Beyond Irregularity

A resource guide for civil society organizations in Nigeria advocating for undocumented migrants’ rights throughout the migration process
The authors would like to thank Jenny Pennington at IPPR for her inputs and invaluable comments and analysis. Thanks to the PICUM team for their assistance with the finalization of this guide, including Sara Aguirre Sánchez-Beato, Sidonie Pauchet, Alexandrine Pirlot de Corbion and Elisabeth Schmidt-Hieber, and thanks to dRPC for co-organizing the workshop in Abuja. Finally, we would like to thank all those organizations mentioned in this guide that with their work inspire us and support migrants upholding their rights.

By Marta Grosso, Project Officer and Michele LeVoy, Director

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The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded as an initiative of grassroots organisations. Now representing a network of more than 140 organisations and 160 individual advocates working with undocumented migrants in more than 38 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

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Useful resource

Criminalization of irregular migration

Measuring, monitoring and combating hate crimes in Greece

Engaging with the media: “Drop the I-Word Campaign”

Mainstreaming access to health care for undocumented migrants into the public health system in Morocco

Building a health care policy network to ensure adequate service provision for undocumented migrants in Italy

The right to fair working conditions in international human rights and labor law

Building a case: labour exploitation of undocumented workers

Compensation for trafficked persons as a tool to combat human trafficking and labour exploitation

Community work as tool for change

Building solidarity among workers in Morocco

Tools & Tips

European NGOs’ common statement on key principles to respect the safety and dignity of returnees

Mapping the use of detention in irregular migration management

Offering counselling and assistance to migrants detained in prisons in France

Assistance and orientation provided upon arrival

Combating stereotypes about returnee migrant women

Linking pre-departure with reintegration

Tools & Tips
Introduction

International migration has emerged over the years as one of the key issues of global policy. The total number of international migrants has increased over the past ten years from an estimated 150 million migrants in 2000 to 214 million persons today. 3.1% of the world’s population is composed of migrants, of which 49% are women and 16% are under 20 years of age. Migrants leave their countries of origin for numerous reasons, including for survival and security, for improved standards of living, access to education, and protection from violence and abuse. Yet a lack of protection and promotion of human rights within migration policies increases the vulnerabilities of individuals who likely already faced numerous human rights violations before leaving their countries of origin. Limited regular migration channels, increased border controls, policies to reduce irregular migration, including punitive measures for irregular entry and stay and restricted access to rights and services in destination countries, make migrants vulnerable to human rights abuses and limit the opportunities and benefits of migration.

Despite an international framework designed to protect and promote the human rights of all individuals, migrants, particularly those with irregular status, experience numerous human rights violations throughout the migration process. Rights based policy making should look at the causes of migration and the need to ensure respect for human rights in the countries from which most migrants originate. It must further reflect on the vulnerability of all migrants - irregular as well as regular – and recognize both the link between residence status and human rights, and the negative correlation between irregularity of status and exploitation.

The migratory process presents many obstacles for those that leave their countries of origin. Such obstacles include arduous passages – by foot or by unsafe modes of transportation – lack of access to water, food and other basic necessities, as well as violence and psychological trauma. These circumstances are present in the countries of origin – where many people’s rights are systematically violated – as well as during the migratory journey, during repatriation and upon arrival in the country of destination, where entering and integrating into society can be very complex.

The “Beyond Irregularity” Project

This guide is one of the outputs of the “Beyond Irregularity. Towards a sustainable approach to dealing with irregular migration from sub-Saharan Africa to Europe” project, which has sought innovative responses to international migration, focusing on the transnational dimensions of irregularity. This project is led by the Institute for Public Policy Research (IPPR), in the UK and has five partners: Sussex Centre for Migration Research at Sussex University, UK; Eaves housing for Women Ltd, UK; the Council of the Moroccan Community Abroad (CCME), Morocco; the Development Research and Project Centre (DRPC), Nigeria; and the Platform for International Cooperation on Undocumented Migrants (PICUM), Belgium.

The project involved field research in Europe, North Africa, and Nigeria, and developed case studies focusing on the following situations of migration:

1. Nigerian victims of trafficking in the UK;
2. Irregular migrants from sub-Saharan Africa in “transit” in Morocco while heading to Europe;

The three case studies are of particular relevance for this guide, as they investigated migrants’ experience at each stage of irregularity, through interviews with irregular migrants and stakeholders working in Nigeria and Morocco. Findings highlighted the vulnerability factors in the pre-departure phase, difficulties encountered during the journey, all obstacles preventing migrants from accessing their

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rights in the country of destination, reasons for remaining in the destination country and barriers to return.

The project engaged with a wide range of civil society and State actors and developed activities aiming at highlighting main human rights concerns in international migration and exploring solutions that try to overcome obstacles and improve migrants’ rights in ways that are also acceptable to policy makers. This remains a significant challenge that has only rarely been adequately addressed.

**Workshop in Abuja: “Empowering and protecting migrants in Nigeria”**

As part of the activities to strengthen the participation of civil society in the project, PICUM, dRPC and IPPR held a workshop in Nigeria on 22 January 2013 entitled “Empowering and Protecting Migrants in Nigeria”. The event brought together different stakeholders upholding migrants’ rights and provided a space for information sharing, peer learning and developing strategies for collective action. From the discussions it emerged that many organizations were working independently without knowing what works and what other organizations were doing on migration related topics. Responses seeking to improve the situation of migrants needed to be better supported, more closely aligned and able to complement work already carried out. One of the findings from the workshop is that it is clear that change is needed within the civil society sector as well as within government. The proliferation of small organizations, the lack of coordination between them and the challenge of marshaling a coherent voice that government can respond to was felt to preclude effective collaboration on these issues.

The workshop in Nigeria served as a basis for this guide, as it helped to identify existing gaps in terms of knowledge related to the national, regional and international legal framework protecting migrants’ rights, as well as the role and the work of civil society organizations (CSOs) in promoting and defending the rights of migrants in Nigeria.

Organizations participating into the workshop requested that additional information and tools should be made available after the event concerning the following areas:

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**The Institute for Public Policy Research (IPPR)** is the UK’s leading progressive think tank with a reputation for incisive, policy-relevant research which has real and substantial impacts on the policy landscape. IPPR currently has more than 30 research staff working on key policy areas at all levels of government in the UK, in Europe and internationally. IPPR is a key centre for the study of issues relating to migration, asylum and integration. IPPR also has a record of high profile work on development issues including developing "Development on the Move" a ground breaking methodology to quantify the impact of migration on development on individual countries through interviews with 12,000 households in each country. This has so far been used in eleven countries worldwide.

**The development Research Project Centre (dRPC)** is a non-profit social enterprise with headquarters in Kano State, Nigeria. dRPC is committed to generating knowledge about the push and pull factors leading to migration, estimating diaspora remittances and income multipliers in migrant families and communities, to patterns of internal and international migration flows as well as trafficking of women and children. dRPC is also committed to strengthening the capacity of NGOs and community based organizations implementing migration awareness programs to enhance their community outreach strategies to resettle female migrants engaged in sex work and to educate migration supply communities about the dangers of this practice. Migrant rights and security is also a new issue of key concern in the Centre as a result of the dRPC’s 2006 collaboration with the National Institute for Policy and Strategic (NIPSS), the Apex Federal agency with responsibility for strategic studies, security and peace.
Recommendations made by CSOs at Abuja workshop

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<td>CSOs engage in pressuring the government to implement existing legal provisions</td>
<td>CSOs to strengthen their knowledge concerning the human rights of migrants, the international binding instruments and the existing national mechanisms that could enforce their role as human rights defenders and migrants’ rights advocates</td>
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<td>Legal framework: migrants’ rights</td>
<td>CSOs provide migrants with information about their rights throughout their migration process - when they leave, when they cross borders, when they arrive and settle in the country of destination and if and when they decide to return</td>
<td>CSOs to develop their capacities to conduct public awareness campaigns and education and develop practical tools to inform migrants about their rights</td>
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<td>Migration statistics for migration policies and migrants’ protection</td>
<td>CSOs become a source of knowledge for policy makers, in terms of data collection and evidence-based research</td>
<td>CSOs to improve evidence gathering and make it part of their on-going activities, and ensure the availability of information as well as monitor their use</td>
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<td>Access to rights: public policy and services</td>
<td>CSOs adopt a human rights approach into their work and improve the rights of migrants following a holistic approach</td>
<td>CSOs to learn how to include labour rights and fair working conditions as well as women’s empowerment and children’s protection into their actions. More generally, CSOs to develop tools and strategies to ensure that all human rights accorded to migrants are supported and defended in order to reduce the effects of migrants’ vulnerability status</td>
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<tr>
<td>Partnerships and networks</td>
<td>CSOs develop synergies and build a network, as well as search for new allies among professionals, social workers and the media</td>
<td>CSOs to enhance their capacities of working with different stakeholders, strengthen their communication skills and improve their outreach work</td>
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Purpose of the guide

This guide aims to bring support and solidarity to advocates of undocumented migrants’ rights by providing them with tools and practical examples to carry out their own advocacy work with irregular migrants at every stage of the migration process: before departure, while they cross borders, in the destination countries and finally during return, whether it occurs voluntary or is forced. It is a resource containing examples of the numerous ways in which NGOs, trade unions, migrants’ organizations and other actors uphold the human rights of undocumented migrants.

The guide was developed following indications put forward by CSOs in Nigeria on existing gaps in terms of knowledge, capacity and advocacy concerning migrants’ human rights. The action points listed in the table appeared in the previous page suggest strategies that could be developed by CSOs in Nigeria, in order to improve their role as human rights defenders as well as drivers of policy change. Every strategy should be adapted to its context and should indicate its targets and objective. Therefore, instead of describing every strategy step by step, the migration process has been divided into four stages and the main human rights concerns affecting migrants have been identified for each stage. Examples are illustrated that have been used by CSOs and proven to be successful in overcoming main challenges. It is hoped that these examples can lead to further inspiration and innovation on the ground, and that Nigerian CSOs could use these examples in order to build their own strategy, according to their capacities and overall objective.

The examples in this compilation have been chosen for their added value, notwithstanding implementation challenges. Some of the challenges have been highlighted in the relevant description of the project; other projects are still ongoing and their impact cannot yet be definitively assessed. Therefore, classifications such as “best practice” or “good practice” have been avoided.

Structure of the guide

The guide consists of an introduction and two parts. The introduction presents the guide and describes the Beyond Irregularity Project, summarizing key findings from the research and main activities.

The first part provides an overview of the existing legal framework protecting migrants’ rights at international, regional and national levels. The related protection mechanisms with relevant human rights bodies and judicial procedures necessary to implement and monitor the legal framework in place are illustrated in this section as well, although more practical examples on how to use a legal strategy are contained in the second part.

The second part is the core of this guide and is divided into four chapters. Each chapter begins by describing the main human rights concerns regarding migrants, organized accordingly to the specificities of the four different phases of the migration process, namely departure, movement, arrival and integration, and return. Practical suggestions and examples for CSOs are provided on how to develop activities that have the potential of improving the situation on the ground. The examples cover a wide range of countries in order to give an idea of the reality of the different regions of the world and have been selected for their supposed adaptability to multiple contexts. A floating section highlights steps in building a campaign and developing a communications strategy, two strategies that could be easily applicable throughout all stages of the migration process to improve irregular migrants’ rights. Each chapter concludes with a set of recommendations to address the issues identified.
PROTECTION AND PROMOTION OF HUMAN RIGHTS WITHIN THE CONTEXT OF INTERNATIONAL MIGRATION

PART 1
The fundamental rights of migrants, regardless of immigration status, are articulated within a variety of legally binding instruments on both the international and regional levels. States have a legal obligation to comply with international and regional legal standards which they have ratified or formally consented to and made valid in their State. As a result, any policy or practice that is contrary to these laws can be challenged as unlawful.

The following sections provide an overview of the international, regional and national legal frameworks protecting undocumented migrants’ rights. The first section contains tables of main instruments related to the UN mechanisms. The second section refers to relevant ILO conventions and the third section focuses on regional (Europe, Africa-wide and West African) systems of protection. The fourth section contains information on the functioning of the human rights bodies and provides resources for additional information on the issue. The final section is on national law and illustrates the state of application of these instruments in Nigeria.
International human rights framework

International human rights law is a set of international rules, established by treaty or custom, on the basis of which individuals or groups can expect and/or claim certain entitlements or benefits from governments. Human rights are inherent entitlements which belong to every person as a consequence of being human.

International human rights law consists of the Universal Declaration of Human Rights (UDHR) and nine United Nations Human Rights Treaties. Together these instruments represent international standards for the respect and promotion of human rights.

INTERNATIONAL BILL OF HUMAN RIGHTS

• Universal Declaration of Human Rights (UDHR), 1948
• International Covenant on Civil and Political Rights (ICCPR), 1966
• International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

OTHER CORE HUMAN RIGHTS INSTRUMENTS
(thematic or protecting specific groups)

• International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965
• Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
• Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
• Convention on Rights of the Child (CRC), 1989
• International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990
• International Convention on the Rights of Persons with Disabilities (CRPD), 2006
• International Convention for the Protection of All Persons from Enforced Disappearance (CED), 2007

Non-discrimination, together with equality before the law and equal protection of the law without discrimination, constitute a basic and general principle relating to the protection of human rights. Almost all of the treaties have a clear reference to this principle. The principle of non-discrimination means that any differences in the treatment meted out to migrants must conform to international law and must not breach migrants’ internationally recognized human rights. Thus, migrants, like all human beings, have equal human rights, and all international human rights instruments apply to migrants, regardless of status. Provisions for the protection of undocumented migrants’ rights are also contained in the Convention Against Transnational and Organised Crime and its two supplementary protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air) and in the International Labour Organization Conventions.

