectifs des sans papiers*,” are prevalent throughout the country and have achieved a high degree of public awareness of their struggles. Undocumented migrants in France are commonly referred to as *sans papiers* (without papers), a term which has become mainstream in society.

The struggles of the *sans papiers* movement go back to the beginning of the 1970s in France, when the government, which had previously encouraged labor migration to fulfill the country's developing industry and need for factory workers, started implementing policies to control migration (Abdallah 2000). The movement has led many different struggles in the past decades to fight for the rights of undocumented migrants, but it largely received impetus in March 1996, when a group of 300 African men, women and children from Mali, Senegal and Mauritania decided to publicly struggle for regularization of their status by occupying the Church of St. Ambroise in Paris. The *sans papiers* were evicted from the St. Ambroise church relatively soon after the initial occupation, but were able to occupy several other places, before ending up at the St. Bernard church in July 1996, where they waged a hunger strike. During this time, support organizations and trade unions provided material and political support, and many well-known public figures also offered their support, all of which helped the movement to gain momentum. On August 23, 1996, the media covered the eviction of the hunger strikers from St. Bernard, when the police chopped the church doors with axes. Media coverage of the eviction helped to strengthen the public perception of the *sans papiers* movement.

The events of 1996 were a strong push for the development of a countrywide *sans papiers* movement. This social struggle has six main characteristics: occupation of public places to build mobilization and visibility; grouping together of various legal categories of migrants, with a demand for regularization for all; *sans papiers* organizing and leading their own struggle; many different nationalities and communities represented in the struggle; grouping together of whole families and not only individuals; and long-term perspective of the struggle (Bouamama 1997).

As *collectifs des sans papiers* began to develop throughout France, many members felt a need to have a central organizing point, where the *collectifs* could come together, exchange ideas and plan actions. The *Coordination nationale des sans papiers* was thus developed, to coordinate the movement on the national level:

#### **Coordination nationale des sans papiers (Paris, France)**

The *Coordination nationale des sans papiers* was started in July 1996, when 50 members of 14 *collectifs* from 13 departments in France came together in Paris and decided to create a national coordination. There are presently 20 *collectifs* in 13 different cities throughout France, but in recent years there have been as many as 42 *collectifs* nationwide. The *Coordination nationale des sans papiers* holds general



assemblies every two months in Paris or another city. Each *collectif* sends a maximum of three delegates to the general assembly, where actions are planned. The delegates then return to the *collectifs* and decisions are taken within the *collectif* on the degree of activism and the role that the *collectif* can play. The *Coordination nationale des sans papiers* has five demands: regularization of all sans papiers with a 10-year residence permit; an end to deportations and the closing of detention centers; release of all undocumented migrants imprisoned due to lack of papers; abolition of the double sentence (*la double peine*); abrogation of the Pasqua, Debré and Chevènement laws.

### Organizing in Spain and Italy

Although there are migrants' groups in Spain and Italy that bring together undocumented migrants in the struggle for regularization and better living and working conditions, the movement is not as fully developed or as widespread as in France. This may be due to various factors: Spain and Italy have traditionally been countries of emigration and have only become countries of immigration within the past 10-15 years; their relationship with former colonies was not the same as that held by France, which maintained migration programs for specific nationalities; restrictive policies and laws have intensified mainly in recent years, which may only now create the need for many undocumented migrants to join a collective struggle for regularization; social networks of family and friends in these countries are not as deep-rooted as in France, and many undocumented migrants are thus forced to rely entirely on their own initiatives to survive. An interviewee in Italy points out that the importance of attending to survival needs may be one of the main reasons why migrants' groups do not develop as much in Italy and Spain:

“For someone who arrives here, the last thing they want to think about is joining an association. They have to hide from the police, find food to eat, a place to sleep, work... all these personal problems have to be solved first. Only afterwards when they have a stable job, when they send their children to school, do they think about joining an association, becoming politically active.” *(Social worker in Italy)*

Although many migrants' groups in Spain and Italy are commonly formed on the basis of nationality and involve regularized and undocumented migrants, there has been a growth of groups mainly representing undocumented migrants from different nationalities, similar to the *collectifs des sans papiers* in France. In Spain, *O.D.I.T.E.* represents workers of many different nationalities, most of whom are undocumented (see next category for more detailed description). Such groups have also developed in the Italian cities of Brescia and Naples. In Milan, all of the 85 members of the *Associazione Sportivo MultiEtnica 2001* are undocumented migrants (except for the two organizers), and represent countries such as Brazil, Poland, the Dominican Republic, Ukraine, and Korea. The organization started as a protest against the removal of Rom from camps in Milan, and has continued awareness raising work by demonstrating against deportations. One of the other main aims that brings members together is to create basketball and football teams made up entirely of undocumented migrants. The teams play regularly and have also competed in some tournaments in Milan. Also in Milan, *Todo Cambia* is mainly directed at undocumented migrants but also involves Italians, since its members feel that the mixed representation leads to more effective integration in Italian society:

#### **Todo Cambia (Milan, Italy)**

*Todo Cambia* began with very simple means, when two migrants started going to a well-known soup kitchen in Milan where undocumented migrants of many different nationalities waited outside in line for nearly 45 minutes to an hour, to distribute documentation and encourage them to organize and to fight for their rights. Three months later, they started gaining their trust, and in July 2001, *Todo Cambia* was started as a *collectif*. From the beginning they said that wanted to represent many nationalities and also include Italians. “The only thing that we asked to have in common was that we didn't like the life that we were living in this country, either

as Italians or foreigners. But we can't do this alone, and we have to change the mentality (amongst many migrants) that all Italians aren't bad. So we decided to help one another. For example, if someone knows of a job, they give the information to others, or if they know of an address where you can get food or medicine or clothing, they pass it on. It was a small group that started to help one another and to try to create a little more solidarity." About 80 people participate in the group on a regular basis, and 90% are undocumented migrants. The group does street actions (it continues to mobilize migrants by rallying outside the soup kitchen on a weekly basis) and recently started to offer services such as Italian classes and a drop-in center for legal information. In April 2002 the group decided to obtain legal status and officially become an organization. *Todo Cambia* presently exists as an organization run entirely by volunteers.

### Migrants' Assistance in Basic Social Rights (4.4.2)

All of the migrants' groups interviewed provide some form of assistance in basic social rights. This may be very simple gestures of solidarity, such as providing space in their own accommodation or letting a fellow migrant use their kitchen or bathroom facilities, to sharing food or providing clothing. As mentioned previously, many undocumented migrants rely heavily on these networks to meet their basic needs.

Some migrants' groups are mainly based on nationality or ethnic affiliation, and members offer guidance and material support to compatriots. The *Associazione di Promozione Sociale Rom Macedone "Sutka"* in Rome provides assistance to Rom from Macedonia and Bosnia. The association, which was started in 2001, is run by five active volunteers and has its headquarters in a nomad camp outside of Rome. The association began as a way to help Rom to become emancipated and to lift them out of social exclusion. Nearly half of the Rom that the organization helps in the camp are undocumented. "*Sutka*" does mediation in schools, and has developed projects for scholarization of children. The association also runs an orientation desk to provide information on the regularization campaign. Another organization based in Rome is *Ararat*, which provides various types of assistance to Kurds (mainly from Turkey):

#### **Ararat (Rome, Italy)**

*Ararat* has an informal café in a house where members sell pittas or other simple fare, and proceeds are used to finance the organization's activities. Approximately 80-100 Kurds stay at the house. Most are single men, and only about 5% are undocumented. However, more Kurds may become undocumented in Italy in the future. Only 40% of Kurdish asylum seekers' applications have been accepted in recent months in Italy (as opposed to much higher percentages in recent years). In addition, Kurds who wish to apply for regularization usually cannot qualify, since many do not have passports. Thus, these hindrances to obtaining political asylum or becoming regularized may create more of a need for Kurds to find housing, and *Ararat* may face difficulties in the future. The organization networks with various other organizations, and contributes to a governmental office on Kurdish issues. It has a project for victims of torture, and collaborates with the San Gallicano hospital in Rome to provide mental health care treatment.

### Awareness Raising and Political Pressure Methods (4.4.3)

To raise awareness amongst the general public of their struggles and to put pressure on authorities to act, migrants' groups use a variety of methods. In her comparative study of *sans papiers* groups in France and Spain, Laura Krueger (2001) observes that migrants have used churches as a symbolic place for struggles, and have considered hunger strikes and street demonstrations as fundamental means of struggle. Many of the migrants' groups interviewed have used these methods, as well as others, to bring forward their demands.

## Demonstrations

Nearly all migrants' groups feel the importance of making their struggle public by participating in demonstrations. The majority of the *collectifs des sans papiers* in France hold weekly demonstrations in front of the prefecture of their respective cities. Undocumented migrants, support organizations and activists participate in these demonstrations.

From March 23-April 27, 2002, a national march of *sans papiers* was made in France from Marseille to Paris. Nearly 50 *sans papiers* went to towns and cities during the five-week march, visiting organizations, trade unions, politicians, mayors, and deputies and explaining their situation and their demands. The *Collectif des Sans Papiers de Marseille CSP 13* in Marseille was a focal point for a national march, which was covered by the media.

The repressive measures towards undocumented migrants set out in the Ley de Extranjería brought thousands of people to the streets in Spain in 2001 in support of undocumented migrants. Major demonstrations took place, such as in Barcelona where demonstrators demanded "*Papeles para todos*" (Papers for everyone). Italy has also attracted its share of demonstrations in favor of immigrants. One particular campaign against a proposal in the Bossi-Fini law to fingerprint foreigners drew thousands of demonstrators as well as signatories to petitions.

## Sit-Ins

Migrants' groups have also tried to put pressure on authorities by occupying public places during sit-ins. Many sit-ins are held in churches, and undocumented migrants may remain on the premises for days to months. The sit-ins that took place in France in 1996 began and ended in churches. In Spain in 2001, a surge of sit-ins took place mainly in churches in various provinces of Spain in reaction to the restriction of rights in the Ley de Extranjería of 2000, and to demand regularization. These sit-ins involved undocumented migrants of various nationalities. Many support organizations provided material and political support to the undocumented migrants participating in the sit-in. More recently in Spain, a sit-in was carried out from June-August 2002 at the *Universidad Pablo de Olavida de Sevilla*. The sit-in was planned to coincide with the European Union Summit, which was held in Sevilla in June 2002. A representative of the CGT trade union, which strongly supported the sit-in, explains the reasons for leading the collective action:

"This year, employers in the agricultural sector in Andalucía made contracts with Romania and Poland, and 5,000 to 6,000 workers were brought in from these countries. Thus, all of the North Africans who usually did this work on a yearly basis were not employed, even people who were undocumented and who would go there to work. They lived in poor conditions, in plastic shacks, in situations of real misery in camps. Some people worked on Saturdays and Sundays as well, some people had papers and others had no income at all. This was the reason for doing the sit-in, and Sevilla was chosen because it was the European Summit and it could thus have more repercussion. From the beginning, the structure that supported the sit-in was a support network of different people and groups, but was basically about 30-40 individuals. The trade union offered its infrastructure to support the sit-in. The possible support started to drop out because of a campaign against the support network and because they saw that it was becoming too radical. The rector of the university sent the police to break up the sit-in, and the majority of the undocumented migrants were detained and some were deported." *(Trade union member in Spain)*

One of the migrants' organizations that contributed to the sit-in in Sevilla is *O.D.I.T.E.*:

**O.D.I.T.E. - Organización Democrática de Inmigrantes y Trabajadores Extranjeros (Sevilla, Spain)**

*O.D.I.T.E.* was created in 1998, when some members of *ATIME* (*Asociación de Trabajadores e Inmigrantes Marroquíes en España*) wanted to form a separate group which would not only be aimed at providing help to Moroccans (which is the case of *ATIME*), but would include other nationalities as well. *O.D.I.T.E.* has members from Latin American, Eastern Europe and North Africa. The target group is foreign workers and most are undocumented. *O.D.I.T.E.* receives much support from the *CGT* trade union, and their demands are made as immigrant workers. *O.D.I.T.E.* provides legal assistance to undocumented migrants, and also works on the issue of housing by demanding better living conditions for undocumented workers.