Human rights instruments established by the International Labour Organization (ILO)

As the UN specialized agency on labour issues, the ILO has been dealing with labour migration since its foundation in 1919. The very constitution of the ILO specifically mandates the organization in its Preamble to give attention to the “protection of the interests of workers when employed in countries other than their own”.

The ILO formulates international labour standards in the form of conventions and recommendations setting minimum standards of basic labour rights: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues. In addition, there are several ILO conventions that deal directly with the rights of migrant workers, both documented and undocumented.

SOME RELEVANT ILO CONVENTIONS FOR MIGRANT WORKERS

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Migration for Employment Convention, 1949 (No. 97)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Migrant Workers Convention, 1975 (No. 143)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
Regional human rights instruments

Beyond the relevant UN instruments, there are three regional, treaty-based systems for the protection of human rights: the Inter-American, European, and African. The three regional systems were each established under the auspices of a larger intergovernmental organization for regional cooperation: the Organization of American States (OAS), the Council of Europe, and the African Union, respectively.

This guide presents a brief overview of the African regional level and the European regional level, as the focus of the “Beyond Irregularity” Project is on irregular migration from sub-Saharan Africa to Europe, and South-South migration emerged as an important feature and a major challenge for organizations working in Nigeria. Nonetheless, knowledge about all systems of human rights protection is relevant for CSOs engaged in the protection of migrants’ rights. A list of resources to learn more about the functioning of each system is included in the following section.

AFRICAN REGIONAL LEVEL


EUROPEAN REGIONAL LEVEL

- The European Convention on Human Rights and Fundamental Freedoms, 1950
- The European Social Charter and its Additional Protocols, adopted in 1961 and revised in 1996
- The Charter of Fundamental Rights of the European Union, 2000
Protection mechanisms and promotion of human rights

All instruments listed in the previous pages provide for a judicial or quasi-judicial decision-making body (or bodies) responsible for receiving complaints of alleged human rights violations and determining States’ international responsibility. These are, respectively, the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights for the African regional level; and the European Court of Human Rights and European Committee of Social Rights for Europe. The nature and duties of each system’s organs, as well as the norms they interpret and apply, are established in regional treaties.

Under the human rights framework at the international and regional levels, only States may be held accountable for human rights violations, as each system was created on the basis of an intergovernmental agreement establishing specific obligations of signatory States (minimum code of conduct for States). In other words, States have agreed to abide by certain standards in their actions and to ensure the enjoyment of certain guarantees by those within their jurisdiction, thereby establishing individual rights vis-a-vis the State.

Further, international human rights adjudication is limited by the principles of subsidiarity and complementarity, meaning that the relevant international decision-making organs are meant neither to supplant nor form part of domestic judicial systems. Rather, those alleging human rights violations before an international tribunal must generally first have exhausted the appropriate, available domestic remedies.

In addition, in Africa, a group of States has started economic integration initiatives, establishing the Economic Community of West African States (ECOWAS). Courts have been created in ECOWAS to deal with disputes arising between member States or under the community’s trade agreement or other laws. These tribunals are not generally considered to be human rights courts because their core mandate is not human rights protection. However, some are authorized to consider individual complaints involving fundamental rights or to directly apply human rights treaties.

To get more information on the functioning of the ECOWAS Community Court of Justice established in 1991 and to read about its relevant jurisprudence please visit the website.
useful resources

- For a comprehensive overview of the international human rights framework and the functioning of the international human rights bodies, see International Justice Resource Center.

- The Office of the High Commissioner of Human Rights has a handbook for civil society organizations entitled “Working with the United Nations Human Rights Programme.”


- Amnesty International published a Guide to the African Commission on Human and People’s Rights, intended to help NGOs in Africa and other human rights defenders to access the African Commission’s system of protection.


- PICUM has produced a report entitled “Using legal strategies to enforce undocumented migrants’ rights” that offers a comparative analysis of the advantages and disadvantages of engaging with mechanisms provided by different judicial bodies at national and international level. It includes also advice from legal experts that will help to develop and improve the capacities of relevant organizations and advocates engaging with various legal channels and ultimately providing greater levels of justice for undocumented migrants.
National legal framework in Nigeria

Nigeria has laws on immigration and emigration, and some of the provisions are contained in the Constitution of the Federal Republic of Nigeria of 1999, while others are contained in the following:

**NIGERIAN LAW**

- The Immigration Act, Chapter 171 of 1990, is specifically directed at the regulation of migration. The law prescribes the terms of entry and exit from Nigeria for citizens and non-citizens as well as the privileges of an alien in residence in the country. However, it remains essentially the same as it was when first enacted in 1963 (with only slight amendments in 1973) and does not reflect the concept of migrants’ rights.

- Trafficking in Persons (Prohibition) Law Enforcement and Administrative, Act No. 24 of 14 July 2003, is the Federal Government of Nigeria’s response to address trafficking in persons in Nigeria and it contains provisions related to human rights abuses occurring throughout the trafficking process. The Act established also the National Agency for the Prohibition of Traffic in Persons and Other Related Matters.


Nigeria has recently elaborated a national policy on migration, which still awaits ratification by the National Assembly. The policy is comprehensive, covering migration and development, migration and cross-cutting social issues, national security and irregular movement, forced displacement, the human rights of migrants, organized labour migration, internal migration, the national population, migration data and statistics, and funding for migration management. The policy reiterates Nigeria’s commitment to all existing international and national human rights instruments, principles and standards.

Key initiatives that should enable the implementation of the provisions contained in the new national policy on migration include:

- the establishment of migration information centres where prospective migrants may be counseled in collaboration with state and local council areas;

- the signature of bilateral agreements to ensure Nigerians being repatriated from abroad are treated humanely and fairly, in safety, and with dignity, and that basic human rights are respected;

- the promotion of dialogue and networking between sending, transit and receiving countries;

- the integration of migrants in order to secure access to basic services such as education, health and employment, and for returnee nationals special measures to ensure their successful reintegration in their home communities;

- the creation of an independent agency that would be responsible for organized labour migration, including the protection of migrants’ rights.

In 2009, through a presidential directive, the National Commission for Refugees was mandated to become the focal agency on migration responsible for revising and, in close coordination with other agencies, implementing the draft national policy.
INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RATIFIED BY NIGERIA

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) acceded to in 1967


- International Covenant on Civil and Political Rights (ICCPR) acceded to in 1993

- International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to in 1993


- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ratified in 2001 and its Optional Protocol (OPCAT) acceded to in 2009

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) acceded to in 2009

- International Convention for the Protection of All persons from Enforced Disappearance (CED) acceded to in 2009

- Convention to the Rights of Persons with Disabilities (CRPD) and its Optional Protocol both ratified in 2010
Beyond Irregularity

REGIONAL HUMAN RIGHTS INSTRUMENTS RATIFIED BY NIGERIA

- African Charter on Human and People’s Rights ratified in 1983
- Protocol to the African Charter on the Rights of Women in Africa ratified in 2004
- Protocol to the African Charter on the African Court on Human Rights ratified in 2004

ILO CONVENTIONS RATIFIED BY NIGERIA

- Migration for Employment Convention [C97] ratified in 1960
- Discrimination (Employment and Occupation) Convention [C111] ratified in 2002
Effective protection of the human rights of migrants requires coordinated action by countries throughout the entire migration cycle, from departure, travel to and arrival and integration in the destination country, and return and reintegration. Individual states have the greatest authority and responsibility when migrants are on their territory. However, intra-state cooperation can foster effective practices to protect migrants’ rights and further enhance their rights across all phases of the migration cycle.

The second part of this guide examines a number of practices arising from the direct experience of CSOs working with migrants in different regions of the world. A “life-cycle” approach to migration is taken, in order to describe the main human rights concerns affecting migrants in each phase of the migration process. It also highlights respective protection responsibilities of countries of origin, transit and destination.

For each stage diverse examples are illustrated which aim to improve migrants’ rights protection. These should not be considered as the only possible actions available to CSOs, but are included as they have proven to be successful when used by CSOs in a range of contexts. In order to build a successful strategy out of these examples it is essential that the specific legal framework, the context and the target of the action is considered carefully before proceeding. The final section of every chapter/stage summarizes the key elements that can be regarded as useful tools to include into an organization’s strategy.
Stage One: Pre-Departure

Migrants before departure: human rights in the country of origin and opportunities for safe migration

The lack of rights afforded to migrants in their country of origin is among the root causes of international migration. Lack of work opportunities, limited access to services, including education, healthcare and housing, the proliferation of violence and conflicts are all factors which push people to seek protection and better lives elsewhere.

The “Beyond Irregularity” Project research\(^4\) provides some insight into the factors that initially pushed these individuals to leave their country. Many interviewees stressed that drastic economic conditions were the main reason for leaving Nigeria:

> Moreover, a common thread was an expression of feeling alone and not being able to turn to anyone, including the state, for help:

**IPPR, “Homecoming: Return and Reintegration of Irregular Migrants from Nigeria”**

> You can only make it here in Nigeria when you have someone to help you. When you have someone to support you, you won’t have the mind to travel out of the country.

– Female, 25

Overall in Nigeria the desire to migrate and travel seems to be a common feature. According to a nationwide survey reported in “Beyond Borders: Human Trafficking from Nigeria to the UK”\(^5\) sixty-eight per cent of Nigerians stated that they would like to go to Europe to study or work, with only a slightly smaller proportion (sixty-three per cent) believing that they would do so in the future. The important social value attached to those who decide to leave and also to those who have successfully made it to Europe (either in a regular or irregular manner), is also a factor contributing to migration:

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Next to these “push factors”, drivers of migration are also connected to what the country of destination might offer or is believed to offer. Availability of jobs and the idea of a “better life” are also strong triggers of migration. The new Nigerian migration policy listed several factors among the current drivers of migration: growing unemployment; attractive salaries abroad; higher education possibilities in foreign countries; the availability of traffickers and smugglers; and finally government policies, conflicts, humanitarian challenges and environmental factors. Moreover, widespread exploitation often occurring in the family/community environment is likely to increase the desire and urgency to leave.

If suitable protections are in place, migration may offer valuable and profitable options for both migrants as well as destination countries. On the contrary, as states limit avenues for regular migration and harshen deportation and detention policies, irregular channels become the only alternative for migration. Many prospective migrants are unaware of the rules that manage migration and often don’t know who to turn to and ask for information.

Analysing the various causes leading to irregular migration helps for a better understanding and implementation of preventive measures to reduce the risks of irregular migration and increase the opportunities for safe migration. Safe migration involves two elements: first, it means that people are able to have a more equal power relationship with others they meet along the way, so that they can negotiate good terms with migration agents and employers; second, people have knowledge which may be required to protect themselves from abuses during the migration process. Offering more opportunities for migrating safely implies actions throughout the migration process, even before migration begins: individuals should be informed about what they should expect during the journey, when they arrive and later the possibilities for return. Information might help prospective migrants to better face the challenges posed by the migration process, even when their only option is to leave through irregular channels. With information about their rights, or lack of rights, in transit and destination countries, people can make informed choices about where to turn if they are exploited or abused.

The misrepresentation of migration prospects emerged as a common feature of most of the irregular migrants’ stories collected in the Beyond Irregularity Project. The positive aspects of the migration experience and “success stories” appeared to be the main image that prospective migrants had before beginning their journey. Despite the fact that violence, poverty and exploitation were common elements in their experiences of migration, there was almost no mention among respondents of being warned about these risks before they left. Even though they said that they would not encourage other potential migrants to undertake the journey, they did not appear to have been cautioned themselves before beginning their journey.


This chapter emphasizes the need to inform migrants about their rights as a strategy to counter violations and abuses, as well as contributing to enhance the positive effects of migration, for the individual development of the migrant, for the country of destination, as well as for the family/community of the country of origin.

In the meantime, advocating for better living conditions in the country of origin, especially for families with children as well as women, who suffer increased discrimination due to age and gender, should also become part of CSOs’ work, to enable individuals to have choices to migrate or to remain in the country of origin.

Informing migrants about their rights

As was described in Part 1 of this guide, the international human rights framework provides for a comprehensive protection system for migrants, articulated within a variety of instruments and treaties on both the international and regional levels, including a convention expressively dedicated to migrant workers that outlines the rights migrants are entitled to with no discrimination and regardless of their migration status.

special focus

The International Convention on the Protection of the Rights of All migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of all Migrants Workers and Members of their Families (CMW) is a comprehensive international treaty focusing on the protection of migrant workers’ rights. It seeks to establish minimum standards that States parties should apply to migrant workers and members of their families, irrespective of their migratory status.

Undocumented migrant workers’ rights are reaffirmed in the preamble, which underlines that States parties consider, inter alia, that irregular migrants are frequently exploited and face serious human rights violations and that appropriate action should be encouraged to prevent and eliminate clandestine movements and trafficking in migrant workers while at the same time ensuring the protection of their human rights. Part III of the convention outlines a series of rights, including the right to information (Article 33), which apply to irregular migrants.

In its Draft General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, the Migrant Workers’ Committee has clarified the scope of the convention as well as other treaties and conventions in the international human rights framework as they apply to migrants in an irregular situation.

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8 There is increasing evidence that the benefits of international migration, not only for migrants themselves but also for origin and destination societies, are contingent on the protection of migrants’ rights. Migrants are best able to contribute to development in both the countries of origin and destination when they are protected and empowered socially, economically and in terms of their basic human rights, regardless of their migration status. The Global Forum on Migration and Development held in Manila in 2008 focused on "Migration, development and human rights" and contributions on this issue are available on the GFMD website.
Migrants have rights regardless of their origin, destination and residence status, but many are unaware of this. As a consequence, countless people leave their countries of origin motivated by a hope for a better life and find themselves in exploitative and abusive situations where they do not speak out because they are scared and feel powerless. The vulnerability that characterizes the migration process is often a consequence of this “illiteracy” that renders migrants easy prey of smugglers and traffickers when they embark on their journey and subsequently contributes to their exclusion and destitution in the country of destination. This is also valid for return that is rarely the result of an informed choice and generally implies coercion or intimidation.

Informing migrants about their rights is thus the first step towards ending the silent suffering of millions of people on the move. The provision of information helps prevent people from migrating without knowing that they might infringe the law of a given country if they don’t comply with legal requirements for entry. However, many migrants may still leave their countries of origin despite the lack of regular channels and all potential dangers.

Pre-departure orientation programs in countries of origin, also called safe migration programs, prepare prospective migrants before their migration project starts. They aim to reduce the risks of irregular migration, but many often use “scaremongering” or sensational tactics to try to convince people not to move. Such programs also tend to give the idea that all migration ends up in suffering and abuse. In addition, even when they succeed in creating safe migration systems from the country of origin, it is much harder to ensure safe entry into the destination country. Safe migration approaches cannot change the exploitative living and working conditions people often find themselves in once they enter the destination country.

Despite these and other limitations, some countries – especially large migrant sending countries – offer some examples of practices which show how protection begins at home and can be reinforced through partnership with both transit and destination countries and with the support of a broad range of stakeholders.
Pre-departure programs in the Philippines provide support and assistance throughout the migration process

The Philippines Overseas Employment Administration (POEA) is in charge of recruiting, registering and verifying the qualifications of prospective migrants, as well as informing Filipino migrants of their rights as workers and as human beings, including providing mechanisms to redress violations of migrants’ rights where necessary.

The POEA delivers trainings, known as Pre-Departure Orientation Seminars (PDOS) supported by a manual including modules around the psycho-social reintegration of returnee migrants and necessary support offered to children and families remaining in the Philippines. No specific destination country is targeted in the manual but information is available for a wide range of migration projects and the overall objective is to provide support and assistance throughout the migration experience (the so called “life cycle approach”).

The involvement of NGOs in the implementation of these programs has contributed to the inclusion of a migrants’ rights perspective and facilitated the creation of additional activities that take into consideration a broad range of stakeholders. For instance, local governments are now included in the program and POEA supports them in establishing migration desks to provide direct orientation to migrants. In the country of destination, embassies and consulates can also assist migrants using the same manual developed by POEA. Moreover, the information sessions address the needs of the individual migrant as well as the entire family, whether they accompany the migrant to the country of destination or remain in the Philippines.

Among NGOs implementing PDOS, the Kanlungan Centre Foundation started in September 2012 to develop its own modules so that the seminars are more grass-roots oriented. This is a joint project with the Open Society Foundations in collaboration with the Center for Migrant Advocacy (CMA) and Migrant Forum in Asia (MFA). The seminar module is addressed to domestic workers and construction workers. For the module development former Overseas Filipino Workers (OFW) contributed with inputs arising from their personal experiences. The module proposed theatrical plays, dramatization of situations such as being abused by the employer or escaping from the employer and the sharing of experiences. The training was facilitated by professors of the University of the Philippines. Kanlungan is currently waiting for comments on the sample developed.

Although Kanlungan does not have an official website, they use an open Facebook group as a tool to spread information, to share the organization’s events and pictures and for discussion.
The first line of defense for the protection of migrants’ rights is thus established in the country of origin. Some initiatives have also been developed specifically on the situation of irregular migrants who are often excluded from government-led initiatives trying only to support regular migration.

**Case Study**

**Informing migrants in Nigeria about potential threats during the migration process**

The “Migration Aware Project” was developed in Nigeria under the framework of the UN-Joint Migration and Development Initiative (JMDI)* and facilitated by the Child and Adolescent and Family Survival Organization (CAFSO) in Nigeria and the African Studies Centre at Coventry University in the United Kingdom.

This project aimed to fill the information gap that prevents potential irregular migrants from making an informed decision on whether to embark on the migration process, based on a sound knowledge and understanding of potential threats to and exploitation of the migrant, both in transit and destination countries. The intention was not to actively dissuade migration but to provide objective information. Direct participation of residents of Ibadan State in Nigeria (the target community) was highly encouraged in all phases of the project.

The project developed and delivered a portfolio of methodologies relevant to the experiences of potential irregular migrants to ensure that they are given necessary information to make informed decisions. Information disseminated focused on the realities of the journey (data on fatalities and evidence provided by NGOs related to violence and abuses occurred in transit countries); rights in the various European destination countries (focus on detention, labour exploitation and deportation); and alternatives to irregular migration. These methodologies included the production of a short film, street theatre, text messaging and poster campaigns, and were based on focus groups, targeted interviews and public meetings to establish a synthesis of the concerns of stakeholders including potential migrants, local authority representatives and civil society organizations.

* The Joint Migration and Development Initiative (JMDI) reflects the acceptance of and growing interest in the strong links between Migration and Development (M&D) and aims to support M&D actors to effectively harness the potential of migration for development. This programme is implemented by UN and financed in part by the EU.
The format of pre-departure programs varies among countries and can range from simple information provision and counseling, to vocational training and cultural orientation, as well as referral to other service providers (for example reception, shelter and legal assistance in case of vulnerable migrants). These programs are more effective when cooperation with countries of destination is in place as well as consideration of challenges faced by specific groups, including women, children and victims of violence. Furthermore, orientation sessions encouraging a participatory approach, where migrants become teachers themselves and are able to train their peers, have also proven to be very successful and sustainable.\(^\text{10}\)

Nonetheless, these actions can hardly reach all groups and all areas, and there will always be a proportion of migrants that will not be able to benefit from such types of awareness raising activities. Advocating for improved conditions and specifically targeting vulnerable groups is thus a complementary strategy that CSOs should see as an alternative to enable individuals not to have to migrate irregularly and to increase the possibilities of a better life in the country of origin.

Protecting families and children remaining in the country of origin

Human rights concerns related to the migration process affect not only those actually leaving but also their families that remain in the country of origin. It is estimated that among the 214 million people living outside their country of origin, around 33 million – 16 percent – are under 20 years of age.\(^\text{11}\) Between 2000 and 2010, the number of international migrants under the age of 20 increased by almost 2 million.\(^\text{12}\)

Restrictions of regular migration impact the way parents and families migrate, increasing the likelihood of children of migrant parents, unwillingly “left behind” in countries of origin, experiencing prolonged periods of family separation and reduced access to rights and services as a result of parental absence. Poor households may face short-term losses when an income-earner decides to migrate and assets may be sold to fund migration, and a migrant’s departure can often leave a family without social protection for instance in cases where insurance is linked to the individual’s employment.\(^\text{13}\)

Further challenges faced by children remaining in the country of origin when a parent or both parents migrate include psychosocial trauma, family instability, and social stigma, which can result in violent and delinquent behaviour, drug abuse, and teenage pregnancy.\(^\text{15}\) As highlighted with concern by the UN Committee on the Rights of the Child, the education of children remaining in the country of origin, particularly girls, is often jeopardized by

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\(^{11}\) UN Committee on the Rights of the Child (CRC), Day of General Discussion, “The Rights of All Children in the Context of International Migration,” Background Paper, August 2012.


\(^{13}\) In the chapter, the term “parents” is used to refer to parent(s) or other primary caregiver(s).


\(^{15}\) The Committee on the Rights of the Child has stressed its concern “at the disruption and changes in the family situation due to the high and increasing migration flows and at the high and increasing number of children left behind either by their mother or father working abroad” (Committee on the Rights of the Child, Concluding Observations: The Philippines, CRC/C/PHL/CO/3-4). In the case of Romania, the Committee is concerned “about media reports of several cases of suicide, particularly among children left behind by migrating parents, although statistics on such cases are not systematically collected” (Committee on the Rights of the Child, Concluding Observations: Romania, CRC/C/ROM/CO/4, 2009).

\(^{16}\) UN Committee on the Rights of the Child (CRC), Day of General Discussion, “The Rights of All Children in the Context of International Migration,” Background Paper, August 2012.
their obligations to fulfill household duties and care for younger siblings and other family members\textsuperscript{17}. In addition, family reunification is deemed to be one of the main causes of the increasing number of both regular and irregular international child migrants, including unaccompanied and separated migrant children\textsuperscript{18}.

Public policies often fail to recognize these specific vulnerabilities or take into consideration the particular needs of families and children who find themselves involved in the migration process, even if they haven’t left their countries of origin themselves. Child protection measures and better care standards can help to prevent abuse, violence and exploitation, for instance promoting an adequate standard of living - access to education, housing, healthcare - as well as protection from child labour. At the same time, family reunification, wherever possible, and after applying the principle of the best interests of the child, can serve to reduce the risk of irregular migration.

\textbf{special focus}

United Nations Convention on the Rights of the Child

The International Convention on the Rights of the Child (UN CRC) affirms that any strategy on the rights of the child should be rooted in the following four basic principles:

- protection against all forms of discrimination (article 2)
- the best interests of the child (article 3(1))
- the right to life and development (article 6)
- the right to be heard in judicial and administrative proceedings (article 12)

While there are no global figures referring to children remaining in countries of origin, research in recent years\textsuperscript{19} has indicated that 3-6 million children in the Philippines, one million children in Indonesia, and 500,000 children in Thailand remain in their countries of origin while parents are working overseas. These numbers imply that roughly 10-20 percent of Filipino children, and 2-3 percent of Indonesian and Thai children, have one or both parents overseas. Enforcing a child protection regime is a key first step to address this issue and limits the risk that these children would migrate through irregular channels and at any cost, in order to reach their parents.

A variety of initiatives have been adopted to promote a child protection regime, engaging a broad range of stakeholders and generally focusing on education. Training and inclusion in school curricula of issues related to migration and related topics such as labour exploitation and trafficking, as well as giving children advice on how to migrate relatively safely, can be controversial. Many organizations feel that they have no right or interest in encouraging young people to leave home and sometimes are also worried about the consequences if young people happen to migrate and are subsequently abused. Nonetheless, practical advice is important for young people and withholding such information can scarcely be regarded in their best interests.

\textsuperscript{17} The UN Committee on the Rights of the Child has pointed out with concern that many children remaining in the country of origin, particularly girls, “need to take on responsibilities for the household and their younger brothers and sisters owing to, inter alia, [...] the lack of support for these children.” (Committee on the Rights of the Child, Concluding Observations: Ecuador, CRC/C/ECU/CO/4, 2010).


A resource guide for civil society organizations in Nigeria advocating for undocumented migrants’ rights throughout the migration process

Professional training and civics classes for families remaining in the country of origin

The NGO Atikha in the Philippines provides economic and social services to overseas Filipinos as well as to their families remaining in the Philippines when they migrate. The organization aims to help address the social cost of migration by organizing professional training and civics class to help children and families remaining in countries of origin to become more self-reliant and turn into active citizens.

Atikha has published a guide for primary and secondary school teachers to integrate issues concerning migration into lesson plans and school activities. The objective of the guide is to enhance participants’ responsibility towards savings; strengthen gender sensitivity and their entrepreneurial disposition, as well as their interest in education; increase the recognition of parents’ decision to migrate; and highlight the importance for parents to communicate with their children and family remaining in the Philippines on a regular basis.

Children in the context of migration can also become victims of trafficking. According to the ILO, nearly 2.5 million people are in forced labour as a result of trafficking, of whom 22 to 50 percent are children. It is estimated that globally 1 in 5 victims of trafficking are children, and these numbers may be much higher in States where there are weak child protection regimes. In Nigeria, with a population of 140 million people of whom 40% are under 14 years old, 15 million children under the age of 14 are working. A very high proportion of these children are exposed to long hours of work in dangerous and unhealthy environments, carrying too much responsibility for their age. Working in these hazardous conditions with little food, small pay, no education and no medical care establishes a cycle of child rights violations.

Child trafficking is frequently hidden, denied or ignored. To address the complex processes and situations whereby children affected by migration become victims of exploitation, abuse and trafficking, a multidisciplinary approach is needed. This should involve applying the “best interest determination procedure” and engage child protection services in order to provide the child with adequate support and assistance, including medical, social, legal, and psychological care, as well as further integration or reintegration support.

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Beyond Irregularity

case study

Initiative to protect children who are recruited into forced labor from Benin to Nigeria

In Benin, legislation forbids the displacement of children for reasons of work, whether the work is voluntary or forced. Nonetheless, many children have no other choice than to go to work to help their impoverished families, lest they become victims of forced labour.

In this framework, the NGO Terre des Hommes (TDH) and other organizations are implementing an initiative called “protective accompanying” that offers services needed to guarantee the health, protection and a better future for child victims of exploitation and trafficking between the Community of Zakpota in Benin and the gravel quarries of Abeokuta in Nigeria, where they are often recruited for work. Not all of these potential young migrants are children whose parents have previously migrated, but the protection system in place takes a comprehensive approach looking at children first and foremost.

TDH facilitates meetings between members of the government and the children in their villages in Benin and in their workplace in the Nigerian quarries, to better understand these children’s need for protection. The focus is on allowing children to speak for themselves and understand and respond to their needs, find concrete solutions beyond prosecution of employers and forced removals of child workers, and implement measures for their reintegration into their local communities.