### Hunger Strikes

One of the methods that migrants' groups turn to when they are desperate and see no way out of their situation is the hunger strike. These actions have taken place at various times and places in the countries studied, and at times have led to the realization of the strikers' objectives, notably the regularization of residence. In Breschia, Italy in 2000, 200 undocumented migrants who were unable to receive residence permits in the 1998 regularization campaign saw no other alternative but to go on a hunger strike. Hunger strikes also took place in Barcelona and Huelva, Spain in 2001, in the same year that many undocumented migrants led demonstrations and sit-ins throughout the country to protest against the repressive measures in the *Ley de Extranjería*. In France, hunger strikes have been used by the *collectifs des sans papiers* at various times. Undocumented migrants in Lille have also gone on several hunger strikes in recent years:

**Comité des sans papiers CSP 59 (Lille, France)**

*CSP 59* was founded in Lille in 1996, in the same year that many *collectifs* were founded throughout the country in response to the movement that was started in Paris. Although some *collectifs* that were started in 1996 dissolved afterwards, *CSP 59* has continued and presently represents around 200-300 undocumented migrants in Lille. *CSP 59* is the only *collectif* in France that has its own legal commission, which is a group of volunteer activists that meets once a month to study applications for regularization and the technical aspects based on the laws and constraints for regularization. The *CSP 59* has had 11 hunger strikes in 6 years (9 of which took place from 1997-2000). The longest hunger strike lasted 84 days, and the shortest lasted 19 days. A positive effect of the hunger strikes was the acceptance rate of applications for regularization submitted during the strikes: more than 80% of applications were approved.

### Relationship with Support Organizations (4.4.4)

Support organizations provide assistance to migrants' groups in various ways. When migrants' groups take public actions such as sit-ins or hunger strikes, a support committee usually forms that arranges practical details of providing material help (food, shelter, bedding, etc.). Such a committee is usually made up of support organizations, trade unions and activists, and the support provided is essential in the continuation of the action of the migrants' groups. Another important area in which support organizations contribute is to provide legal assistance to migrants' groups. Lawyers and legal advisors have not only contributed by helping to process applications for regularization and examining existing applications, but have also trained members of migrants' groups to provide basic legal assistance. Support organizations also work on the structural level by raising awareness and supporting migrants' demands.

## Autonomy

Many migrants' groups realize that establishing good working relationships with support organizations is essential in defending their cause and in obtaining wider public support. Nonetheless, the issue of autonomy is very important for migrants' groups as well as support groups, since both have to clearly define their expectations and limits. This is not so straightforward, and is often a learning process, as Madjiguène Cissé, the former spokesperson for the *Coordination nationale des sans papiers* in France, points out:

The struggle has taught us many, many things. It has taught us first of all to be autonomous. That has not always been easy. There were organizations which came to support us and which were used to helping immigrants in struggle. They were also used to acting as the relay between immigrants in struggle and the authorities, and therefore more or less to manage the struggle. They would tell us, "Right, we the organizations have made an appointment to explain this or that," and we had to say, "But we can explain it very well ourselves." Their automatic response is not to get people to be autonomous, but to speak for them. If we had not taken our autonomy, we would not be here today... And we have also learned that if we really wanted to be autonomous, we had to learn about democracy. We had to make our own decisions, get them acknowledged as truly representative of us, not allow them to be called into question from the outside, respect them ourselves, and therefore learn to make others respect them, and to implement them ourselves. We have learned that in six months. Without the struggle we would not have learned it in 10 years. (Cissé 1997)

Migrants' groups become empowered by grouping together to defend their rights, and this has been an important element in strengthening their position and ensuring the continuity of their struggle, as an interviewee in France highlights:

"What we've found interesting in this struggle is that it has been the people directly concerned, the *sans papiers* themselves who have fought for their rights, and it has been their struggle. I think that it's due to this that it has had such a large scale and that it has been able to carry on."  
(Trade union member in France)

## Coordination of Actions

*Les collectifs des sans papiers* have been active for at least six years throughout France, and experience has been gained on how to effectively work together. Some support organizations take more of an observer status and contribute when necessary (but do not provide systematic help), while others are actively involved with migrants' groups and have close cooperation. Those that work closely with migrants' groups are usually very clear about expectations, and will not defend strategies and decisions that are not fully approved by their organizations. Support organizations also define what they can do to contribute to the struggle. For example, a trade union member in France indicated that there are things that only the trade unions can do, such as to sensitize employees in local unions and businesses about the situation of undocumented migrants. The *Coordination nationale des sans papiers* holds regular meetings (sometimes several times a month) with support organizations, trade unions and political parties to exchange ideas and determine what actions will be taken. The *sans papiers* determine the agenda, but those present determine how and to what degree their organizations become involved. The regularity of contact has helped to build a working method in which all actors come together in a common cause, but also clarify what they can contribute:

"While there are always different opinions, at least we are able to agree on many things and this permanent practice of having meetings and contact amongst migrants' groups, trade unions, political parties and support organizations allows us to agree on what we can express on a common level."  
(Trade union member in France)

The working relationship amongst these actors in Spain and Italy is somewhat different, largely due to the fact migrants' groups have not developed in the same ways as in France. As mentioned previously, there are many migrants' groups in Spain and Italy that are predominantly based on nationality, and group together undocumented migrants as well as those who are regularized. Many support organizations and trade unions interviewed maintain continuous contact with these groups, and support them by providing material help and encouraging their development. However, except for specific periods in recent years when undocumented migrants have joined together in sit-ins, hunger strikes, or have made other collective demands for their rights, there has not been an ongoing movement of *undocumented* migrants' groups in Spain or Italy.

## Organizational Issues (4.5)

The aim of the interviews that were held with organizations was not only to find out about what kind of work they do concerning undocumented migrants, but also how they go about their daily work. Various legal, ethical and organizational issues may arise in providing assistance to people with irregular status. This section begins with a discussion of the impact that legislation has on daily work, and organizations' relationship with authorities. Issues concerning the target group are presented, as well as the objective and limits in providing assistance. Finally, some elements concerning the balance between direct assistance and structural work are introduced.

### Influence of Legislation on Work (4.5.1)

The main aim of the *Book of Solidarity* is to show the various ways that people throughout Europe extend solidarity to undocumented migrants, and to identify elements that hinder this solidarity. One of these elements is restrictive legislation, which has been discussed in Chapter III. During interviews with organizations, one of the questions concerned the impact of restrictive legislation on daily work. The following section presents some of the key findings concerning the impact of legislation: legal provisions do not prevent organizations from providing assistance; restrictive laws may incite individuals and organizations to do civil disobedience; public funding and acknowledgment of undocumented migrants by public entities may serve to thwart negative repercussions for organizations that provide assistance to undocumented migrants.

#### Application of Law

The initial question "Is it legal in your country to provide assistance to undocumented migrants?" brought forth varying responses. Many organizations clarified that it is against the law to provide assistance if it is for financial gain. Very few interviewees could make a specific reference to an article in the legislation that mentions what is legal and what is not, and some answered that they didn't even know if what they were doing was against the law or not, but that for them, it didn't matter.

Many organizations generally do not feel concerned by clauses concerning assistance, because those who are sanctioned are usually people who make a profit off of undocumented migrants:

"What could protect us from a condemnation is that in fact here, we are only applying the law. We are drawing our advice from an existing law. We aren't doing anything else; we're not employing a clandestine person, we're not in illegality. There have been condemnations of people who have helped by providing housing; there have been some cases, for example of people who are living together. Or traffickers, people who employ an undocumented migrant. But in fact when people are sanctioned, it's the networks, people who do it for money. 70% of the undocumented migrants we meet in our organization are provided accommodation by individuals, and all of these people aren't sanctioned. It's really the big mafia networks that are sanctioned. We as organizations don't really risk anything from the authorities."

(Activist in France)

Although sanctions for providing assistance are mainly directed at traffickers and mafia networks, there have been cases in recent years in France, Spain and Italy of individuals and organizations that have been penalized for providing assistance to undocumented migrants (see discussion in Chapter III). Many of these cases have resulted from an *interpretation* of the law that the assistance provided was for financial gain. The fact that interpretation can always be different in one context to another is almost more worrisome than the actual law itself, as a lawyer in France points out:

“From a lawyer’s point of view, the fact that a law exists and is not often applied, is worse, because then we are in the areas of arbitration and transfer of powers. There is a text, and anyone can be caught and the police will decide if they feel like applying it. In 99% of the cases this doesn’t happen, but if in 1% of the cases, the police decides to catch someone, they have the possibility of doing it. And that seems to me to be very serious, because we are then in a state of law. If for one reason or another, the police wish to begin legal proceedings, to condemn a person or an association, then they can do it because the text is at their disposal. This is what I call ‘transfer’, because the legislator determines if legal proceedings can be made. The legislator says ‘We can start legal proceedings against anyone, and the police authority has all the power.’ And this is a problem, even if concretely at our organization we’re not worried about the fact that we could have legal proceedings as of tomorrow.”  
(*Lawyer in France*)

### Responses Against Restrictive Legislation

Even if it’s against the law to provide assistance, many organizations are first concerned about helping people in need, and this philosophy overrides concerns about possible sanctions. Many organizations also emphasized that they are not supposed to act like the authorities in enforcing border control measures:

“As an organization, we don’t stop to think if it’s legal or illegal. We just provide help to people without papers. It’s not our job to deport people.”  
(*Social worker in Spain*)

If laws are so harsh that they violate basic human rights, then many organizations feel called to disobey them. The introduction of the Ley de Extranjería in Spain in 2000 and the serious measures it has concerning undocumented migrants incited many organizations and trade unions to take actions against the law. *Federación Estatal de SOS Racismo* in Barcelona and many other organizations launched a joint campaign of civil disobedience against the law, which had as a theme: “It doesn’t matter what the law says. My members and I will help undocumented migrants.” This particular law was also a reason for the *CCOO*, *CGT* and *UGT* trade unions to lead a campaign to encourage their members to disobey the law, by allowing undocumented migrants to join the unions and to receive assistance. In addition to making public declarations against this law, the *Asociación Pro Derechos Humanos de Andalucía* has also responded by working on awareness raising, to counter the effect of government campaigns and legislation against undocumented migrants:

“Although there are people who help undocumented migrants for humanitarian reasons, it is also a fact that the campaigns that the government has systematically done with an opposition party have created a situation of rejection of immigrants greater than what existed two years ago. In this case, these ideas are represented not by the extreme right, but by our own government. This has meant that it has been more important for our social awareness raising not only to be the distribution of leaflets, but also to try to bring immigrants closer to the population that they are in contact with. This has taken the form of immigrants going to neighborhood associations, schools, universities and cultural organizations to explain what their living conditions are like, why they are here, that they aren’t a threat but that they are already part of our society. This is a positive message and it gains importance by showing that immigration doesn’t mean conflict, delinquency or problems but that it is a social, economic, cultural and demographic contribution to society.”  
(*Human rights activist in Spain*)

An additional way of protesting is to join forces with other social organizations to show that restrictive legislation affects a wide range of social actors. When José Bové and the Farmer's Confederation led large-scale actions in Millau, France, a place which had become well-known for anti-militarization struggles in France in the 1970s, the *SUD-PTT* trade union gave its support to a common struggle against repression of social movements:

“This law weakens all organizations that decide to be activists in a different way than just the ‘institutions.’ And until now, this shouldn’t change anything for us, because we’ll continue our actions as we’ve done until now, and at the same time, we’ll organize demonstrations to condemn the fact that social movements can be criminalized by the law.”  
*(Trade union member in France)*

Another form of civil disobedience is to refuse to give personal information or data about undocumented migrants to the police. Several organizations in Italy mentioned that the police have made visits to their offices, but these organizations systematically refuse to give any information that would reveal the address or identity of undocumented migrants they help. One organization added that even if the police penalized them for working with undocumented migrants, public opinion would be on their side, and this would be very serious.

### **Link with Public Funding**

An underlying theme to the discussions on the impact of legislation on daily work is the link with public funding. Many organizations receive public funding to carry out a certain percentage of their activities and programs. The percentage of public funding in the total income of an organization varies from one organization to another, but various organizations receive some funding from the government. Many organizations, especially in Spain (although this is also valid for France and Italy), pointed out that if governments penalize organizations that receive public funding to subsidize their activities, then this is inconsistent with the government’s own budget lines:

“Many organizations are often working outside of the law by providing assistance to undocumented migrants, especially when they offer employment. But organizations are not afraid. If they receive public funding, then it’s a contradiction, because the administration gives you funding to help people and then penalizes you for helping.”  
*(Social worker in Spain)*

Another interviewee emphasized that while legislation is specific about what undocumented migrants are entitled to, at the same time it is also very clear for authorities that the help provided by organizations contributes to the prevention of a larger social conflict:

“The law currently prohibits certain basic rights to undocumented migrants such as the right to meet, to organize, to demonstrate, to strike. If an undocumented migrant wants to be a member of our organization, it is no problem. It appears that it’s against the law, but the government has not established this very well. It is clear for the authorities that our organizations help undocumented migrants because with such a big number of undocumented migrants (200,000 to 300,000), they have to eat and sleep somehow, and with such a huge number, this could create conflicts and social tensions that the authorities are not interested in seeing appear. So the authorities give money to associations to deal with the problem because they can’t deal with it themselves, because they can’t officially provide help for people they don’t recognize, or don’t wish to recognize because it’s not in their political interests.”  
*(Social worker in Spain)*

### **Recognition by the Administration**

An additional point brought up by organizations concerning the impact of legislation is that many different public entities work with undocumented migrants, especially in the areas of health care, education, and housing. In



addition, undocumented migrants in Spain can even register at the town hall, and although they do not receive a residence permit when they register, they are nonetheless acknowledged by local authorities (see discussion on “empadronamiento” in the section on “Legal Assistance”). Thus, undocumented migrants are recognized by many levels of public administration, and to penalize non-profit organizations that work with undocumented migrants would then be hypocritical:

“All the public administrations and the NGOs on all levels, the central government, autonomous communities, regions and town halls, all work with undocumented migrants. A town hall will register and recognize a citizen at an address and his/her child will go to school. This has worked like this. But now the tendency of the government is not to allow this; limits should be set for undocumented migrants and they should be deported. And I think that these beginning public demonstrations of the central government will be strengthened so that in the distinctive territorial levels, this will be a practice.” *(Social worker in Spain)*

The recognition of undocumented migrants by public entities is also manifested in social welfare programs. Public employees working in social welfare programs aim to meet the needs of disadvantaged groups, many of whom are undocumented migrants. In applying their program policies, public employees are often challenged to disregard laws that state that they cannot provide help to undocumented migrants:

“There is a contradiction between what is legislated in laws and what is practiced in programs. This is most noticeable in programs that provide welfare services. In applying and putting into practice social services policies, the government has a real problem, because the vocation of these ministers and of these consultancies is to stimulate the best quality of life possible for its citizens. Until now many of those who have been working within, civil servants and public employees, have defended (which is different from what the legislation says) that if an immigrant has entered and is here, they need to have a minimum amount of dignity to live their lives, even if they don’t have papers. So there has been a push to the administration from the civil servants themselves not to implement the policy according to the norm.”

*(Social worker in Spain)*

## Relationship with Authorities (4.5.2)

As mentioned previously, official institutions are often aware, and even condone, assistance provided by organizations to undocumented migrants. While the relationship with authorities varies from one organization to another, it was observed that there is a common interest of organizations to establish dialogue with authorities. However, this is not always possible on all levels of government, since political parties that govern on the local and regional levels may be different from the national level, and this may lead to different possibilities for dialogue. Organizations are also quick to add that authorities often “pass the buck” in transferring work that they should normally be doing themselves to organizations.

### Establishing Dialogue

Many organizations have contacts with and cooperate with authorities. This may be done to share expertise on specific issues faced by undocumented migrants and to improve public support. Some organizations stated that it is important to maintain a working relationship, to be able to work as constructively as possible:

“In general we try to work together with the authorities at all levels, from the local to national levels. We believe that we have to try to bring them what we can. The situation isn’t one of dispute, nor of love. We try to maintain our independence and try to be open to dialogue.” *(Human rights activist in Spain)*

“We don’t see institutions as people to fight; we think that in general we can dialogue with institutions. One has to try to resolve situations on the local level. The Bossi-Fini law is very hard...” *(Doctor in Italy)*

“If you have good relations with civil servants, then you can do your work well. But if you have bad relations, you have obstacles, delays, hostility.” *(Lawyer in Italy)*

While there is a general desire by most organizations to establish dialogue, this does not at all prevent them from criticizing governmental policies, but actually is a frequent characteristic of the relationship that many have with authorities. In describing their relationship with authorities, an organization in France added that the issue of public funding also comes into play, since their (and many) organizations that dialogue with authorities are critical of them, but at the same time receive public funding:

“We have a relationship of institutional dispute with the authorities, because we are always attacking the government. We attack a decree or the refusal of an individual case. But at the same time, we cooperate with the Ministry of Social Affairs and we have contact with people in certain ministries. It’s somewhat difficult to understand how we can be financed by the state and at the same time be highly critical.”

*(Social worker in France)*

On the other hand, some organizations refuse any discussion, cooperation or “round table” discussions with authorities, but it should be noted that very few of the organizations interviewed had this opinion, and even those who characterized their relationship as “distant” or not very good, still maintain contact.

### **Dialogue on Different Levels of Government**

Dialogue with officials is not always feasible on all levels of government. Political affiliation often characterizes the type of response organizations can expect in their requests for dialogue. For example, some organizations in Milan said that both the local and national governments are rightist, and it is thus very difficult to work with public authorities on both levels. On the other hand, some organizations in Rome said that they have a good relationship with authorities on all levels, but have no relations at all with the national rightist government. In the autonomous province of Andalucía, in Spain, many organizations said that although their relationship with the regional government was not perfect, they nevertheless have working relations, which is not at all possible with the central government:

“The relations are very bad on the national level and they’re a little better on the regional level, but are not ideal. There are good agreements, for example in the area of education, where the regional administration itself gives Spanish classes to immigrants; in the area of health care there is the agreement for Andalucía which doesn’t exist elsewhere in Spain. It’s true that in Andalucía the authorities have a bigger interest than on the national level, because the administration itself is racist. A racist and xenophobic attitude is promoted from the national government itself, and the government has now launched a campaign to link immigration and delinquency and is constantly giving figures about immigrants in prison and their increase in comparison to past figures.”

*(Social worker in Spain)*

### **NGOs Doing the Work of Authorities**

Several frequent points were mentioned in the general discussion about the role of the authorities and NGOs in providing assistance to undocumented migrants. An underlying theme to the discussion about the relationship with authorities is that many organizations feel that the work they do is the government’s responsibility, in that it should provide for everyone in its territory, regardless of their legal status.

“Organizations like ours are doing authorities a favor. We’re doing the dirty work that they don’t want to do. It’s like they say ‘I’ll give you money so that you’ll do something that I won’t do. Just do it and that’s it.”  
*(Social worker in Spain)*

A common stance taken by organizations that provide services that are clearly delineated in the legislation (e.g. access to health care for undocumented migrants) is to emphasize that according to the law, authorities should be providing these services. As long as this is not done in practice, NGOs will provide these services and constantly remind authorities that the law should be applied:

“The voluntary sector isn’t supposed to do this kind of work, but we do it to teach the law to people who have to apply it. However, it’s not our job. We’re doing extra work.”  
*(Doctor in Italy)*

Some organizations brought up the argument that authorities delegate the role of providing assistance to organizations, because they think that economically it is less costly for the non-profit sector to do this than to properly incorporate these services in the public sector:

“Authorities should be doing this work, but instead they pass it on to NGOs. Also, externalizing a service that the government should be doing itself makes it much cheaper.”  
*(Lawyer in Spain)*

Finally, the issue of preventing major social conflicts was reiterated: many organizations feel that the authorities permit them to provide assistance because it helps to prevent worse and bigger problems on the long term (see discussion in “Influence of Legislation on Work”):

“The government realizes that the work of NGOs and associations is to maintain cohesion amongst everyone, because if not it will become a social conflict sooner or later.” *(Activist in Spain)*

## Target Group <sup>(4.5.3)</sup>

To acquire a better understanding of the specialization of the various organizations interviewed, several questions were asked about the target group. Organizations work with several types of undocumented migrants, and direct their services either at only undocumented migrants, regularized and irregular foreigners, and people in need.