The strategies illustrated above aim to enforce a system for child rights protection and promotion that should not only limit the negative effects of migration on children left without parental care due to migration, but avoid that children in general see migration at any cost as the only available option to improve their situation.

Conclusion

As underscored by the Office of the High Commissioner for Human Rights (OHCHR), human rights play a crucial role in the decisions to migrate of both adults and children. Indeed, “the vast majority of migrants have all suffered some kind of constraint on their rights in their country of origin”.

Strategies illustrated in this chapter all start from this basic premise: human rights protection starts in the country of origin, well before the migration process starts. In the pre-departure phase it is important to ensure that prospective migrants are aware of their possibilities for a successful migration experience and are also able to seek assistance in case their rights are violated. On the other hand, organizations that intervene at this stage should not overlook hidden realities facing migrant families remaining in the country of origin and should ensure that these families receive adequate support. Last but not least, improving human rights standards in the country of origin should become a priority for every programme addressing migration and must be considered as the ideal “preventative strategy” regarding irregular migration.

23 “The Cairo World Conference urged governments to make the option of not migrating – ‘remaining in one’s country’ – a viable one for all people. To this end, it called on governments to respect the rights of minorities and indigenous people, and the rule of law, to promote human rights and good governance, and to strengthen democracy; it urged greater support for food security, education, nutrition and health. Endorsing this approach, the Global Commission on International Migration urged that ‘women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfill their aspirations in their country of origin and hence migrate out of choice, rather than necessity’. Office of the High Commissioner for Human Rights (OHCHR), “Migration and Development: A Human Rights Approach”, Geneva, 2008.

• List the various causes leading to irregular migration in the country of origin and assess “safe migration” opportunities.

• Identify tools (e.g. printed material; online resources; manuals; comic books; outreach media campaigns; help desks, etc.) to inform migrants about their rights throughout their migration process – the “life cycle approach” – and develop their capacities to exercise them.

• Encourage partnerships among countries of origin, transit and destination and engage with a broad range of stakeholders in order to offer different levels of assistance beyond information and counseling.

• Privilege a participatory approach in pre-departure training initiatives, in a peer-to-peer learning format.

• Ensure that awareness-raising initiatives focusing on the migration experience include reference to the situations lived by families and especially children remaining in the country of origin and establish a monitoring and evaluation system of children remaining in countries of origin (including data collection).

• Enforce a child protection framework to protect children and avoid that children migrate at any cost and become victims of forced labour and trafficking.

• Focus on capacity-building for professionals working with children (teachers, psychologists, police, health workers, etc.) as well as family members, on the vulnerability of children remaining in the countries of origin and protection of their rights.

• Advocate for a general improvement of human rights standards and related protection mechanisms.
Stage Two: On the Move

Migrants on the move: violence and other risks during the journey

Despite an international framework designed to protect and promote the human rights of all individuals, migrants experience numerous human rights violations, especially while crossing borders. Long and dangerous fragmented journeys have become a common feature of global migration systems. International migration may involve several countries through which people merely transit or in which they stay for shorter or longer periods of time. A variety of factors determine an individual’s route, including the reasons for departure in first place; migration laws for entry, stay and exit in the countries concerned; availability of financial resources; cultural, family and social ties; and not least chance and improvisation. Most migrants interviewed for the “Beyond Irregularity” Project25 said that the migration route could take anything from a few weeks to a number of years and is often long and harrowing as a way to evade border controls and reach the country of destination. The intended migration project can evolve during the journey itself and is informed by the multiplicity of factors highlighted above.

The “Beyond Irregularity” Project research highlighted that it is also important to recognize that many sub-Saharan migrants, before reaching their final destination, have already lived and worked for an extended period in what one European stakeholder described as “transnational mobility.” Consequently, their journey should be located in this context of this fluid migration, facilitated by the minimal border controls and regulations between many countries in the sub-Saharan region, including the free movement of labour within ECOWAS26.

Beyond the uncertainty and variety of models characterizing international movements, violence and fatalities are increasingly appearing as a common feature. The number of migrants who are killed or injured during lengthy and extremely risky overland or maritime journeys has increased significantly in recent years. UNHCR reported a total of 4,376 migrants lost or dead at sea in the Mediterranean between 2007 and 2011, with a 78% increase27 during this time period. States are progressively limiting avenues for regular migration and harshening deportation and detention policies, rendering irregular channels the only alternative for migration. A recent report by Médecins sans Frontières (MSF)28 outlines how restrictive immigration policies make


it harder and much more dangerous for people to seek safety and a better life for themselves and their families. In some transit countries MSF observed an increase in the number of patients with violence-related injuries and heard testimonies of migrants surviving capture, detention and torture while living in transit.

The “Beyond Irregularity” Project research also found that violence was a characterizing feature of many migrants’ experiences:

**IPPR, “Sub-Saharan Irregular Migration in Morocco”**

*Where I went to that was where the ambush was. I ran into a group of Nigerian guys who held me up, they put a knife on my neck, they put me on the ground like you want to slaughter a cow. Their foot on my head they put the knife and they were searching my bag. If I was a francophone they would have killed me...They were searching they were speaking French with me and I said I am not a francophone. They took my driver’s license they took my Ghanaian passport and that is what saved me, when they saw I was a Ghanaian.*

**Ghanaian migrant, male.**

This chapter begins with an overview of possible approaches that can be adopted to enhance the protection of migrants on the move. It further illustrates how the lack of research and data related to migrants’ experience during the journey contribute to hiding the often tragic and traumatic realities faced by people on the move, as well as the ineffectiveness of many policies focused on controlling borders and preventing migrants from pursue their migration plans. It also emphasizes the importance of evidence-based research to denounce human rights violations and defend migrants’ rights.

The importance of building a network and working in cooperation amongst countries of origin, transit and destination to ensure justice and protection across borders is also underlined.

**Adopting a human rights approach regardless of the protection framework in place**

The absence of a well-founded mechanism to deal with migrants on the move, addressing their human rights concerns and ensuring their protection, has created a sort of "legal loophole" where states have felt free of passed laws and policies according to a security approach that put national interests ahead of the well-being of migrants on the move. It is urgent to seek ways to manage these movements from a human rights perspective, going beyond border controls and strategies to prevent and punish irregular migration.

Within the legal framework for refugee protection, there have been numerous discussions and efforts to examine more broadly the relationships between protection, solutions and migration. The United Nations High Commissioner for Refugees (UNHCR) has thought that adopting a human rights approach to international mixed movements, where refugees often travel along with other migrants, is the best way to address the vulnerabilities that affect all people on the move. UNHCR has repeatedly stressed the obligation of the international community to imperatively address the phenomena of international migration in a more coherent and comprehensive manner, and have encouraged governments to consider these movements no longer as a threat to their sovereignty and security but as a risk for those people travelling in inhumane conditions and potentially exposed to exploitation and abuse.

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Beyond Irregularity

In 2006, the UNHCR formalized a key resource – the 10-Point Plan - that constitutes a strategic tool to support advocacy, containing a compilation of practical examples on how best face challenges posed by international migration, especially in transit and destination countries, as a way to find a proper balance between national interests and international responsibilities.

Four years after the adoption of the 10-Point Plan, UNHCR launched a compilation of practices relevant to the implementation of the Plan across its various subject areas. The compilation describes the steps of the UNHCR strategy, originally created to enhance refugees’ protection that could serve as examples to address the human rights concerns of other categories of vulnerable migrants on the move. UNHCR recommends that any measure adopted should be complemented by information campaigns in countries of origin, transit and destination. People need to be alerted of the dangers of irregular movement and the difficulties they might face upon arrival, as well as to any alternatives to irregular migration which might also meet their circumstances.

Digging into different protection frameworks is sometimes useful to learn about other approaches and strategies. Many anti-trafficking specialists have also fostered the importance of avoiding strict categorization of vulnerable groups and promoted a broader approach that addresses fair working conditions, women’s rights and child protection before protection mechanisms for trafficked victims are enacted. They also believe that migration status is a vulnerability factor in situations of human trafficking and exploitation. Therefore, reinforcing protection in crucial areas, where migrants face discrimination, is of utmost importance for victims of exploitation and abuse. Access to labour rights and fair working conditions, access to protection, justice mechanisms and redress as well as access to basic social services are most relevant.
The Global Alliance Against Trafficked Women (GAATW) is a network launched in 1994 by a group of women's rights activists and has members in Africa, Asia, Europe, LAC and North America committed to ensure that the human rights of all migrating women are respected and protected by authorities and agencies. Having worked within the anti-trafficking framework for many years, GAATW affirms that excessive focus on the issue of human trafficking has tended to ignore other related phenomena, such as people’s experience in migration and work. It creates the false impression that trafficking is a problem that can be solved by merely taking a few legal measures and providing assistance to those identified as trafficked. Thus, the long term goal of advocating for systemic and structural changes in society is overlooked. GAATW encourages governments, NGOs and all stakeholders to adopt different frameworks that can be used at different moments to increase migrants’ power over their own situations.

GAATW’s approach on strategies to be implemented to fight against trafficking carries with it an important lesson. Why do labour rights matter for trafficked persons and irregular migrants? Why should child protection systems be enforced to assist all children regardless of their status (migrant, trafficked, unaccompanied, “left behind”, etc.)? How could women's rights prevent people fleeing from violence and ensure justice when abuses occur? Mainstreaming a human rights approach into strategies is crucial for ensuring that actions are effectively centered on the individual’s needs and no pre-packed solutions are imposed. GAATW suggests that whenever CSOs find it difficult to determine the best protection framework to adopt, especially in cases of migrants on the move, the main international human rights instruments should be applied with no hesitation.
Using evidence-based research to raise awareness and make governments accountable for the human rights of migrants

The lack of implementation of the existing international human rights framework protecting migrants regardless of status is also due to challenges in gathering data and the limited use of research for investigating human rights violations occurring during migrants’ journeys. The lack of coordination and collaboration has sometimes been resolved if the purpose of collecting data is to identify travel routes, discovering criminal gangs and smugglers, and strengthening border controls to prevent irregular migrants from reaching their destination. Nonetheless, there is a growing movement of civil society organizations that, individually at national level, and more often collectively at regional and global level, are trying to fill the gap of research in the field of human rights violations in the context of international migration. There are also initiatives that are using the evidence collected to denounce those violations, holding governments accountable and seeking justice for all beyond borders.

case study

Monitoring human rights in the Mediterranean

Migreurop is a network of 43 organizations and 36 individual members based in 16 countries across Europe, Africa and the Middle East. It was founded after strong media attention towards the situation in Sangatte, France, during the year 2000, when migrants who were detained reached first public opinion and then forced policy makers to respond. Initially created in order to spread knowledge about the detention of undocumented migrants, to gather information about the complex reality of migrants on the move and their living conditions in the camps and to denounce abuses and violations of human rights, Migreurop has progressively enforced its advocacy position.

Today Migreurop is at the forefront of the battle for ensuring adequate protection to migrants regardless of status during sea rescue operations and aims to maintain a civilian presence on maritime borders in the Mediterranean, with the following campaigns:

31 See for more information Migreurop, “Atlas of Migrants in Europe”, Armand Colin 2012. The Atlas is a compilation of European migration policies and activities illustrated through the spatial organization of the European Union’s migration borders, whose main objective is to make the human impact of the strengthening of migration controls visible. It describes the living conditions of migrants who are blocked at the borders or live in those territories that are at the margins of existence (from Calais in France to Oujda in Morocco), and highlights the hidden reality of the dangerous journeys of those who move across borders.
Collecting data and using evidence-based research to denounce violations of human rights and abuses occurring across borders is a powerful strategy that can contribute to save lives. As policies and actions are often elaborated in the absence of concrete data, there is an urgent need to reveal the realities faced by migrants, since security measures often tend to increase danger and death at borders.

To collect information on very vulnerable groups in constant fear of being arrested or deported, it is important to have a relation based on trust, as many migrants are generally reluctant to speak about their stories. NGOs and other advocates that have gained their trust can play an important role by facilitating access to the target group. NGOs often work with researchers and/or academic institutions to capitalize on the effects of an investigation. Such collaboration can lead to fruitful results. Furthermore, when such research is conducted in a participatory manner, and is based within migrant communities, it can also have a direct impact on the target group participating. This is even more valid when information is used as a legal basis to search recourse in justice.

- **Boat4People**, an international coalition established to end deaths at maritime borders and to defend migrants’ rights at sea, began in July 2012 with a boat rally between Italy and Tunisia, composed of activists, parliamentarians, artists and journalists. The campaign facilitated the enlargement of the network of NGO and the creation of an alliance of sailors in charge of alerting human rights violations at sea. Today Boat4People continues its work through **Watchthemed**, an initiative that aims to collect information concerning incidents at sea from all possible sources, such as distress signals sent out by coast guards, different types of documentation coming from seamen, the press and migrants themselves, as well as satellite imagery.

- **Frontexit** was launched in March 2013 and focuses on the work of the European Union agency Frontex, which was created in 2004 to keep EU external borders under surveillance. Frontexit aims at defending the rights of all migrants at the external borders of the European Union. It is led by 21 associations, researchers and individuals from both North and South of the Mediterranean (Belgium, Cameroon, France, Italy, Mali, Morocco, Mauritania) international organizations, regional networks that agreed to cooperate to investigate the functioning of Frontex, as well as its transparency and respect for human rights. The website contains a collection of practical and accessible tools to support the campaign, including a toolkit with detailed information about the structure of European migration policy, the activities of the Frontex agency and issues concerning human rights.
Beyond Irregularity

**Documenting abuses to protect the rights of migrants on the move**

Justice Without Borders (JWB) is a network with members based in different countries across Europe and Africa. It seeks to combat violations of migrants’ rights linked to deportations and refoulements. JWB carries out transnational actions that combine the use of legal mechanisms, advocacy, and documentation and reporting of abuses, capacity building, and strengthening collaboration and communication amongst partners.