### Categories of Undocumented Migrants Represented in Target Group

Organizations were asked to specify what their general target group was and to give a general estimate of the percentage of undocumented migrants amongst their target group. They were also asked to give approximate ideas of the different types of administrative situations of undocumented migrants they deal with. Five main categories of undocumented migrants were proposed, and organizations were asked to distinguish the one(s) most represented in their target group:

1. Overstayers (people who may have entered with a tourist, student or other type of visa which later expired)
2. Clandestine migrants (people who entered the country irregularly)
3. Rejected asylum seekers
4. Rejected candidates for family reunification
5. Other

The three main categories of undocumented migrants represented amongst the target group of organizations interviewed are clandestine migrants, overstayers and rejected asylum seekers. Many organizations provide

assistance to clandestine migrants, especially those that arrive directly from Northern or Sub-Saharan Africa. Overstayers also represent a large part of the target group, and are mainly from Eastern Europe and Latin America. Some organizations provide help to people who came to Europe either on a tourist visa or via irregular entry to join family members. However, these undocumented migrants do not necessarily make a specific demand for family reunification. Many organizations in France added that they also work with another category: rejected candidates for territorial asylum. These undocumented migrants are mainly Algerians (although other nationalities are also included) who request asylum because of a danger in their country of origin (e.g. due to widespread political violence or terrorism).

Identifying the categories of undocumented migrants represented amongst the target group is also important to have more insight on the link between the target group and the organization's structural work. For instance, an organization that mainly works with rejected asylum seekers may focus on putting pressure on the government to reform the asylum law, while an organization that works predominantly with clandestine workers may concentrate its efforts on denouncing exploitation in the workplace and working to improve better conditions for undocumented workers.

It should also be noted that some organizations, particularly in France, could not give estimates on the percentage of undocumented migrants in their target group, because it simply wasn't a question which was asked within the organization. A trade union member emphasized that all employees should be treated in the same way, irrespective of their legal status, and that it wasn't part of the climate in France to ask about status. Another organization stated that it was not their philosophy to be too concerned if a person who received (health care) assistance was undocumented or not, since focusing too much on status could lead to stigmatization of the individual.

### **Assistance Directed Towards Target Group**

By learning more about the target group, the objectives of an organization and its development over time, some general observations can be made about the different approaches taken by organizations in providing assistance to undocumented migrants:

#### 1. *Only undocumented migrants:*

Some organizations direct their assistance only towards undocumented migrants. This is the case for the majority of the organizations that provide health care (mainly in Spain and Italy). Some organizations work with a specific target group based on nationality (e.g. sub-Saharan Africans) or type of undocumented migrant (e.g. unaccompanied minors, victims of trafficking) and provide assistance only to those with irregular status from these target groups. The collectifs des sans papiers in France and some migrants' groups in Spain and Italy are also directed primarily at undocumented migrants.

#### 2. *Mixture of undocumented migrants and other foreigners:*

Many organizations provide assistance to undocumented migrants as well as to foreigners who are regularized. They may come into contact with both groups in providing assistance in housing, education, legal assistance, etc. Organizations that work with political asylum applicants also provide assistance to rejected asylum seekers. Undocumented migrants are part of the target group of trade unions, as well as of organizations that work with migrant domestic workers. Many women's organizations interviewed work with women in general, and include women who are from Spain, Italy, and France, as well as regularized and undocumented foreign women. Migrants' groups in Spain and Italy that are based on nationality include both regularized and undocumented migrants.

#### 3. *Disadvantaged people:*

Another approach is to provide services to people in need, regardless of their legal status or background.

Organizations characterized by this approach usually run soup kitchens, shelters or clothing services, and also provide legal assistance to disadvantaged groups. Their target group includes undocumented migrants as well as local population in need of special services (e.g. homeless people, battered women, drug addicts, etc.). Although they open their services to a wide group, many organizations that take this approach noted that undocumented migrants usually make up more than half of their target group. Some organizations also said when they began offering such basic services, these were aimed only at people in need (regardless of status), but that as time went by, the main users of the services ended up being undocumented migrants.

## Finality of Assistance (4.5.4)

In their daily work with undocumented migrants, many organizations are faced with dilemmas concerning assistance. Unable to help everyone in need, many are forced to establish criteria for providing assistance. To have more comprehension of how organizations react in such situations, questions were asked about the aim of the assistance, relevance of a time limit and how they make decisions in situations in which they see no perspective for the undocumented migrant.

### **Aim of the Assistance**

The question relating to the aim of assistance brought forth interesting responses that reveal underlying themes in the area of assistance to undocumented migrants. While all organizations would most likely support the aim of working towards better living conditions for undocumented migrants, there was a slight difference in the terminology used to describe the objectives. Quite a number of organizations in France spoke about “fighting for rights” and aiming to have “equality of rights” of undocumented migrants. Some also questioned the notion of “assistance,” since their aim is to empower undocumented migrants to have recognition of their rights. A common response of organizations in Spain and Italy was to talk about working towards “integration” of migrants in society. Both approaches are complementary, and not all organizations in these countries use the same type of descriptions of their objectives concerning assistance. Nonetheless, these responses do shed some light on the different climates in these countries.

### **Establishing Limits in Providing Assistance**

Various factors determine if an organization establishes a limit for providing assistance, and if assistance will be provided to an individual who has poor chances of ever becoming regularized.

It should first be clarified that the issue of time limit is not even a consideration for several organizations. These organizations will “never turn someone away”, and will “always provide help, whatever the legal situation is, and even if the person has no possibility of being regularized.” Others who share this approach spoke of their organization’s “duty not to reject anyone.” Some organizations that have an open approach do establish some sort of limit on the amount of time that a person can receive help (such as food, housing, clothing, etc.), so that they can encourage the undocumented migrant to be autonomous and not to become dependent on this type of assistance.

Many organizations that provide legal assistance to undocumented migrants see it as their duty to intensively discuss various possibilities for the specific situation of the migrant. Some options may include: making a request for regularization; revising a negative decision; examining the feasibility of other alternatives such as migration to another country or return/resettlement; discussing the problems related to continuation of irregular stay. The duty of the social worker, legal advisor or lawyer is not to impose these or other alternatives, but to help the undocumented migrant to become fully aware of the various options and to take responsibility for his/her choice.

Nonetheless, many organizations are faced with ethical dilemmas when they are forced to make choices concerning assistance. One of the reasons they may have to choose who to help is based on constraints of time and resources. Not all organizations have sufficient staff or material resources to provide help to everyone in need, and if faced with a case which most likely will be rejected, some organizations will not provide legal assistance.

Another very important reason why some organizations will not provide legal assistance is due to a legitimate concern for the protection of the undocumented migrant, who can be arrested and deported if his/her application for regularization is rejected. Two interviewees explained why their concern for the security of their clients prevails in such situations:

“We won’t help someone who has no chance, because that would be helping someone who would be taking risks, and this could be dangerous for the person since s/he could be arrested. In this case, we would explain that it would be better not to do anything, rather than ask for papers.” *(Lawyer in France)*

“We have a very legal approach. We give some good advice and good advice is not to throw yourself into the lion’s mouth because when you make a request for papers, if it’s rejected, then you are obligatorily sent to the border. If a person wants to go through the procedure, then I tell him that it’s risky, I tell him that after such and such time he will receive an order to leave the territory, that he could be picked up just for being irregular... I let him know all of this. I try to explain and vulgarize the law and make sure that he understands, so that he can reflect and make the decision himself.” *(Legal advisor in France)*

Some organizations that have established a certain amount of credibility in the applications for regularization they present to the administration also indicated that they will not take on cases that will most likely be rejected, mainly because this would prevent other undocumented migrants in the future with realistic chances of obtaining regularization from having a chance to succeed. Although some organizations may uphold this practice, it is not always generally accepted within an organization, as an interviewee points out:

“Our organization has a good reputation in view of the French administration, because we are considered serious, rigorous, activist, but in a determined way. So the administration thinks that the files that we send are worth it. The authorities think that a pre-selection is made and if we send some files in which nothing can be done, then this will discredit all of the other files. This is why we make a pre-selection, but not everyone at the organization agrees with this, because there are some that think that we have to help everyone. From the moment that we make a selection, we are acting like the administration, and it’s not our role.” *(Activist in France)*

### **Alternatives to Not Providing Help**

Despite the reasons given for not being able to provide help, the fact remains that these choices are not easy to make, and are often very tough dilemmas that social workers, legal advisors and lawyers must try to resolve:

“Each time that we help someone, it’s a decision which is very, very, very difficult to make, to tell someone that we can’t help them to make a request for regularization. This is really the most difficult thing of our work. The legal aspect isn’t the most difficult; the most difficult is to say ‘no’.” *(Activist in France)*

Organizations which are characterized by a strong legal approach are often very clear in what kind of assistance they will and will not provide, and emphasize the importance of not providing false hope to an undocumented migrant:

“Our approach is very legal; we only work within a legal framework and if we can’t do anything legally, then we don’t do anything. We don’t give hope to people; we don’t do activist actions, we won’t get involved in the Saint Bernard struggle (*sans papiers* struggle), we’re not in that framework. We’re not magicians; we don’t have a magic wand that we can wave when the law doesn’t allow it.”

(*Lawyer in France*)

On the other hand, some organizations will also be very realistic about an individual’s chances for regularization, but at the same time encourage other options, such as collective action with other undocumented migrants in similar situations:

“If we can’t do anything for the person, and if the climate is good, then we would advise them to do collective actions, get involved in the *collectifs* and do it as a group rather than trying on an individual level (if that doesn’t work). But this depends on the time period and on the political climate.” (*Lawyer in France*)

In discussing an undocumented migrant’s options, an organization that chooses not to make an application for regularization will always refer the undocumented migrant to places where s/he can get food, shelter, clothing, etc. Although these are only provisional solutions, many organizations find it important to give the undocumented migrant information on how to carry on and survive. In such cases, some organizations do innovative things such as offer certificates or other documentation to indicate that the person is not a complete unknown in the host country:

“If we can’t do anything legally, then we try to give a document that says that we know the person. It is not a legal document but it supports the legal situation. We try everything to find a legal situation for the person. If we know in the end that the person will never be regularized, then we try to be very honest, give practical advice about staying illegally in Italy. The paper that the undocumented migrant receives from us can be helpful because if the police see this, they know that they have to be careful, because this person is known (by an organization), so someone will find out if they do something to the undocumented migrant. We also give practical information on deportation. We tell the undocumented migrant to try to avoid it and if they get checked, to try to return on their own initiative, because if they get caught they can’t return to Italy for 10 years. We also may give the undocumented migrant a certificate to say what they’ve learned, so that they don’t go home completely defeated.” (*Social worker in Italy*)

### Balance Between Structural Work and Direct Assistance (4.5.5)

Discussions with organizations revealed one dilemma that most organizations have to cope with: the division of working time between structural work and direct assistance. These two types of work may also be understood as prevention versus crisis intervention (or alternatively, proactive versus reactive approaches to working). The majority of the organizations interviewed do some type of policy work. Some organizations consecrate all or the majority of their time to carrying out research, producing information, doing training sessions, etc., while others spend more than 90% of their working time on direct assistance. Those that focus mainly on direct work are quick to add that they don’t want to be “patronizing” to undocumented migrants, but they do want to help them to meet their basic needs. Their assistance is aimed at insertion and integration, but undocumented migrants shouldn’t be tempted to becoming dependent on the organization. Another organization justified its full-time efforts to meeting basic needs by the fact that it provides humanitarian protection to undocumented migrants who might not easily find help elsewhere, and that is why the organization offers this assistance, and prefers to leave structural work to organizations that are more specialized in those areas.