Using testimonies of serious and repeated violations of migrants’ rights documented in the field by its members, as well as judicial cases, JWB contributed significantly to the adoption of a resolution on human rights violations against migrants by the African Commission on Human Rights and Peoples during its 51st Session held on 18 April 2012, in Banjul, Gambia.

JWB conducts field research, in collaboration with a wide range of experts and researchers, working at the NGO level or within academic institutions as well as law groups and other professionals, to produce reports on the human rights of migrants. JWB’s website contains a list of available resources with useful information on the situation in the Western Africa region and examples of litigation, communication strategies and campaigns, and legislative advocacy.

JWB is also devoted to increase the capacity of partner organizations through trainings, technical assistance in legal, financial and other matters and through the development of common tools. The training of organizations that lack resources to systematically collect data, and lack the capacity to understand the potential of their “knowledge” in terms of advocacy and legal strategy, is a necessary step to reduce also the feeling of powerlessness characterizing many migrants on the move.
Building partnerships to facilitate transnational cooperation and enforce migrants’ protection on the move

The previous examples all share the same characteristic of being based on a broad partnership, involving countries from different regions of the world and along the migration continuum (countries of origin, transit and destination). The benefits of transnational cooperation are particularly evident when migrants are moving, as governments commonly evade their responsibility towards migrants crossing borders, under the premise that if migrants are merely in “transit,” they won’t remain for long within their jurisdictions. Nonetheless, migration journeys may often be unpredictable as well as full of risks and uncertainties, and hence coordinated actions amongst countries of origin, transit and destination can effectively fulfill migrants’ rights across all phases of the migration cycle. A cooperative approach both benefits individual migrants and promotes mutual development and good relations between origin, transit and destination countries.

Case study

Building an alliance to intervene at national level through transnational cooperation

The West Africa Network for the Protection of Children - formerly called “West Africa Programme” (WAP) - is a civil society initiative that aims to set up national and transnational measures to respond to the protection needs of children in a situation of instability. WAN promotes regional cooperation between the participating states and civil society organizations in the ECOWAS region to protect and reinsert, in professional and social life, children who are displaced and in a vulnerable situation within the West Africa transnational context. WAN is based on a participative approach involving children, families, NGOs, governments and childhood professionals. The programme has concrete implication of different actors at national and transnational levels, as well as specific individualized follow-up of the child beyond borders.

WAN has set minimum common standards for child protection, supported by joint approaches and harmonized procedures. The strategy consists of eight steps for child protection, from the identification to reintegration process, including the assessment of the family situation and the child environment; the opportunity to place the child out of its family to ensure better protection and guarantee its best interests. Reintegration is monitored in the two years following return.
The power of a network can be very useful in highlighting the human rights concerns of a particularly hidden population that falls outside governments’ priorities and strategies. Cooperation amongst countries to ensure equitable and humane conditions in connection with international migration is recognized by the international community as vital for effective migration management. International instruments call for cooperation between states to promote good governance of migration and protection of migrant workers.\textsuperscript{32}

Conclusion

This chapter emphasized the need to increase and improve data collection on the realities of the journeys that characterize irregular migration and has highlighted the utility and power of research to denounce human rights violations occurring during this particularly risky stage of the migration process, make governments accountable for them and better protect migrants rights through legal assistance and advocacy.\textsuperscript{33} Cooperation of different stakeholders at global, regional, national and local levels is an essential element of this strategy that enforces a “shared responsibility” to overcome existing barriers.

\textsuperscript{32} See for example: the International Convention on the Protection of the Rights of all Migrants Workers and Members of their Families; the Protocol against Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

\textsuperscript{33} On 22 April 2013, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) held a Day of General Discussion about the importance for migration statistics in the protection of human rights and in the design of evidence-based policies and decision making. Through an exchange of the different experiences and good practices in the systematic collection and analysis of migration data, participants learnt about the challenges to closing gaps in methodologies, quality and practices as well as the solutions that are being adopted to gain information on the protection of rights and that data on habitually "hidden" populations - including irregular migrants, migrant domestic workers, migrants in administrative detention, children of migrants. This was a public meeting in which representatives of governments, UN bodies and specialized agencies, intergovernmental organizations and non-governmental organizations participated. For more information please click here.
Privilege a human rights approach above all, when applying the necessary protection framework.

Improve communication channels between relevant stakeholders (including sailors, border guards and people in charge of rescue operations) for data sharing, exchange statistical non-personal data, and establish data-sharing agreements.

Develop mechanisms to ensure that the data collected by different stakeholders is comparable.

Establish partnership at national, regional and international level to facilitate the process of data collection and sharing and also to ensure better dissemination and outreach activities.

Develop databases to systematically store data, simply linked to everyday work –for instance about people accessing the services provided by the NGO- and use those to inform policy-making.

Compile other relevant primary or secondary data, including by collating data from various institutions at the national level (e.g. population censuses, surveys, and interviews): this is useful to understand the context and the target but also to avoid researching on topics already covered by other organizations.

Encourage the participation of migrants directly, that can provide detailed information about their stories and can feel empowered by the research process in itself: listen to migrants stories and explain to migrants the power of their experience, how this can be used, and that other people share the same situation.

If feasible, beyond stories, develop case management and procedural tools to increase the efficiency of legal advice: combine migrants’ stories and information regarding their experience with the existing legal framework to classify data according to their potential procedural use.

Ensure that all processes and procedures are sensitive to age, gender and diversity.
Raising awareness on migrants’ rights

Communication strategy

Giving voice and visibility to the problems many migrants face, using their own words as well as their own experience, can have a positive impact on public perception. As part of a strategy to uphold migrants’ rights, communication is crucial to circulate the results of organizations’ work and engage with more potential partners and allies, as well as to have a broader impact on public opinion.

Basic communications tips for migrants’ rights NGOs

Production (creating your stories) – should be done by the organization.
1. Be clear about your objective: don’t take any communications action without relating it to a measurable, core objective of your organization.
2. Back up your story: the average journalist/reader is not an expert and is sceptical. Use authoritative facts and figures to persuade them. Drain out the drama; use neutral language. Let the facts tell the story; show, don’t tell.
3. Find a fresh angle: people are saturated with messages of suffering and are becoming immune. A positive approach to a story can get you heard, while drawing attention to the negative stories that you really want to push.
4. Use a unique format: use info graphics, photography, video (even from a mobile phone) rather than text (which can’t go viral). You have the tools – use them. Surprise people.

Distribution (sending your stories out) – can be done by volunteers
5. Use today’s distribution tools: get on Twitter and learn how to use it; it’s an activist hub, but also valuable for monitoring. Wordpress (blogs)/and YouTube (video) are also important tools and easy to use.
6. Cultivate your contacts: coffee is the best social media, and activists represent a small community. Don’t sit behind a screen; get out there and build relationships – it is worth the investment.
7. Considering international media outreach: if your story is big enough, target international media to get on the national media’s agenda that way.

Monitoring (checking how well your stories were received) – can be done by volunteers
9. Learn the landscape: see who is writing about your issue, who the influencers are, and send your next announcements to them.
10. Check back on your objective: did you achieve it? Feed your lessons learned back into your production.

How to build a campaign

Running a campaign constitutes a way of bringing a message to the attention of policy makers and the general public, seeking both awareness raising and political change. A campaign can be conducted at global and local level. In the first case, it serves to disseminate the message to a broader audience and influence decision makers. Locally it enables for adapting the message to different realities in the field, while ensuring that concrete outcomes reach final beneficiaries.

expert insight

LESSONS LEARNT FROM AN INTERNATIONAL CAMPAIGN

Terres des Hommes International Federation (TDHIF) consists of ten member organizations based in different countries that provide active support to children, without racial, religious, political, cultural or gender-based discrimination. In 2001 TDHIF launched an international campaign on the issue of child trafficking. After ten years, an assessment of the campaign highlighted some important lessons learnt that could serve as an example on how to build an international campaign.

From the publication called “Beyond a Snapshot”, here are some useful tips to build a campaign:

➔ Speak a common language. Developing a glossary.
➔ Include a period of fact-finding in the preparation of the campaign and don’t rely only on pre-existing research on the issue.
➔ Ensure strong coordination to avoid a different set of priorities across the participating organizations or even contradictory message.
➔ Work if possible with pre-existing networks, especially at national/local level. In the absence of any available coordination structure at national/local level try to identify the most experienced and legitimate organization in the selected issue.
➔ Constantly inform the campaign and its participating members with up-to-date evidence and examples of “good practices”. Maintaining a digital library on the topic that is the subject of the campaign. Be aware that alternative dissemination methods should be made available in case internet connection is not easy to access. Moreover, publishing and disseminating reports on good practices and manuals is not sufficient in itself, but needs to be supplemented by suitable training programmes (possibly on-line training, preferably interactive).
➔ Identify harmful side-effects of the chosen message. Monitoring and evaluation should be carried on throughout the campaign and emphasis should be put on the feedback collected from the target group of the campaign.
➔ Make sure that the objective of the campaign is a priority for every country in which the campaign will be disseminated. Therefore, wherever possible the campaign should set different degrees of achievement in order to adapt the objective to the situation experienced in the country.
➔ Manage public information and relations with the media. For example, develop a “grading system for press review”, a method for objectively assessing the quality of newspaper reports. Additionally, organize short courses for journalists and awarding prizes to the authors of good quality articles.
Migrants in the destination country: flexibility and vulnerability of immigration status

Many migrants go through different statuses at different times; for example, they may migrate regularly, lose their status, and later have the opportunity to regularize their status. Regular migrants can move into a situation of irregularity after loss of employment or residence status, arbitrary confiscation of documents by employers, rejection of a claim for international protection, etc. The numerous routes to becoming an undocumented migrant demonstrate the flexibility of immigration status and how migrants can arbitrarily slip between “regular” and “irregular” status.

The lack of a stable residence status contributes to the sense of isolation that migrants often experience in the country of destination, compounded by the predicament of being irregular and potentially being criminalized upon disclosing their status to those who could offer support. This further brings marginalization, destitution, and even exclusion from society, resulting in greater obstacles in accessing the fundamental rights irregular migrants are entitled to. There are large discrepancies between human rights norms and their implementation, as States Parties who have ratified various international human rights instruments often fail to comply with their obligations. Non-discrimination, together with equality before the law and equal protection of the law, constitute a basic and general principle relating to the protection...
of human rights. The Universal Declaration of Human Rights (UDHR) confirms that human rights apply to all persons, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

This chapter addresses conditions faced by undocumented migrants in their country of destination, starting from the consideration of the importance of using the right terms and communicating carefully to the media, the public at large and policy makers in order to avoid discriminatory discourse towards an already vulnerable population. Discriminatory attitudes can also create barriers in accessing rights and undocumented migrants face many obstacles when seeking housing, healthcare and education. Mainstreaming migrants’ rights into public policies reaffirms governments’ obligations to protect, promote and fulfill the rights accorded to undocumented migrants by the legal framework in place. A section on labour exploitation and gender based-violence looks at how the legal framework in place can best be used to seek justice and enforce fair working conditions for undocumented. Finally, building capacities through empowerment, as a way of obtaining increased protection for undocumented migrants, is illustrated through examples of using community work and unionizing migrant workers.

Monitoring, reporting and denouncing violence: choosing the right terminology and communication tools

Advocating for the use of the term “undocumented migrants” (or alternatively, “irregular migrants”) as opposed to “illegal migrants”, in referring to migrants without a valid residence permit, is a strategy increasingly being taken by a multitude of non-governmental organizations, local authorities, professionals and migrants’ organizations to influence public opinion about migrants. Hostile terminology where irregular migrants are referred to as “illegal” can lead to discriminatory behaviour, hinder public acceptance of migrants, and exacerbate social exclusion. Being in a country without the required papers is, in most countries, not a criminal offence but an administrative infringement.

### Useful Resource

The European Union Fundamental Rights Agency (FRA) published a comprehensive comparative report on the fundamental rights of irregular migrants in the European Union in 2011. The FRA reviewed available literature and legal sources, sent a set of questionnaires to national and local authorities as well as civil society representatives and interviewed migrants in an irregular situation and those who work with them. Based on the findings of this research, the report advises on how fundamental rights should be incorporated in policies, laws and administrative practices affecting migrants in irregular situations.
Beyond Irregularity

CRIMINALIZATION OF IRREGULAR MIGRATION

Human rights authorities have repeatedly emphasized that irregular migration should not be criminalized.

- The United Nations Working Group on Arbitrary Detention has expressed the view that “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration”.
- The UN Special Rapporteur on the Human Rights of Migrants, Francois Crépeau, in his 2012 report to the Human Rights Council, noted that, “it is important to emphasize that irregular migrants are not criminals per se, and should not be treated as such”.
- The UN High Commissioner for Human Rights has stated that, “crossing a border or residing in a country without the legal permission to do so should at most be considered an administrative offence”.
- Criminalizing irregular migration tends to have a disproportionately negative effect on the rights and well-being of the migrants involved. Additionally, most policies of criminalization fail to reach their objective of deterrence. In May 2011, a Global Roundtable organised by OHCHR and UNHCR on the issue of alternatives to migration-related detention concluded that there is no empirical evidence that detention deters irregular migration, despite the often significant cost to States of maintaining such a detention infrastructure.

Some countries have witnessed an increase in racist and xenophobic behaviour and acts against migrants, including in the form of physical violence and hate speech by political groups and officials, which is partly due to exacerbated fears about migration in the context of the global economic crisis.

IPPR, “Beyond Borders: Human Trafficking from Nigeria to the UK”

The police continued to ask me questions; they shouted at me saying I would be deported or arrested if I didn’t tell the officers R’s address, or any address they could take me to. I didn’t know any address to be taken to and could not recognize R’s house. The police officers then brought me to the police station where I was questioned again and arrested.

- Female

This atmosphere of suspicion and hostility towards migrants in an irregular situation has serious implications for the protection of their human rights. During a workshop held in Athens in December 2012, Greek and international NGOs reported that racist attacks against migrants had recently become more numerous and more violent, resulting in more severe injuries. The near complete absence of accountability of the police for overt psychological and physical assaults against migrants on the streets and in police stations in Athens and elsewhere, plainly visible to any passer-by, are threatening the very basic elements of a democratic society. Incidents of torture and ill-treatment in police custody and prison leave migrants with no access to protection, justice and redress. Human rights activists in Greece have begun mobilizing to monitor these facts, as well raise awareness among the general public and policy makers to identify offenders and provide redress for abuses.

Measuring, monitoring and combating hate crimes in Greece

The Greek National Commission for Human Rights, the UN High Commissioner for Refugees (UNHCR) and 23 NGOs created the Racist Violence Recording Network in October 2011, which aims to record racially motivated incidents and develop a series of proposals to prevent such crimes, as there is no official national mechanism to deal with such incidents in Greece. Activities have included seminars to teach people how to file an attack through the network in order to collect reliable data but these have not yet proven to be successful as still the number of filed complaints for racist violence does not match the reality.

According to data collected in 2012, 15 out of 80 recorded racist attacks included incidents where the police used force during identity checks and ill-treatment at detention. Other failures of law enforcement officials included official documents being destroyed, lack of a systematic method in investigating and addressing claims, and delays in the prosecution and punishment of perpetrators. Additionally, very few incidents are reported, as migrants fear reprisals, arrest and deportation but also mistrust the justice system due to law enforcement officials protecting their colleagues by refusing to speak out or testify against any abuses.

The network has a website where a section is dedicated to additional useful tools that have been implemented in many different countries with the overall objective of combating racism and discrimination.

The present situation in Greece has also suffered from a general lack of objective reporting by mainstream media, with the exception of some pieces of noteworthy coverage. There is a need to build a line of communication between civil society organizations and journalists in order to address the urgency of the issue in relation to detention conditions, deportations, etc. Civil society should take on a role of experts and feeding facts and figures, providing time to talk, explain, especially legal areas as very few journalists have the knowledge and time to grasp such complex jargon.

The role of social media cannot be ignored, as it can be a very useful tool for creating and encouraging ‘citizen journalism’ at the grassroots level which is key for developing awareness, especially about fast developing issues. Addressing negative perceptions of migrants within host communities, including in the media, is essential for promoting integration.

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Drop the I-Word is public education campaigns powered by immigrants and diverse communities across the United States that value human dignity and are working to eradicate the dehumanizing term “illegals” from everyday use and public discourse. According to the promoters of the campaign, the i-word strategy has been moved into the media by a group of people and organizations committed to halting and derailing reasoned, informed debate and policy on immigration. The Applied Research Center (ARC) and its daily news site, Colorlines.com, decided to launch the Drop The I-Word campaign and called on media outlets and elected officials to uphold reason, due process and responsible speech by dropping the i-word. As a racial justice think tank and home for media and activism on those issues, ARC’s mission is to popularize racial justice and prepare people to fight for it.

The campaign is complemented by a set of tools that can be used to support this initiative:

- **Journalists resources** include an Immigration Stylebook, FAQs and information for outlets that want to drop the i-word;
- **A Campaign toolkit** contains key information, activities and actions for individuals to take and to use with groups (i.e. possibility to send an organization pledge and endorsement; sample to write a resolution; sample letters to address editors; a discussion guide supported by a video about the campaign; and images and graphics that can back general activities).
- **The Action Guide** is a very handy “step-by-step” manual that gives suggestions on how to take action according to available resources and desired degree of involvement.

As a consequence of this campaign and related efforts of the migrants’ rights movement, in April 2013 the Associated Press decided to remove “illegal immigrant” from its coverage. Similarly, the Italian news agency Adnkronos announced on 4 April 2013 that it would no longer use the term “clandestino” - a term in Italian that is often related to the criminalisation of migration, racism and xenophobia - following the terminology campaign led by the President of the Chamber of Deputies, Laura Boldrini.

Proper terminology combined with a communication strategy that has carefully considered its objective, drafted its message, selected its tools and adapted to its audience is a crucial need for NGOs to progress in their work in terms of better protection and promotion of migrants’ rights.
Ensuring irregular migrants’ rights are protected in public services and policies

The realities faced by undocumented migrants in their country of destination are widely misunderstood and sometimes even overlooked. Migration management discourse is often used to justify policy discrimination, which in practice means that local authorities and service providers act as immigration authorities instead of performing their duties.

IPPR, “Beyond Borders: Human Trafficking from Nigeria to the UK”

When I told them I was homeless, they didn’t care. That was really terrible. There should be something better that you could do. Not just let a young girl at 17 to, you know, walk around the street. It was really terrible.

- Female

One of the most striking deprivations of access to basic rights for irregular migrants is the right to health. For migrants, a worsening of their physical and mental health is more likely to occur owing mainly to poor access to health care services and the continual fear of being discovered and expelled. A high percentage of undocumented migrants do not access any kind of health care even if they are entitled.

The denial of this fundamental human right can be displayed in a variety of situations that go from conditions of extreme emergency, where the life of the person is threatened, to circumstances that deal more with long term care that although not urgent are deemed necessary for the wellbeing of the person.

In Morocco, Medecins Sans Frontieres (MSF) experience demonstrates that the longer sub-Saharan migrants stay in Morocco the more vulnerable they become. MSF’s data indicates that the precarious living conditions that the majority of sub-Saharan migrants in Morocco are forced to live in and the wide-spread institutional and criminal violence that they are exposed to continue to be the main factors influencing medical and psychological needs.

Women’s Link Worldwide (WLW), a Spanish NGO working on women’s rights, has conducted research on violence perpetuated against irregular migrant women while they are migrating and when they finally end up either in Morocco or Spain. Their findings shows that the organizations that currently offer their services to this population – especially in Morocco - are limited in number and resources and, in general, have difficulties gaining access to women, who are extremely isolated and very often controlled by traffickers. Furthermore, due to their immense fear of deportation, these women often do not seek the services they require. They do not have access to basic services and necessities, such as drinking water, housing, food or health care, and they suffer constant violations of other human rights, including the right to physical integrity. For the most part, migrant women are only able to access care when civil society organizations intervene in the process.


41 For more information on WLW research activities please visit their website.
Beyond Irregularity

Mainstreaming access to health care for undocumented migrants into the public health system in Morocco

To avoid creating a parallel system of care in the Oriental Region of Morocco, Médecins Sans Frontières (MSF) increased its collaboration with the Moroccan Ministry of Health in early 2011 and reduced the number of direct medical consultations they provided, and focused on assisting and supporting sub-Saharan migrants’ access to public health facilities. Working with regional health authorities, hospitals and health centres, pharmacies and members of the migrant community, MSF staff has helped to ensure that sub-Saharan migrants are able to receive care via the Moroccan system.

In 2011 the Moroccan government passed Law 34-09 relating to the “Health System and Offer of Care”. This law affirms Morocco’s commitment to the right to health as a fundamental human right (art. 1), equality of access to care and health services (art. 2) and respect for a person, their physical integrity, their dignity and their privacy (art. 7). MSF teams in Oujda have witnessed a reduction in the discriminatory and bureaucratic obstacles that were preventing sub-Saharan migrants from receiving the medical care they needed. Yet considerable challenges remain in ensuring that the medical and psychological needs of sub-Saharan migrants are met, particularly with regard to non-emergency, secondary care, care for people with mental health problems and protection and assistance for survivors of sexual violence.

Building alliances and solidarity networks among professionals working with undocumented migrants can be helpful in overcoming administrative barriers or simply changing negative attitudes towards a vulnerable population that is too often believed to have no rights. This is also true in countries where despite legal entitlements and availability of services, migrants still find many obstacles in accessing healthcare due to ambiguity in legislation, discretionary power of public and healthcare authorities and costs of services provided.

42 For a comprehensive analysis of main barriers in accessing healthcare for undocumented in Europe, see The European Union Agency for Fundamental Rights (FRA), Report on “Migrants in an irregular situation: access to healthcare in 10 European Union Member States” - FRA 2011.
Building a health care policy network to ensure adequate service provision for undocumented migrants in Italy

The Italian Society of Medicine and Migration (SIMM) created the Local Group for Immigration and Health (GrIs) in the 1990s, a local healthcare policy network that seeks to promote, support and advance the work of professionals who provide health care assistance to undocumented migrants. Each GrIs centre serves as a localized meeting, advocacy and project-development hub bringing together healthcare workers of all disciplines, with 12 centres situated throughout Italy. The centres provide regional and local support for the management of access to public healthcare. Additionally the centres advocate on a local level, targeting healthcare service providers and managers. They identify key administrative barriers to undocumented migrants’ access to healthcare and propose solutions at the local level for a better provision of healthcare to undocumented migrants in Italy.

SIMM, together with the GrIs and the Italian Society for Paediatricians, jointly established an Italian working group on migrant children, called the GNLBI, whose overall aim is to facilitate access to health for all migrant children. The research collected by the GNLBI is generally used for advocacy purposes. For example, in 2010, the Italian Society of Paediatricians and SIMM issued a joint statement about the fundamental rights of migrant children. The statement called for access to a family paediatrician for all children. It became one of the most relevant issues carried out in the inter-regional taskforce set up between national and regional levels of government to analyse access to healthcare for migrants. The joint statement among regions was approved in December 2012 and will become law in 2013. Although not having the full effect of law, it stands as an official document urging regions in Italy to implement and interpret current legislation to guarantee access to a family paediatrician for all children, without variance among the regions.

The international human rights framework protecting migrants’ rights is a core element which lies at the base of strategies, actions and initiatives implemented by NGOs. Professionals and care workers working together with NGOs aim to overcome the barriers to access basic rights and try to close the gap between legal entitlements and the situation in practice.
Beyond Irregularity

Promoting decent work for all and fighting against exploitation

Given their precarious status, irregular migrants are highly vulnerable to abuse and exploitation by their employers, migration agents and criminal gangs. When migrants are afraid of being detected, they are unlikely to come forward to demand fair treatment by employers. Criminalization together with the unavailability of legal aid in employment tribunals worsen an already complicated situation characterized by the obstacles described above and related to the concrete difficulties that undocumented workers face in regard to access basic social services such as health care, housing and education.

In some sectors of the economy, such as agriculture, construction and domestic work, there is a massive presence of irregular migrants. These workers are particularly vulnerable and often subject to all kinds of abuses. They often work long hours in dangerous and/or unhygienic conditions; many do not receive their wages or receive less than was agreed upon; sometimes workers are fired without being given due notice. If an industrial accident occurs, the lack of official proof of employment renders it complicated and often impossible to have any health care refunded. By denying migrants fair working conditions, employers are able to respond to the growing consumer demand. Companies often resort to cutting costs by lowering standards of working conditions and irregular migrants are the first to be affected by such policies. In a situation of forced labour, the power of the employer to impose conditions and rules is absolute and the worker is unable to refuse without facing some kind of punishment, e.g. under the menace of a penalty.

Temporary work, precarious contracts, subcontracting, mobile schedules, dependency of employees and undeclared employees have all been tried out first on foreign workers. “Have work but not the worker” appears to be the guiding principle on the demand side, therefore initiatives should try to prosecute those responsible for not safeguarding basic safe and fair working conditions and increase assistance and support for those that are victims of labour exploitation.

The right to fair working conditions in international human rights and labor law

The principle of safeguarding safe and fair working conditions such us remuneration for all workers, including those who are undocumented, is expressly protected in various instruments, which attempt to promote equality amongst both migrant workers and nationals.

International labor law:

ILO-Convention No.143 on Migrant Workers [Supplementary Provisions], adopted in 1978. The convention addresses migration in abusive conditions. Part I applies to all migrants, including undocumented migrants, and focuses mainly on the fight against illicit and clandestine trafficking in labour. Article 8 and 9 state that any migrant worker shall not be regarded as in illegal or irregular situation by the mere loss of his employment, which shall not itself imply the withdrawal of this authorization of residence, or as the case may be, work permit,

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and that undocumented migrants workers shall “enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security or other benefits”.

In addition, the ILO has developed the International Multilateral Framework on Labour Migration within its Decent Work Agenda. This document is a nonbinding framework for a rights-based approach to labour migration that develops a comprehensive compilation of relevant principles, guidelines and best practices in relation to labour migration. “Decent work” is an objective defined as “freely chosen employment,” supported by “fundamental rights at work,” with an income sufficient to “meet their basic economic, social and family needs and responsibilities,” and an “adequate level of social protection for the workers and family members.” Within the fifteen broad principles of the framework, the three main principles that directly concern the rights of undocumented migrant workers are:

- Protection of human rights for all migrant workers;
- Promotion of social dialogue as the main way for integration;
- Implementation by the government, in consultation with social partners, of measures to prevent abusive practices, migrant smuggling and trafficking in persons.

**International human rights law:**

International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the UN General Assembly in 1966. Article 6 and 7 of the Covenant commit signatory parties to “recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right” [Art.6] and to recognize “the right of everyone to the enjoyment of just and favourable conditions of work” [Art.7].