There are also organizations that try to achieve a balance between both types of work. This is not always easy to do in practice, and many organizations said that constraints such as the time of the year, the specific reality of the place where an office is located, and the time needed to do individual casework all come into play in determining how much time is dedicated to structural work and casework. However, many organizations feel that it is important to carry out both, to be able to have a realistic view of the situation faced by migrants, so that they can better evaluate the type of response they will make on the structural level:

“We do less direct help (we do more work in other areas). Nonetheless, we would like to continue to do the direct help to keep our feet in reality, in daily life, to know what the problems are, specific issues that come up at a certain time, the problems posed by the prefecture at a certain moment.” *(Legal advisor in France)*

Some organizations that combine casework with collective action of undocumented migrants stated that at a certain moment, the individual cases join the collective cases and it is necessary to have knowledge of the individual file to better organize the collective action.

## Conclusion (4.6)

Numerous initiatives are made by organizations in providing assistance to undocumented migrants. Many organizations aim to help undocumented migrants meet their basic social rights of food, health care, housing, work, education and legal assistance. Depending on the type of service, organizations may either offer their own assistance, or help undocumented migrants to access certain public services. Not all undocumented migrants have the same needs, and some organizations focus on special groups of concern, including unaccompanied minors and undocumented women, as well as undocumented migrants in detention.

Many organizations dedicate their efforts to working on a structural level concerning undocumented migrants. By networking, raising awareness on conditions faced by undocumented migrants, working to influence policy, and developing informational materials and/or training programs, organizations make great strides in informing and trying to influence the general public and policy makers about the situation faced by undocumented migrants.

Migrants' groups in France, Spain and Italy also play a key role. The development of migrants' groups has been somewhat different in the three countries studied, but a common factor has been the desire to come together and take collective action for rights. Not only do they provide assistance in basic social rights, but they also offer a place for migrants to meet and share experiences with others in similar situations. The sense of empowerment that such collective actions bring about was noted as being very important for most of the migrants' groups that were interviewed.

In discussions on various organizational issues that come into play when providing assistance to undocumented migrants, it should be noted that restrictive legislation does not prevent organizations from providing assistance. On the contrary, a common response by many organizations is to publicly denounce repressive measures, and state their support for undocumented migrants. Another point made by many organizations is that authorities give funding to organizations with clear knowledge of their work with undocumented migrants. To penalize such organizations would thus be hypocritical.

Other organizational issues such as the target group of the organization, finality of assistance and balance between direct assistance and structural work brought up varied responses and approaches, depending on the organization's political vision concerning migration policy as well as their resources.



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## Additional Reading Material

The following is a list of additional reading material concerning undocumented migrants. Works are listed by country and also in a general grouping of references on different thematic issues relevant to undocumented migrants. It should be stressed that this list is by no means exhaustive, but is included here as an indication of additional sources that may be consulted.

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## Periodicals That Cover Undocumented Migrants in Europe

### *Migration Newsheet*

Monthly information bulletin on immigrants, refugees and ethnic minorities. Published by the Migration Policy Group in Brussels.

### *European Race Bulletin*

Comprehensive quarterly digest of race relations in Europe, collating and summarizing news reports from papers, magazines, NGOs and campaigns in every European country. Published by the Institute of Race Relations in London.

# Reflections On Motivations For Providing Assistance

Assistance to undocumented migrants can be approached from different points of view. Most of the time, as has been revealed in this book, it is considered a problematic issue in the national policy framework. Questions about the legality or illegality of assistance to undocumented migrants mainly have a strong legal character, and are based on the irregular status of the person. Questions of legality and acceptability of assistance to a person are linked to the acceptability of the person's presence on the territory or the nation state.

The findings in the *Book of Solidarity* have revealed that a considerable number of citizens in Europe do not take a legal approach. Thousands of citizens seem to reason differently. What is their motivation? In the following chapter we will present some reflections on the motivations we came across during our research. The first section contains various quotations from citizens who provide assistance to undocumented migrants. In the second section, the question of “why” assistance should be provided to undocumented migrants is approached from an ethical framework. The last two approaches elaborate on the theme of good citizenship, and the precarious situation of undocumented migrants.

## Motivations for Providing Assistance (5.1)

### Help Providers' Motivations (5.1.1)

“We're all here because we are interested in human beings. This is also in the interest of our organization, that human beings help human beings.”

“There will always be people who want to go and try to make a living somewhere else, legally or illegally. More or less hidden, they will continue to be part of our society in the coming years. It is important to explain to the public why this happens, and to give these migrants the opportunity to do this themselves, out of a respect for their motives. To look together with them for a perspective, is to take them seriously, regardless of whether it is possible or not to realize their ideas. But this is something they do realize very well, because often they found out already a long time ago what it means: ‘to survive’.”

“I personally agree with the basic principles of my organization, that wants to help people in need, and undocumented migrants find themselves in this situation. I see this work as a moral historical obligation and I am politically motivated, too. One has a certain responsibility towards people coming from poor countries, because this poverty is in certain way caused by industrialized countries.”

“Until every one of us is free, none of us is free.”

“Of course I am helping these people, they come from my country. In my country, you can not just turn your back to someone and walk away. I have to help, it is my obligation. And they will always help me.”

“It is not our duty to reject anyone.”

“It is not right that someone of this world has fewer rights than I have.”

“To promote basic social rights does not only concern people with a precarious residence status, but affects the general quality of our society, of living together.”

“Undocumented migrants are not without rights. Various national and international conventions affirm the equal treatment of foreigners and Belgians.”

“Starting from a Christian way of thinking, we want to choose for the most excluded people in our society. We want to be there for people that have been made vulnerable and we want to appeal to their own possibilities, giving them back their self-esteem.”

“You see that the way in which the world order is organized nowadays leads to a growing gap between poor and rich countries and between people with and people without chances, reflecting the dictatorship of the market that is reducing everything that is of value to things you can buy. And you realize that the governments and the elites of our countries are not a part of the solution, but rather a part of the problem. And, aside from these macro considerations, I am convinced that people are more important than laws and regulations.”

“It started because I found it cozy, to live together with many people with different stories. Then you get to know people, and you become aware of the troubles they are in. That really makes me angry. First it was just cozy, then I became more radical.”

“The confrontation with people that do not find this kind of assistance to undocumented migrants obvious has always been my main source of motivation.”

“My motivation is my belief in democracy. Respect of human rights for everybody should be guaranteed in every democratic society.”

“The word ‘assistance’ - it comes from a good intention but our aim isn’t that. What we’d like to develop is a counter political power of rightless people.”

“Despite the difficulties that we have, we have courage and we have professional and activist conscience.”

“It’s an international situation and it’s in this sense that we feel that we have to act because we can’t accept it.”

“We can’t stop providing this help, it’s our reason for living and if another organization is interested in it, we are happy because we would like for everything that we’re doing to turn out well someday.”

## “Who Else if Not Us?”: Ethics in Immigration and Social Work with Undocumented Migrants (5.1.2)

*Franck Düvell, University of Exeter*

Social work<sup>13</sup> with undocumented migrants is a minefield, and often a taboo. By law they are not entitled to be where they are; they are “illegal”. But when they get ill, become destitute or get into trouble, many people help

13 Social work in this context refers to assistance provided within a wide range of professions, and by many different individuals. These may be employees or volunteers who provide assistance of a social work nature to (undocumented) migrants they come into contact with via their professional tasks or by chance in other activities (e.g. campaigning, neighborhood solidarity, etc.). These individuals do social work regardless of their educational background.

them, because they are family members, friends or professionals. These individuals act according to empathy, solidarity and an inner sense of duty: ethics.

Ethics is a complex topic: it appears on diverse levels, on individual, social and political levels. There is not only one ethics, there are many. We live in a multi-ethical society as much as we live in a multi-ethnic, multi-religious, multi-cultural and multi-lifestyle society. Furthermore, ethics is inseparably linked to justice and power.

There is no eternal framework; ethics involves permanent reflections on our thinking, feeling, policies and actions. Ethics continually evolves; what was deemed adequate during the 18<sup>th</sup> century may not be suitable for the 21<sup>st</sup> century. The following chapter discusses some of the aspects in order to contribute to the theme of the *Book of Solidarity*: justice and support for undocumented migrants.

### **Globalisation, Ethics and Rights**

Before ethics, the abstract ideas of individual and social rules, there is a fact, reality, that is the form of life as such (bios). Life comes prior to any idea about life, therefore it is the starting point for thinking about ethics. This is relevant to remember. Whatever the concept may be: reference for life; respect for life; sanctity of life; dignity of life; value of life; or the right to life (Kleinig 1991, see Schweitzer 1949); all have in common that being born and being alive contains a number of unconditional rights which lead to some kind of obligation to preserve life, to contribute to its progress *and* well-being (“the conquest of happiness,” Russell 1930). Neither ethics nor human rights are prerequisites of membership of state, nation or any other system; these basic rights are settled beyond man-made structures.

Ethics is well equipped to respond to and to adapt to changing worlds through its concept of evolution. The present era is characterised by the politics of globalisation, an era of challenges and of transition to a new world order, that quite likely includes a good-bye to many familiar features and organisational structures of the world as we knew it. It is suggested that with the crumbling of nation states, the classical concept of international law (“Völkerrecht”) has to be transformed into a right of humanity (“Menschheit”) (Kimminich 1995). One pressing theme under conditions of globalisation is that when the relevance of belonging to a nation state fades away, where and how are we going to claim our rights? This process inevitably gives rise to a “globalisation of ethics” (Sandvoss 1999). Preliminary thoughts about global governance, a de-territorialisation of rights and a common responsibility for humanity as such indicate a possible move towards concepts of universal suitability of individual rights.

Another consequence of globalisation is increasing mobility and migration, documented and undocumented alike. One ethical obligation is to look at and to acknowledge what is real (Müller 1997). In social work with migrants and refugees one needs to face the fact of the presence of an undocumented population. Immigrants without legal status are joining societies all over the world. Their numbers are considerable: 20 - 30 million worldwide (IOM 2002). Research shows that external controls do not halt “illegal” migration. Indeed, most undocumented migrants represent a fraction of the large stream of global travel and tourism; they enter legally and overstay (Jordan/Düvell 2002). Other research indicates that intensified controls drive undocumented migrants into more invisible working and living conditions rather than preventing irregular stay (Cyrus/Vogel 2002). It is likely that illegal stay persists, which points to some failure of the immigration control system. As a matter of fact, there are individuals in our society who are excluded from legally participating in our functional systems and their provisions.

One also needs to acknowledge that despite the fact that these people are undocumented, hence denied legal immigration status for a number of reasons, they may be well wanted by some parts and members of society. Most industrialised and indeed many developing countries show some demand for additional work force. The growth of global cities, their service sectors, the supply of affordable food and housing all depend to some extent on globally mobile workers (Sassen 1994). This points to some inadequacy of the legal framework of citizenship (Hammar 1990) as

well as to some inconsistencies within our societies. The requirements of one functional system (Luhmann 1997) collide with another, for example the labour market with the statutory sphere. The concept of nation states seems to lag behind world integration and globalization and features of the past come into conflict with new developments. But recent thinking about transnational organizations and global governance seeks to offer alternatives to the traditional concepts of nation states and thereby a future solution to the problem. However, in the meantime, the result is a society that causes discrepancies of all kinds; there are individuals who get caught up in these and who suffer from the imperfections of our societies.

Undocumented migrants are by definition neither members of the nation state, nor citizens, nor are they usually members of our welfare systems. However, they are still members of our society and of humankind. It is the latter which makes us equal with an equal set of rights and obligations (Singer 1984). The dilemma is that we live in a world which provides us with two reference systems: state and humanity, which lead to two sets of rules: the law, and moral and human rights. Kant rightly analysed it as the contrast between “legality” and “morality.” Sometimes they conflict with one another and that is when we ask “What comes first”: the state and its rule aiming to organise peaceful and orderly cohabitation or the individual human being with his/her inherent rights.

Before thinking about ethics it is helpful to reflect on the state of human rights. Applying the right to human dignity (Article 1) for example to a refugee placed in a transit camp in Sangatte (France) or an internment camp in Woomera (Australia) does show that the first paragraph is at stake. And how can “all be equal before the law” (Article 7) if there are separate laws for citizens and foreigners. Travel restrictions for asylum seekers, as in Germany, undermine freedom of movement (Article 13); and a decent standard of living (Article 25) is denied to millions worldwide. But the killing in Rwanda in 1991 went much further and reflected the complete absence of human rights, sympathy or ethics altogether. These examples are given to illustrate what has been analysed elsewhere: human rights are in trouble (Annan 1998), often do not work and are frequently in conflict with national legislation or practices. As early as 1951, Arendt raised attention to this failure, and only recently Agamben (1995) analysed the state of human rights as in permanent crisis. There is no agency to enforce human rights (the recent moves to argue that wars are necessary to reinstall human rights such as in Yugoslavia, Kosovo or Afghanistan raise more doubts than answers).

If this is taken seriously, it emphasises the need for a revival of ethical approaches, codes and enforcement. Maybe it is left to ethics to formulate an adequate response to those who fall in between in such gaps. And maybe it is left to smaller agencies such as professional associations, civil society agencies and their members to take responsibility for enforcement.

### **The (Un-) Ethics of Immigration (Control)**

It is usually accepted that states control access to their territories and functional systems. But meanwhile, globalisation has linked the fates of the world’s population without providing political institutions for just distributions between them. Instead, it has increased the disparity between rich and poor; subsequently, any migration restriction immediately raises questions of distributive justice on a global level. Liberating trade and flow of finances whilst containing the movement of people leads to a “moral deficit” of those promoting migration restriction; you cannot have one and reject the other (see Myrdal 1944). In political philosophy some authors question the justification of migration restrictions. In his theory of justice, Rawls named “freedom of movement and free choice of occupation against a background of diverse opportunities” as the second of “primary social goods,” after “basic rights and liberties” (Rawls 1996: 181). Carens (1981) argues that the “original position” is a world without borders suggesting “open borders” as the most just state. Others made clear that “it is inconsistent with the equal liberty of individuals to block their exit from communities of fate, or to erect discriminatory barriers to their entry to a community of choice. Hence border controls are not appropriate instruments (Jordan/Düvell 2002, Chapter 10).” As one can see, even in taken-for-granted policies like immigration control there are some strong arguments that challenge the justification of such measures, in that they also provide for some good reasons to accept and to assist migrants whatever their status may be.

### **Ethics, Which Ethics?**

If one thinks about ethics one may immediately think of Kant, Spinoza, Voltaire, Hobbes and others, who provide us with a heritage of modern western thinking. That is not to say that the philosophies of Lao Tse or Tagore are less relevant only because they are less known in western societies. Ideas of “live and let live” or “don’t do to others what you don’t want them to do to you” are deeply rooted in our ethical thinking. Meanwhile ethics have been specialised and diversified; there is not one but many ethics. Individual ethics covers individual obligations; social ethics outlines norms and principles of collective human life; diverse professional ethics provides principles for particular professions; and political ethics asks for the legitimacy of politics. Beyond these levels there are particular ethics such as the Christian ethic, deriving from concepts of charity and sympathy (see for example Schneider 1999; Martin 2001). We need to acknowledge that we live in pluralist societies with diverse moral concepts and ethics. These can differ between social classes or groups and between faiths such as Christianity, Islam or Hinduism (Sandvoss 1999). Another feature is the parallelism of nationally and professionally diverse cultures and ethics. Each country has its own distinct culture, each organisation has its specific culture and each national profession has its own code of practice. But despite all these ethics, Alt (2000) points to the fact that there is no social ethic that explicitly includes “illegal immigrants.”

In discussing the ethics of immigration policy, Gibney (1996) gives preference to individual ethics (“moral duties to others”). He demands to “truly compare the possible negative consequences to the host country that might be brought about migration versus the negative consequences brought about failure to act” (: 199). Consequently, the damage done to the host society (with its enormous resources) by the claims of immigrants of any status to be safe and to have a “good life” are subordinated to the damage done to the individual (with very limited resources) in case of failure.

Regarding social work, a variety of codes, policies and encyclopedias should be taken into account: International Federation of Social Workers (IFWS); National Association of Social Workers, UK, Ethics Code; A code of ethics for radical social service workers; or Berufsethische Prinzipien des Deutschen Berufsverbandes der Sozialarbeiter und Sozialpädagogen. These different codes show some relevant contrasts. The German ethical code for social workers, for example, explicitly goes beyond the IFWS policy statement by adding “nationality” to the catalogue of criteria of which services should be independent from, and also bans discrimination on the basis of any “state or status.” Thereby, it implicitly calls for the inclusion of clients without immigration status into the delivery of services. Explicit is the call not to collaborate, accept or contribute to any such discrimination. Christian concepts are even clearer. The Protestant Church of Westphalia (2000) argues: “the living situation of people without immigration status demands from us the opening of our church-deacon services” listing hospitals, accommodation, crèches, schools and women’s shelters (p. 59). And the World Medical Association (1998) similarly emphasises that “doctors are obliged to provide treatment regardless of a patient’s status.” To summarise it all, an encyclopaedia and textbook explains, “on principle, help will be provided to any individual run into misery, regardless of the degree to which someone caused the misery him or herself. This principle distinguishes social work from judiciary”, as the latter is based on liability (Rumpf 1978: 66).

In any case, one should beware of a one-perspective approach when discussing ethical implications. For example, what appears to be a criminal offence from the point of view of legality is help, assistance or a service from an individual ethics perspective. What may be justified from a social ethics point of view may be completely unfair from an individual ethics perspective. Seeking the equilibrium is the tricky bit; the concept of reflexive discourse ethics suggests that any decision shall be made in communication with the client (Oelkers 1992). However, all ethical codes listed above finally prioritise individual ethics and the obligation one has for another individual. Social work in general “must be provided in the interest of people in need. ... Decisive is the degree of neediness” (Pietsch 1994). Individual ethics is taken as the first and foremost reference for professional ethics and makes clear statements for an obligation to help the patient or client regardless of their status.

### **The Need for Professional Ethics for Social Work with Undocumented Migrants**

A social worker or any other member of public services or society as such has enormous power over the well being of undocumented migrants. They can report them to the authorities or they can renounce to do so; they can include or refuse them in their services. Whatever the decision, it has a deep impact on prospects, freedom, health, happiness or quality of life for the individual client. Reflecting on this reveals a huge responsibility and burden on social workers or any other member of society who provides assistance to undocumented migrants. Because the undocumented client has no institution to which s/he can appeal to or make a complaint, s/he is without any rights or power and exposed to the staff, whilst the social worker or assistant has absolute power. But in social work, such a relationship is not foreseen in law. The social worker's power, regardless of his or her decision, is basically outside the legal framework and therefore arbitrary. A social worker should not have such power, which is usually associated with policing or enforcement agencies. The latter have their own ethics and training for that. To cover a social worker's decision by some kind of framework and to justify action within any framework, one may need to turn to professional ethics. And that is why these are so important: they come in where other frameworks are left behind or fail.

Another starting point is Arendt's and Agamben's discussion of the failure of human rights, to which one solution would be to offer alternatives by way of less universal but small-scale frameworks such as professional ethics. A close look for example at the failure to implement and enforce human rights for asylum seekers reveals that there are only some parts of society that fail to implement these for everyone, such as statutory agencies or welfare agencies. Other institutions, particularly civil society agencies, may instead do their best to implement human or other rights and even to bridge the gap.

An ethical code is a guideline, not a law. Whatever board drafts such a code, it will not have the power to enforce the code or to sanction actions that are in breach of the code. However, such a code provides a standard, and to dodge it requires some good justification. There are certain measures such as publicity or warning letters, or reports to professional associations that could put some pressure on those neglecting ethical standards.

### **Conclusion: Why it is Ethically Advised to Provide Services to Undocumented Migrants**

There is and there is not a straightforward concept of ethics in social work with undocumented migrants. Any act must be morally justifiable, must carefully judge between the well being of society and an individual, and give some priority to the negative consequences for the individual.

- I Ethics represent an evolutionary concept. There was a time when slavery was deemed justified (Aristotle for e.g., see Rist 1982); it is presently perceived with outrage. With the concept of nation states adapting to globalisation, it is not unlikely that the idea of human beings being "illegal" will be condemned sometime in the future. There are good reasons (for social work) to be ahead of the time.
- II First, undocumented migrants contribute in many ways to our society and to family life by working or culturally. Therefore they deserve to be served; it is unfair and unjust to exclude them from reciprocal contribution by our society. Second, if they are in need, the ethical requirement, as corresponding with basically all professional or Christian ethics is pretty clear: there is an obligation to serve them regardless of their immigration status. Failing to act is failing morally. Third, as formulated by Hannah Arendt, the most basic imperative is "the right to have rights." But if there is no one else to implement such rights, then it is left to the individual who an undocumented migrant comes to for help to provide this and thus implement "the right to have rights."

It has always been social work and policy that is responsible for responding to the victims of social exclusion, to those without homes, without work, or without support. It is thus only a consequence that it is now responding to those "without papers."



In the era of globalization, social workers, medical staff and other aid workers are in the first profession that is in the position of a universally responsible and acting profession. Instead of resisting the historical move towards globalisation by, for example, insisting on membership to nation states as a precondition for service provisions, social work could take a lead in promoting and practising universal access to welfare and happiness.

- III From an ethical standpoint, there are no grounds for excluding non-members (who are morally equal with and identical to members) from the goods of membership of a political community that are consistent with the principles of equality and liberal democracy that we apply within such communities, including freedom of movement. This means that all exclusionary practices within a state, directed against irregular migrants, have no coherent ethical basis, because the rules of exclusion themselves have no such basis. Both immigration rules and rules that forbid irregular migrants to have access to collective benefits and services are unethically discriminatory (Cole 2000).
- IV In frontline work we need to ask ourselves: “Do we have to establish a client’s status?”; “Do we need to know their status?”; “Is this relevant to the primary aim of our jobs?” Social workers become active because of the needs of an individual; they first are seen as clients. In some countries, like the UK, social workers, teachers and others are backed by trade unions that reject their members from becoming immigration officers by asking for immigration status. That may serve as a good example for what can be done.
- V In an era in which “mental heritage [of the 20th century] makes history because of its unimaginable loss of ethics” (Smith 2002) it is more than justified to revive ethics and contribute to professional and indeed public debates about the relevance of ethics to the present. Without ethics we are reduced to the crude concepts of economics and power.