International Convention for the Protection of the Rights of All Migrant Workers (ICMW), adopted by the UN General Assembly in 1990. Several articles of the Convention refer to fair working conditions. Article 25(1) of the Convention refers to the right to fair conditions of employment by stating, among other, that “Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration”. Article 26(1) refers to the right to join trade unions and others associations and Article 2 (1) refers to the right to social security.

General Comment No. 1 on Migrant Domestic Workers in 2010 during its 13th session. While highlighting the problems faced by domestic migrant workers and members of their families throughout the migration cycle, it describes main protection gaps existing within the legal framework and in practice. The General Comment contains recommendations in order to generally improving working conditions; precisely, the CMW encourages States Parties to ensure access to social security and health services, fulfill the right to organize, guarantee access to justice and remedies, as well as facilitate access to regular migration status.
Having a basic knowledge of legal remedies available for undocumented migrants is of utmost importance for organizations assisting them. NGOs can provide undocumented migrants with reliable information on their rights when seeking access to justice and in facilitating early contact with a lawyer or before approaching a national court. Advice and preparation early on in the legal process are often significant in the successfulness of the case. Engaging with national courts can be an effective way of reiterating the rights of migrants to authorities, building national case law and standards that will support undocumented migrants in the future, and holding countries accountable to both national and international human rights standards.

special focus

Building a case: labour exploitation of undocumented workers

Cases of labour exploitation are normally addressed on national level through two different strategies: breach of employment law or under anti-trafficking laws. Methods differ under both of these strategies but there are some key areas of concern for both.

1. Collecting evidence

It is notoriously difficult to provide evidence of labour exploitation and for this reason workers need to be proactive in collecting it. Legal systems are starting to develop the principle that if a worker can prove employment relationship with their employer then the burden of proof is on the employer to prove that they met legal working conditions. Some methods of proving employment include: a) in depth knowledge of the workplace: for example a detailed floor plan of a restaurant kitchen or a house; b) leaving a ‘mark’: domestic workers can signal their presence in the workplace by reporting things such as something they had left under the bed when cleaning; c) photos of the work place: these are particularly powerful if they show the exploitative conditions; d) written records of hours worked, pay received and duties; e) a report or statement from a labour inspector; f) statements from other employees. This can be an on-going process and a protectionist measure for workers in case their labour conditions deteriorate in the future.

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44 This example is taken from Platform for the International Cooperation on Undocumented Migrants (PICUM), “Using legal strategies to enforce undocumented migrants’ human rights,” PICUM 2013 (to be published in May 2013).
2. Foreseeing alternative and protective measures in case of repercussions linked to the migration status

Reporting labour exploitation or bringing a case to court often results in proceedings related to the migration status of the worker and depending on the practice of the country concerned, possible arrest and an increased risk of deportation. Undocumented workers should also be aware of what provisions are available for them with a pending labour court case – there may be a ‘bridging’ visa or entitlements to certain facilities such as health care or shelter. The opportunities for gaining, or retaining, residence status in the country of employment after the case has been decided must also be explored.

3. Building strategic alliances and advocacy

During proceedings and even before, as a preventive strategy, it is useful to build alliances with trade unionists, legal professionals, relevant NGOs, state agencies, immigration officials, labour rights officials and the media. Without advocacy and follow-up alongside legal action, the collective gain from court cases, even if they are successful, will be limited. Media attention, naming and shaming and political pressure can all help to ensure that employers comply with court decisions and labour standards.

Labour exploitation can be dealt with in or out of court and there are benefits to both strategies. As was described in the previous example, advocacy and strategic activity can help to push for higher enforced labour standards and prevent exploitation of undocumented workers.
Beyond Irregularity

Case Study

Compensation for trafficked persons as a tool to combat human trafficking and labour exploitation

COMP.ACT is an initiative by the NGOs La Strada International and Anti-Slavery International to bring about systematic and practical changes to ensure that trafficked persons receive compensation for their suffering and unpaid labour. Its innovative approach looked at trafficking as a phenomenon caused by a variety of factors (so-called root causes) that occur in all stages of the trafficking process: in countries of origin (poverty or unequal gender relations), destination (demand for cheap labour or repressive migration policies) and during the migration process (lack of safe/regular migration opportunities). This approach requires that human rights are at the core of any anti-trafficking strategy. It integrates the norms, standards and principles of the international human rights system into legislation, policies, programmes and processes.

Compensation as a restorative, preventative and punitive function was a key element of the project, which ended in December 2012. The results of the project in fourteen European countries, in terms of research, test cases, and developing guidelines for professionals, are summarized in a toolkit that explains in a very simple way key steps when seeking compensation. It includes a guide for lawyers, counseling centres and service providers.

One of COMP.ACT’s successes has been to mainstream access to compensation in anti-trafficking policies and services offered to trafficked persons and increase in the number of persons applying for and actually receiving compensation.

Guidance and tips on how to collect evidence and build a case can be very useful also for other cases of human rights violations. According to the legal system in place and available remedies – at national, regional and international level – different support and strategies might be suitable (see Part I on the legal framework for additional resources).

Capacity building for the empowerment of undocumented women

Gender vulnerabilities increase the likelihood of migrant women to become undocumented, a status under which they are greatly exposed to systematic violence, abuse and discrimination. The majority of undocumented women arrive in their destination...
Community work as tool for change

Migrants Rights Centre in Ireland (MRCI) is a non-governmental organization working in Ireland to support undocumented migrants’ rights. Participation is a cornerstone of MRCI social reform agenda and enables those distanced from formal structures of power to actively redress imbalances.

Since opening in 2001, MRCI received many requests for support from migrant domestic workers. Mostly female, these workers were particularly isolated and their work was unregulated as their place of work was often their place of residence. Employers had unilateral control of work permits and so workers had few options if subject to violence or exploitation. Despite the high rates of exploitation, the Irish government was failing to address these issues occurring in private homes. Rather than continuing to work on a case-by-case basis, MRCI developed a participatory-based strategy so that migrant domestic workers could effectuate social and policy change. These women initially came together to participate in a “support group”.

By creating a social space where group activities were linked to political change, they succeeded in creating a public and political space for migrant domestic workers to challenge their situation. To enable undocumented women to participate in decisions and structures that affect their lives, MRCI “start where the community are at” and link into existing social networks and support channels. To enable maximum participation, meetings were held on Sunday. A safe space was created so that the immediate needs of domestic workers could be shared and the group developed according to these needs.

MRCI has shown the impact that a community work model can have in advancing the rights of undocumented migrants. MRCI “Tools for Social Change” is a useful resource guide for community work containing all lessons learnt and best practices arising from its direct experience.
Beyond Irregularity

Unionizing undocumented workers

To prevent and stop exploitation and abuse, undocumented workers must be able to effectively exercise their rights. Empowering and developing undocumented workers’ leadership capacities counteracts a system of dependency. Instead, workers are able to defend themselves and even engage in and influence the decision-making affecting their lives. These capacities are essential if workers are to become agents of their own rights. For an undocumented worker acting alone, asserting one’s rights remains a major challenge. Unionizing undocumented workers is therefore very important, since it puts a worker in a much stronger position. There are, however, several obstacles preventing undocumented workers from joining unions, and not all traditional union structures and working methods are directly applicable to undocumented workers.

The benefits of joining a union for undocumented workers are the same for all workers who wish to be part of an organized association that protects and furthers their rights and interests. Unions promote fair working conditions, defend workers’ rights and gather strength by organizing workers. An additional benefit of union membership for undocumented workers is the ability to receive a union membership card. A union membership card is by no means a residence permit, but is proof of residence in the country of destination.

Building solidarity among workers in Morocco

In May 2012, for the first time during the May 1st celebrations in Rabat, a group of more than 160 migrants, documented and undocumented, the majority living and working in Morocco for several years, marched together with the Moroccan Trade Union ODT (Organisation Démocratique du Travail) under the slogan “We are all workers”. While asking for decent and fair working conditions for all, these migrants took the opportunity and spoke about the abuses and human rights violations characterizing their life in Morocco and highlighted the absence of support and protection available to them.

The first Congress launching a trade union for migrant workers in Morocco was held a few months later, on 1 July 2012, under the umbrella of the ODT and with support from a trade union protecting the rights of Moroccan migrant workers abroad. Since its establishment, ODT-Migrant Workers has focused its efforts on collecting evidence about the number of undocumented migrants living in Morocco and has used their personal stories to raise awareness about racist attacks and exploitation experienced in the work environment, as well as difficulties in accessing basic services like healthcare, housing and education. By circulating press releases and reports, participating in public conferences and appearing in the written press, broadcast and social media, ODT-Migrant Workers quickly gained visibility and public support, and succeeded in establishing fruitful partnerships with several NGOs and government institutions.

On the occasion of International Migrants Day, on 18 December 2012, ODT-Migrant Workers, in collaboration with the National Council for Human Rights, held a conference entitled “Migrants and the New Moroccan Constitution” that explored possible strategies to improve the rights of irregular migrants within the existing legal framework. The event launched also a campaign for regularization that is one of the next goals of ODT-Migrant Workers’ mandate.
In many countries, reaching a certain degree of organization and leadership development within the migrant community is an important step that can bring about collective action and mediation thanks to the philosophy of “power in numbers”. Among the varied possibilities offered to undocumented migrants to challenge their employers, recognizing the potential of workers joining together is proven to be effective rather than working alone.

Conclusion

Discrimination, criminalization, isolation, marginalization, destitution, and sometimes full exclusion from society are part of the realities faced by undocumented migrants once they reach their country of destination. Positive terminology can be considered tools for change that can help in improving migrants’ rights and facilitate a process of social cohesion that should be of utmost importance for societies having undocumented migrants among its population. Not having documents - or a permit to regularly residing in the country - should never prevent them from claiming their rights, seeking justice and making all possible efforts to become fully members of the society where they live and often work.

• Non-discrimination, together with equality before the law and equal protection of the law, constitute a basic and general principle relating to the protection of human rights. Efforts should be directed to close the gap between existing legal entitlements for undocumented migrants and the situation in practice.

• Carefully select terminology that doesn’t discriminate: being in a country without the required papers is, in most countries, not a criminal offence but an administrative infringement.

• Build a line of communication amongst civil society organizations and the media to disseminate information about undocumented migrants’ lives in the country of destination as a way of engaging public support and combatting racism and xenophobia.

• Enforce collaboration with local authorities and services in order to mainstream access to healthcare, education and housing for undocumented into public services and policies.

• Safeguard basic safe and fair working conditions by using the legal framework in place to enforce rights for undocumented migrants in courts at national, regional and international levels and through the UN reporting system.

• Invest in undocumented migrants’ capacities to speak on their own behalf by engaging directly with migrant community organizations, developing their leadership, organizing and unionizing them.
Stage Four: Return and Reintegration

Returnee migrants: the ability to exercise their choice and dignity of return

The “Beyond Irregularity” Project research considers return as part of a movement that starts with departure from the country of origin, entails crossing borders, settlement in the destination country and, in the end, return to the country of origin.

The third case study on “Return and Reintegration of Irregular Migrants from Europe to Nigeria” distinguishes three kinds of return:

- forced return, when the migrant is forcibly removed from the country of destination;
- compelled return, when a migrant left as a consequence of unfavourable circumstances and factors which abruptly interrupted the migration cycle; and
- chosen return, if a migrant did not face any form of pressure or coercion whatsoever when deciding to depart for his/her country of origin.

The latter two can include returnees who returned on their own “spontaneously” or through an assisted programme such as that offered by the IOM.

According to this classification, return can also be used by destination countries as an instrument of managing migration, through both policies designed to act as a “stick” – such as increasingly restricted access to the labour market and to public services – and policies to act as a “carrot” – such as packages of support offered to migrants who agree to return to their country of origin.

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Having a migrants-centered approach related to return requires focusing on the needs expressed by returnee migrants during the process of return, beyond the reasons that brought or forced them to go back to their country of origin in the first place. For instance, measures to support migrant workers’ social and occupational reintegration have been virtually overlooked so far. A migrants-centered approach implies putting the human rights of migrants at the core of policy making, as migrants whose rights are fulfilled are best able to reintegrate in their country of origin.

Notwithstanding the great differences experienced by returnee migrants according to the “type of return” – e.g. chosen, compelled, forced –, some human rights concerns are common to all types of return and help in identifying strategies in order to ensure that return occurs in a dignified and safe manner, according to international human rights standards. This chapter will first consider the situation of irregular migrants facing a deportation order that are often subject to detention during forced removals. The kind of support that is generally required goes from simply sharing the necessary information regarding the expulsion procedure, including informing them about their right for appeal as well as possibilities of claiming international protection or alternatives to return. The reasons why voluntary return should be prioritized are also described due to sustainability that is very much linked to the ability to exercise choice, as well as the prospect and opportunities for reintegration and the measures in place ensuring post-return monitoring. Different activities are included in the examples ranging from pre-return support, assistance and orientation in the country of origin and comprehensive programmes of return and reintegration based on strong partnerships between countries of destination and countries of return.

Detention of irregular migrants: protecting their rights when they face removal from the destination country

The previous chapter described the situation of extreme vulnerability and marginalization that characterizes many migrants’ lives in their country of destination. Expressively denying migrants their human rights can be a strategy to prevent and deter irregular migration, and return procedures are often conducted regardless of human rights standards allowing for safe and dignified return.