Drafting an ethical code for social work with undocumented migrants (as is done by PICUM) aims at filling the missing link in ethics; secondly it aims at articulating what is already reality for many social workers and others. However, in so doing it is not advisable to adapt the usual EU policy of an agreement on the basis of minimum standards, which has frequently been criticised as downgrading otherwise good practices. Instead, one should aim to adapt to the highest standards possible.

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## Good Citizenship (5.1.3)

*Didier Vanderslycke, Steunpunt Mensen Zonder Papieren*

### Concept of Solidarity

Concerning the position of the citizens or organizations, it can be argued that in providing help or engaging in actions of solidarity, they are doing what is expected of them as "good citizens." Through different channels, children, youth and adults come in contact with various educational programs that are inspired by ideas of solidarity. This is most explicit in primary and secondary schools where, in the framework of societal education, children and teenagers are sensitized to the model of a democratic society. Voluntary commitment to people who are victims of social exclusion is an important part of citizenship education. This idea is also present in adult and continuous education. In countries and regions where extreme right parties and movements try to influence public and political opinion, programs for active and democratic citizenship are developed as an answer to this phenomenon.

This concept is also integrated into various legal provisions concerning social support to individuals, and in national and international regulations, conventions and resolutions. In the Charter of Fundamental Rights of the European Union, Chapter IV on "Solidarity" outlines social rights. In the Preamble, the concept of solidarity also appears. "Solidarity" is placed here on an equal footing with human dignity, freedom and equality:

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

(Charter of Fundamental Rights of the European Union 2000/C 364/01)

Thus it can be stated that the global concept of solidarity is an inherent part of the “soul” of Europe that will be passed on to future generations. The concept is “global” in that the target group is not limited to residents of the European Community member states, and solidarity has various forms (gifts, moral support, humanitarian aid, policy development, organizational development, structural assistance, etc.).

### **Making Solidarity Work**

In many areas where citizens have actively and collectively demonstrated their support of a certain need or a certain target group, governments have consequently made the choice to develop minimal regulations, to adapt existing legislation, to financially support citizens’ activities, or even to consider assistance as a task of the government. This is especially the case when the citizen’s initiative refers to an action that is not only aimed at one single aspect of society, or when the initiative succeeds in revealing that the undertaken action also affects the general public, and when the action of solidarity is developed in public and in cooperation with a local or higher authority. Whenever this is not the case, if the action remains hidden and if the aims and objectives remain vague, there is little chance that this initiative will have long-term effects for a bigger group of people.

It is not the aim of this text to elaborate on examples from European social history. However, many governmental initiatives concerning the reception of homeless people and needy people are based on a voluntary citizens’ initiative, often lacking any societal appreciation at first. Dialogue with the government and the public has raised awareness for the desirability of such initiatives for the people concerned and for their environment.

Concerning the theme of this book, we could conclude that an appeal for commitment on different levels is launched to citizens to take a humanitarian approach when confronted with the presence of undocumented migrants. It is necessary for the sustainability of actions of solidarity to actively contribute to the development of a social policy concerning this target group, with a view to improving the quality of life for both the people concerned and society at large. It is desirable to do this, where possible, in cooperation with governments.

We can thus refer to an action in the framework of “good citizenship.” The interests of those in need, the common interest and the public and dialectical/cooperative character are four characteristics of a democratic and humanitarian commitment by civil society to undocumented migrants.

It is crucial to stress that this commitment is the logical consequence of a human rights tradition and education that characterizes post World War II Europe, and that is communicated to the population by governments and policy makers.

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## “Internationalising” the Social Security System (5.1.4)

*Didier Vanderslycke, Steunpunt Mensen Zonder Papieren*

It may appear strange to elaborate on the theme of social security in the *Book of Solidarity*. Yet there are some reasons for this, especially if we want to take our solidarity towards undocumented migrants further than a mere fighting of symptoms. The reason for incorporating the concept of social security in the argumentation for constructively working with undocumented migrants in Europe, relates to the reasons why migrants leave their countries of origin.

In Chapter 1, we have referred to the various reasons that cause people to flee or to migrate. It could be argued that the quest for “social security” is the common denominator of the causes described. The concept of “social security” as it is used here refers to a set of provisions and/or regulations aiming at satisfying social needs (such as health care, food, shelter, etc.). Translated into the motives to leave the country of origin, this means that many undocumented migrants reside in our cities and communes nowadays due to the serious lack of social security in their countries of origin. It also means that these migrants have an idea or even a dream that social security would be guaranteed and accessible in Europe.

Many Europeans consider migrants’ initial desire to obtain social security as “taking advantage of the system.” Yet for most migrants who come to Europe, even if they come without a fear of prosecution as is outlined in the Geneva Convention, the desire for social security is based on a real difficulty to earn a living. This desire is often translated into the question to be allowed to work. But on a more fundamental level, it should be perceived as a charge against the social insecurity in their country, region, city or village.

Social insecurity in the country of origin is a consequence of the impossibility or unwillingness to develop and establish a social system. The relation between the North and the South is unequal and the gap between rich and poor countries is deep. These realities have been admitted by the richest countries, and have been recognized by the World Bank and the IMF. However, when people from the South come to Europe and directly confront us with these existing inequalities, the consequences seem to become too concrete for many people. To justify the restriction of this immigration and the installment of an expulsion policy, people start to appeal to the protection of “our” social security. At first glance this argumentation seems socially acceptable. It is indeed hard to object to the fact that European citizens have to protect the national social security systems, since they have contributed to them, and these systems rightly form their claim to solidarity. Yet this is only one part of the picture regarding national social security. It is known that not only people who actually contributed can claim for this social security; the solidarity on which the social security system is based also counts for people who are needy, ill or disabled, children and for those who never had the possibility to contribute. Even in the most rigid system of social security in the EU, non-contributors are taken into account.

The solidarity concept that forms the basis of the social security system in Europe is not connected to any paid membership. It is not insurance, nor is it linked to nationality, gender, or religion. In other words, the concept has to be interpreted broadly; there is nothing such as “our” social security system. This is exactly what makes this solidarity concept as humane as it is. Based on this concept the social security system as we know it is very valuable, and should be prevented from disappearing. We should export it rather than keep it for ourselves. By internationalizing this system, by applying it without taking into account national borders, it can be a very efficient and adequate way to achieve protection of human rights.

This is also the basic premise of the International Convention on the Rights of all Migrant Workers and the Members of their Family, which was drawn up by the United Nations in 1990. Even though this Convention deals

with more than only social and economical rights, it reflects the respect of its founders for the system of social security as it is conceptualized and realized in many European countries. If volunteers and professionals who are working with undocumented migrants plea for more “social security” for their clients, this appeal needs to be understood in the spirit of the Convention. They ask that the EU-countries would apply as broad an interpretation as possible of the social protection of needy people, also if they are undocumented.

In the same way that a certain amount of the governmental budget is dedicated to international development cooperation, the part that is dedicated to social affairs can be orientated in a way that it responds to more problems than it does today. The precise way in which this should happen largely depends on the different member states. Also for financing, it is not (yet) possible to point in one direction. However we think that it would not be wise to establish a parallel circuit of separate ‘social funds’ for undocumented migrants. Just the same as it should be prevented that any development budget is spent on it. It should rather be considered to invest the fines of human trafficking, undeclared employment, etc to foresee the need for social security of undocumented migrants. This would mean a fair restitution for all the victims of these criminal activities.

We would also like to insist on a real exchange between non-governmental organizations, political groups and governments in the countries of origin to make the models of social security applicable in these countries (taking into account the cultural and social characteristics). Such a creative solution will most probably be more rewarding than the mere repetition of so many forms of repression that often proved their disgracefulness and even more often their inefficiency.

## Conclusion <sup>(5.2)</sup>

Motivations that drive people to provide assistance to undocumented migrants are as varied as the help providers themselves and the organizations they represent. Motivations may be based on political views, on moral and historical considerations, on a common fate or a common country of origin, on religious convictions, etc. It is difficult and unnecessary to comprise the motivations of all the organizations presented in the *Book of Solidarity* in a few pages. Yet this chapter aims at elaborating on some motivations for providing help to stimulate reflection.

Social workers are urged to take an active role in providing assistance to undocumented migrants based on the ethics inherent to their profession and based on their role of responding to the victims of social exclusion. In the era of globalization, social workers, medical staff and other aid workers are in the first profession that is in the position of a universally responsible and acting profession.

An appeal for commitment is also launched to citizens to take a humanitarian approach when confronted with the presence of undocumented migrants. It has been stressed that this commitment is only the logical consequence of a human rights tradition and education that characterizes post World War II Europe, and that is communicated to the population by governments and policy makers.

Finally, if most migrants leave their home countries in search of social security, the most appropriate answer to their problems would be to open up our social security system. This would be a step in the direction of bridging the gap between North and South, by tackling the root causes of migration. It is possible to elaborate on this idea since the solidarity concept that forms the basis of the social security system is a global concept; it is not linked to nationality, gender, religion, or status. If volunteers and professionals who are working with undocumented migrants plea for more “social security” for their clients, they ask that the European Union countries would apply as broad an interpretation as possible of the social protection of those in need, also if they are undocumented.

# Conclusions<sup>14</sup>

“Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it’s the only thing that ever has.”  
Margaret Mead

Various socio-economic factors must be taken into consideration when analyzing the environment in which organizations in France, Spain and Italy provide assistance to undocumented migrants. It is clear that there is a wide gap not only between international standards and national policies in these countries concerning the basic social rights of undocumented migrants, but also between theory and practice of the national policies themselves. Although legislation in France, Spain and Italy states that undocumented migrants can obtain certain forms of health care and that minors under the age of 18 can enroll in the educational system, the situation in practice is often quite different, where various factors prevent undocumented migrants from effectively accessing these services. The various regularization campaigns that have been carried out in these countries in recent years are another example of such discrepancies. Notwithstanding the positive effect of legalizing the situation of thousands of people in an irregular situation, these regularization campaigns are often very arbitrary and are not necessarily a guarantee of full and long-term security for undocumented migrants.

Recognizing the need to intervene where public services for undocumented migrants are non-existent or ineffective, citizens and civil organizations in France, Spain and Italy extend support and solidarity towards undocumented migrants in a variety of different and innovative ways. Whether the focus is on helping undocumented migrants in basic social rights, or advocating on their behalf towards the general public or policymakers, organizations consistently demonstrate their determination to improve the living conditions of people who are often exploited and marginalized. The multiple forms of direct and structural assistance given by organizations are testimony to their desire to work on many different levels to support undocumented migrants. The solidarity they extend to undocumented migrants is legitimate, and is not stopped by laws that do not uphold basic principles of democracy and human rights.

Undocumented migration is fought in many ways. It is alarming that blocking access to social rights is one such means, as well as criminalizing and penalizing undocumented migrants themselves and the social help that is provided to them by citizens and civil organizations. Nonetheless, it appears that for many citizens, moral concerns prevail over legislation. They follow their own moral principles and disobey laws that they feel are unethical and unjust. As a result, (restrictive) social policy in the field of undocumented migration remains ineffective in many areas. It is created at a central level as a strategy to “enhance security” and to strengthen deportation policies. Yet in its denial of humane and moral considerations it is not effective at a decentralized level, where it should be implemented.

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<sup>14</sup> This chapter is a preliminary and rather general conclusion of this volume. More elaborate conclusions and policy recommendations will follow the three-volume series.

As long as root causes are not dealt with and legal channels for migration are not established, undocumented migration is a phenomenon that is unlikely to vanish or even to diminish in the coming years. In this light, it is advisable for policy makers to recognize the presence of undocumented migrants in France, Spain and Italy and to respect their human rights. Although the European Charter of Fundamental Rights of the European Union states that solidarity is one of the indivisible, universal values on which the European Union is based, solidarity towards undocumented migrants is discouraged and even penalized.

Even so, thousands of citizens in France, Spain and Italy work daily to help those who are exploited and socially excluded. It is very hopeful and encouraging to realize the extent to which they extend solidarity to undocumented migrants. These citizens do not only work in the interest of undocumented migrants, but also in the public interest. They value a society of inclusion, rather than exclusion, and their acts of solidarity are active expressions of how they wish to achieve this. Thoughtful and committed, they contribute to changing the world, every day.

# Ethical Guidelines

## Some Guidelines for Assisting Undocumented Migrants

These guidelines are meant to be instrumental for a discussion within PICUM. This discussion could lead to a degree of consensus between the different organizations within PICUM, and give clarity about the position of the various organizations. As PICUM is a platform, it is not the forum to establish any enforceable ethical code for its participants. However, organizations could use these guidelines as a basis for eventually developing their own ethical code.

These guidelines aim to address social workers, aid workers, advisors, advocates and supporters. In the following we will use the term “social worker”, referring to all these roles and professions.

### General Principles

- Social workers are committed to principles of social justice and inclusion, and recognize, promote and protect the human dignity of all individuals.
- Social workers do not discriminate, disadvantage or prejudice clients.
- Social workers and others come into contact with undocumented migrants either via their organization or by chance. However, their main task is first to provide social work, advice or support to their clients, in conjunction with their professional ethics.
- Social workers therefore include undocumented migrants in their work.
- Forced migration is a problem derived from the lack of political and economical balance in the world. Therefore, individual or group solutions will always have a pragmatic character.
- Passing the buck by the authorities and their increasing use of tactics of depriving individual undocumented migrants put these and voluntary agencies trying to assist them in an extremely difficult position: in many situations there is no long-term solution and the choice is usually between bad and worse.
- Undocumented migrants are usually extremely dependent on their surroundings. They are therefore vulnerable to exploitation, maltreatment and misuse: forced prostitution, forced criminality, work without any protection of their rights, exploitation in the housing sector, blackmail, exploitation by traffickers, etc.

### The Relation Between the Client and the Help Provider

1. It should be made clear at any time what assistance can be provided, what are the limits, and why. The obligations of both the provider of assistance and of the client should constantly be clarified as a part of the process of reaching or upholding consensus regarding the assistance. In this sense the relation should be based on mutual understanding and should have the character of an unwritten contract, so that the client knows what he/she can expect and what is expected from him/her.

Amongst many other things, the process of providing assistance is also negotiating. That is why a careful and thorough intake is of utmost importance, as it is at this time and place that the tone and the main aims and limits of the contract will be put on the agenda.

During this stage of the process and throughout the whole process, the worker should be aware that s/he is the stronger, even dominating partner in the relation. This requires respect and a reserved, self-critical attitude from the worker.



Organizations offering assistance to undocumented migrants have to define clear instructions for their workers regarding the acceptance and refusal of help, working methods, peer control, pointing out structural problems both within the organization and in a broader context, the (legal) position of workers (insurance, accounting for their work). This to protect both the workers and the clients. Both workers and clients should have the opportunity to appeal to someone else within the organization.

2. The relation of the help provider should not be different if a worker is paid or works on a voluntary basis. This should be guaranteed by a written agreement between the organization and its volunteers.
3. The circumstances under which the worker can temporarily or completely discontinue the relationship should be clarified, for example:
  - If the client remains passive to whatever the social worker tries to do, if s/he is not willing to seek and create a situation in which s/he can (temporarily) survive in an ethically acceptable way;
  - If it appears that the client is intentionally providing false information, seriously frustrating the trust put in him/her and thus harming the organization or rendering the assistance impossible;
  - If a client abuses or attacks staff, volunteers or other clients;
  - If it appears that the client committed serious crimes (e.g. crimes against humanity, human rights abuses, serious common crimes), either in the country of origin or in the country of current residence without having had a fair trial.
4. All workers should see that they keep their professional distance from clients for their own and the client's protection. As soon as the character of the relationship becomes personal, the worker should stop providing formal assistance. Peer control should play a decisive role in this kind of situation.

## Aims of Providing Assistance

5. The aim of providing assistance is to efficiently deliver a particular service or to find a solution in which the client can survive in an ethically acceptable way. This situation can be temporary or durable. It is essential that the client is able to support him/herself in one way or another.
6. The seeking of this "acceptable situation of survival" constitutes the core of the "unwritten contract" between the provider of assistance and his/her client.
7. Possible solutions include:
  - a. Legalization of the residence status. The following should be noted concerning unfounded requests for residence procedures: it is not advisable to sustain a totally unfounded request for a residence procedure if it could cause a stricter procedure on the short or long term, and could harm the credibility of the organization, which in the end could render it impossible to provide assistance.
  - b. Voluntary return. Organizations and workers should adhere to the "Guidelines for NGOs in Relation to Government Repatriation Projects" (See annex. Note: only English version is available).
  - c. Continued illegal residence and work. In this case the main task of the provider of assistance is to minimize as much as possible the chance of marginalization, exploitation, discrimination and misuse.
8. Any essential step in the process will be discussed with the client and will not be taken without his/her consent. If the worker (preferably after consulting colleagues or a supervisor) has no alternatives to offer that are acceptable to the client and cannot meet the options or wishes of the client, he/she can end the relation, because there is no definable aim to the process.

9. The aim can change in the course of the process: the workers should be flexible and creative in adjusting their methods and aims: they should be able “to make the impossible possible”. For example, the organization can offer a limited time period for the undocumented migrant to make up his/her mind. After the pre-established time limit has passed, it has to be considered if a new “contract” can be negotiated.

## Standard of Services

10. An undocumented immigrant is morally equal to any other individual. It should therefore be ensured that the client obtains access to the usual services available and that the service given is as close to the standard as possible.

## Prioritizing

11. The overall aspiration should be to serve all those in need. If this is impossible, for example, due to lack of resources, then clear criteria and prioritizing mechanisms should be applied. From the beginning, the provider of assistance and his/her organization should be clear about what criteria they apply in providing or denying assistance, and if the reasons for denial are based on shortage of means, limited working methods and/or principle.
12. Clients should preferably not be accepted without any form of selection if the limited means of the organization will at some moment force it to close its doors.
13. The urgency of the need for assistance is defined in different ways by different organizations:
- Urgent humanitarian need, great vulnerability: e.g. families with (small) children, medical or psychiatric needs, other severe situations, etc.
  - Perspective of a (durable/temporary) solution (asylum, residence permit based on humanitarian grounds, further migration, repatriation, “black work” (undeclared work) without too much exploitation).
14. If the organization is unable to provide the assistance required, the social workers should try to suggest alternatives or refer to other agencies that could help. No client should be sent away without first trying all channels.

## Secrecy

15. It should be identified in the beginning what kind and how much information is required to solve the problem brought forth by the client. It should also be considered within the perspective of the purpose of the service offered by the organization. Data that is not relevant for the case should not be collected.
16. All information given by a client in the context of providing assistance is guaranteed to remain secret. Other workers under the code of the organization, however, have access to the information as long as this has a clear function (e.g. continuity of the process of assistance, control by authorized people within the organization). In this sense and within these limits, information is not given to this individual worker, but to the organization. However, there is one exception: if the social worker happens to obtain information on real, ongoing or planned serious criminal acts, the civic responsibility overrules the professional duty of confidentiality. This should be made clear to all clients during the intake.
17. If and when the provider obtains information on crimes by third parties during the course of his/her duties (e.g. trafficking of women and children, exploitation, misuse, forced prostitution, domestic violence, black-

mailing of undocumented migrants), s/he should try to find ways and means to put an end to these practices. Problem solving strategies could include informing the public and authorities, without doing any harm to the client(s) who provided the information.

18. No information should be provided to third parties without the clear consent of the client, except for the one case mentioned in Article 16.
19. The client has the right to see his/her complete file at any moment. When the relationship comes to an end, the client has the right to take his/her file. Nonetheless, the organization is entitled to keep the client's essential personal data. If the client requests assistance again, s/he has to once again make the whole file available to the organization.

## Political and Social Action. Transparency

20. Providing individual assistance without active openness towards the surrounding society is like swimming against the tide.
21. Organizations assisting undocumented migrants should be open and transparent regarding their finances, their working methods, the number of clients they are able to help, their contacts with authorities and with other organizations.
22. It is an essential task of organizations assisting undocumented migrants to inform society of the problems faced by their clients. The organizations and/or their networks or umbrella-organizations (regional, national, European) should invest in informing media and in lobbying politicians on the issue. This presupposes a focus on signals from the field and instruments (time, well-equipped people) to incorporate and handle these data and to develop a common strategy.
23. Possible involvement of clients in public actions should be considered with great caution (e.g. demonstrations, church-asylum). Clients should be fully informed of the possible scenarios and their consequences. It should be clear what to do if the action fails in one way or the other. The publication of photographs and of personal testimonies of clients should be avoided without their explicit consent.

## Legitimacy and Its Limits

24. In the EU member states, there is a relatively high degree of democracy. Under these circumstances, the legitimacy of disobeying laws is far more remote than under a clearly undemocratic regime. However, if a state excludes its inhabitants from essential means of survival, these residents have the right to disobey laws in order to survive. Their actions should be in proportion to this aim and should do as little harm to others as possible.
25. This does not legitimize the breaking of the law by those who assist undocumented migrants. However, they have to defend, situate and explain the behavior of their clients in this respect. If they are involved in a situation that is not strictly legal, it should be agreed upon with the client that his/her illegal action in which s/he is assisted is completely the client's responsibility. If a worker is in the situation that only a breach of the law could lead to the most efficient assistance for the client, this should always be discussed and agreed upon with a team. The consequences of this illegal action for other undocumented migrants, society at large, public perception, etc., should be taken in consideration. In no case shall a worker in an organization individually decide on such a case.

26. In some countries it is forbidden by law to assist undocumented migrants. These types of laws are subordinate to fundamental ethics that therefore have priority.

27. Actions undertaken, working methods and rules such as these guidelines that are used by organizations assisting undocumented migrants should be open and transparent. This appears to be a condition to earn the cooperation and support of other organizations, of the public and sometimes of (local) authorities.

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