The 1996 UNHCR Handbook on Voluntary Repatriation: International Protection and the subsequent 2004 Handbook for Repatriation and Reintegration Activities attempt to clarify the meaning of “safe and dignified return” from UNHCR’s point of view regarding the situation of return of refugees. Both handbooks discuss the question of safety in commendable detail, focusing on three primary concerns: the physical, legal and material security of returnees. The 2004 handbook details UNHCR’s 4Rs approach to return, which entails a focus on voluntary repatriation, reintegration, rehabilitation and reconstruction.

Generally speaking there is a strong connection between dignity and the ability to exercise choice. For irregular migrants, dignity is trying to affirm itself as a legal norm recognized in international law: many civil society organizations advocate for a better definition of “dignity” and “safety” and some provided criteria that governments should adopt in their policies and programmes of return.
In August 2005 a group of NGOs issued a common statement addressing the EU and its Member States, highlighting the core principles that should be reflected in any policy and actions on return, whether this takes place in a voluntary manner – always preferable - or it is the result of a deportation order:

- Standards on removal and return should be applicable to all areas of the member states of the European Union territory including so-called transit, border or airport zones.

- Any forced removal must be carried out in accordance with the European Convention on Human Rights (ECHR), the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol (Refugee Convention), and other obligations under international human rights law. Risk assessment procedures must be carried out prior to the enforcement of removal orders: the principle of non-refoulement must be respected.

- Collective expulsions are prohibited by international law (International Covenant on Civil and Political Rights, article 13).

- Return decisions or removal orders should only be issued when any claim for international protection, including those based on the Refugee Convention, ECHR (particularly articles 3 and 8), and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), have been rejected and all remedies exhausted.

- Children should neither be forcibly removed nor detained. In accordance with the UN Convention on the Rights of the Child separated children should only be sent back to their country of origin where it is safe and in their best interests. This must be assessed on a case-by-case basis and should never be a forced removal.

- No action should be taken to remove any person who suffers from a serious illness, unless it can be established that he/she has real access to appropriate treatment and medical care in his/her country of origin upon return.

- Other vulnerable persons whose best interests are infringed upon by forced removal should be protected against such removal, including elderly persons, pregnant women.

- Victims of human rights violations like labour exploitation, sexual abuse, and criminal offences in general, should be able to obtain guarantees for redress before any return decision or removal order is executed.

- Every person subject to a removal order or a deportation order should have the right to an individual in-country suspensive appeal against these decisions. A sufficient delay to make this appeal effective should be provided by law.

- Interpreters, access to free legal aid and legal representation during the whole process of detention and removal should be provided by law.

- Use of force should comply with Council of Europe recommendations. Involuntary removal should always take place in safety and dignity, and with adequate safeguards to ensure that the right to life and mental and physical integrity are respected; removal must be in accordance with Recommendation 1547 of the Council of Europe.
Despite international standards protecting returnees, evidence of human rights violations linked to detention and removal operations of irregular migrants and unsuccessful asylum-seekers is consistent. Migration-related detention is based on administrative (as opposed to criminal) grounds and is used to establish the migrant’s identity or as a measure of custody before deportation takes place. Individuals are often detained even where the prospect of removal is unlikely because of the lack of co-operation from countries of origin or otherwise. Serious concerns have been expressed by international human rights monitoring bodies, such as the UNHCR, the UN Special Rapporteur on the Human Rights of the Migrants, and the Council of Europe all claiming that detention should be the absolute exception and the last resort.


**Case Study**

**Mapping the use of detention in irregular migration management**

The Global Detention Project (GDP) is an inter-disciplinary research initiative that investigates the role detention plays in states’ responses to global migration, with a special focus on the policies and physical infrastructures of detention.

To assess the growth and evolution of detention institutions, project researchers are creating a comprehensive database of detention sites that categorize detention facilities along several dimensions, including security level, bureaucratic chain of command, facility type (an exposed camp, a dedicated migrant detention facility, or a common prison), spatial segregation (separate cells for criminals and administrative detainees, for women and men), and size. This data is gradually being ported to the GDP website in the form of maps, lists, and country profiles.

Researchers have also undertaken an overall assessment of international law as it pertains to migration-related detention and begun profiling domestic policies and legal guarantees as part of a longer-term effort to assess the impact of law on detention practices and the degree to which the treatment of detainees conforms with international commitments.

Ultimately, the GDP’s goals are threefold: 1) to provide researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; 2) to encourage scholarship in this often under-studied aspect of the immigration phenomenon; and 3) to facilitate accountability and transparency in the treatment of detainees.
Often national legal systems do not have clear rules for administrative detention and migration detainees face legal uncertainties, including lack of access to the outside world, limited possibilities of challenging detention through the courts, and/or absence of limitations on the duration of detention.

In Europe several NGOs focus their work on the issue of detention of irregular migrants, trying to act as watchdogs whenever they have the permission to enter detention facilities.

Offering counselling and assistance to migrants detained in prisons in France

Since 1984, the French NGO La Cimade has held the right to enter detention centres and meet with foreign detainees. Imprisoned foreigners can be defendants or already convicted people, they can possess a valid residence permit or not. In any case La Cimade offers help and advice as to their administrative status (stay, deportation and what little protection against it they can have). Sometimes, it provides help in the legal field as well. When lawful, it can also accompany these people through procedures to guarantee them a proper access to their rights.

Such work is conducted with the help of Prison Insertion and Probation Advisers (CPIPs) and partner associations. Presently, La Cimade works with 130 volunteers (the Jail Committee) going into 75 penitentiaries to meet imprisoned foreigners. La Cimade volunteers mainly have a legal action but it also has a strong humanitarian impact.

Any useful information is given to the foreigner and suitable course of action, according to the situation faced, is established. In any case, once information has been given and advice offered, La Cimade’s volunteer makes sure that the prisoner decides alone what’s good for him or herself.

Immigration detainees are especially vulnerable to various forms of ill-treatment, whether at the moment of apprehension, during the period of custody or while being deported. In certain countries, authorities routinely resort to administrative detention of irregular migrants pending deportation, sometimes with no time limitation or judicial review. There are several reports examining the impact of these measures on the human rights situation of irregular migrants. When the grounds justifying detention are not laid down in national legislation in a clear and exhaustive manner, or when the detention is not carried out in compliance with the procedural or substantive rules as stipulated by law, human rights violations are most likely taking place. Principles like necessity and proportionality, the length of detention, any procedural safeguards to prevent arbitrary detention, and detention of specific vulnerable categories like children, are all elements that need to be carefully monitored.


Making return sustainable and ensuring reintegration in the country of origin

Many migrants develop their decision to return not only when they feel that they were able to accomplish what was foreseen in their original migration plan, but often when they realize that their expectations won’t be met and they wish to escape from exploitation and violence. The motives guiding return cannot be easily categorized and are highly context dependent. Sometimes return is forced by events that fall outside the responsibility of the migrants, such as global economic downturn, humanitarian crisis and conflict. In some regions, the high degree of “border porosity” allows greater circulation rendering the process of return more common and part of a continuum where re-emigration is highly possible. Return can also be imposed by the State authorities of the country of destination, when the migrant is caught in violation of the migration law and lacks the proper documentation authorizing their stay.

The “Beyond Irregularity” Project research has indicated that knowing about available options for return often did not influence return as a choice, but was a factor that can intervene in shaping the process and outcome of return.

Voluntary return is generally more cost-effective and administratively less cumbersome than forced return for the returning country. Countries of origin would also welcome voluntary return if it would ensure that the rights of their nationals are respected and would avoid the stigma and poor outcomes of forced returns. Voluntary return can be promoted and supported in many ways, ranging from pre-return support to post return monitoring.

IPPR “Homecoming: Return and Reintegration of Irregular Migrants from Nigeria”

I will say it is good, I came back to Nigeria because while I was there I always cry to God to come and remove me from the suffering I was going through because that was not the type of life that I wanted to live, I have always wanted to be a great woman by making the difference in my family, so coming back home is a thing of joy for me.

- Female

IPPR “Homecoming: Return and Reintegration of Irregular Migrants from Nigeria”

When you are there (Europe), you don’t experience what is happening back home, so when they convince them and they accept to return and they can see that they can find something to do so they are happy.

- Nigerian stakeholder

Comprehensive information packages and counseling, which include return information, ensure that migrants are aware of their options and can make informed decisions. It is important that such information be provided as early as possible after arrival in the country of destination. However, ongoing access to return information throughout various procedures is also essential, as it may encourage persons who are at other stages of the procedure and who lack the possibility to legalize their stay to return. After the decision to return has been taken, the continual provision of up-to-date country of origin information, including information on socio-economic conditions, will help the individual to prepare for his/her return and reintegration.

Reintegration assistance that is tailored to the individual’s profile and the country situation, including social and economic circumstances, contributes to the sustainability of return. Reintegration assistance can include vocational training, skills training, education grants, assistance with small-business
schemes and loans for business/micro-enterprise development. Vocational training programmes and grants for business/micro-enterprise development in the country of origin have been generally more successful than lump-sum payments. Good results have been achieved where assistance is offered to both the individual and the community to which s/he is returning. Participation by returnees in reintegration planning can ensure that assistance is tailored to specific needs and skills.

Nonetheless, the “Beyond Irregularity” Project research shows that a majority of returnees to Nigeria reported negative experiences, whether their return was forced, compelled or voluntary. Some respondents who were returned to Nigeria arrived at the airport with no one to meet them and could not contact the organization that they had been given the details of. Some ended up in detention in Nigeria or were met at the airport by their trafficker. Having the possibility to rely on a local NGO that can meet the returnee directly at the airport as well as provide support and all necessary information is a key element of sustainability.

case study

Assistance and orientation provided upon arrival

The Organization for Malian deportees (AME) is an NGO based in Mali whose main objective is providing first aid and orientation service to Mali deportees arriving at the airport, and subsequently supports them whenever they want to file a complaint for human rights violations experienced in the country of destination, during their stay or in the removal procedure. AME is present at the Bamako airport on a daily basis, meeting deportees as they disembark, and listens to returnee migrants, collects their stories and investigates more when necessary, in order to build cases on labour exploitation, gender violence, torture, and similar abuses. Next to legal aid, AME provides assistance for housing, healthcare and job placement and accompanies the migrant as well as their family and community of origin during the process of reintegration.

Since not all returnee migrants pass through the airport, AME also is present in some specific areas of Bamako to identify and offer its help to migrants having experienced expulsion from a neighbouring country. Since 2010, AME has offered similar support to voluntary returnees that wish to return to Mali but are unaware of possibilities to reintegrate in their country, both economically and sometimes even logistically (e.g. housing and education opportunities). Their reintegration plan is often developed in accordance with the National Policy for Migration that has a section dealing with returnee migrants.

AME relies on a wide network of local NGOs, lawyers and other professionals, as well as trade unions and the consular services of the countries from where migrants were expelled. AME conducts also advocacy work at national, regional and international levels, promoting the right of free movement and the principle of justice without borders.
Specific provisions should be foreseen for some vulnerable categories of returnees. With regard to the return of unaccompanied/separated children, for example, the appointment of a guardian in the host country, consultations with a guardian or a legal representative in the country of origin, as well as family reunification or placement in foster care in the country of origin need to be arranged prior to return. Trafficked persons found not to be in need of international protection may continue to require medical and psychological attention and specific reintegration support to ensure that they are not re-trafficked.

The “Beyond Irregularity” Project research has highlighted that some Nigerians who were trafficked were referred to support that was inappropriate for them. Some interviewees were afraid to be reunited with their family, yet support assumed family reintegration to be the final point – even when people had suffered abuse from their family or when placing them back with their original community would accentuate their loss of social networks and the shame they feared.

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**Case Study**

**Combating stereotypes about returnee migrant women**

Based in Bolivia, the Grupo de mujeres migrantes ran a series of theatre workshops developed as part of a self-esteem program for Bolivian women who returned home after living and working abroad. "We're Back!" enabled women to prepare and present their testimonies of migration and return in public spaces, working through their experiences and affirming their identities as women and migrants. The public performance element seeks to break down barriers and prejudices which returnees face in their family environment and the broader community.

By acting out lived experiences and giving undocumented women control of their representation and narrative drama, theatre, and film can also be a powerful educational tool for both participants and the audience. It has emerged as a popular means and process to enable undocumented women to come together and challenge their conditions.

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Often main difficulties result from the lack of cooperation between the destination and the origin countries. The “Beyond Irregularity” Project research identified that the lack of joined up and ongoing work around supporting returnees left gaps in the response. The fact that no systematic referral process exists between destination countries and agencies in the countries of origin, means that many returnees remain unidentified and not referred to the support that is eventually available to them.

There is generally a lack of a smooth transition between destination countries and countries of origin. Assisted voluntary return and reintegration programmes tend to be designed and administered by the countries of destination or international institutions rather than local governments in the country of origin, so there may be gaps in support that can only be identified by users and other providers who attend to the same demographic. There may also be nuances in reintegration needs – for example, between victims of trafficking and irregular migrants – which can only be distinguished through speaking with returnees about their experiences.

IPPR “Homecoming: Return and Reintegration of Irregular Migrants from Nigeria”

The phone just rings and rings. We don’t know if anyone’s there. And we don’t know anything about who these organizations are, their capacity to support or what they’ll do with our service users when they meet them … or if they’ll meet them. But often it’s the only option because they’re told they’ll be removed and it’s up to us to find someone, anyone who can help them even to leave the airport.

- UK Stakeholder

Linking pre-departure with reintegration

The European Reintegration Support Organisations (ERSO) is a network of non-governmental return counselling and reintegration support organisations working and closely cooperating in the field of migration and development. ERSO is active in Pakistan, Iraq, Mongolia, Cameroon, Senegal, Togo, Morocco and Sierra Leone.

ERSO network members believe that migration entails a potential of having a positive impact on the development of countries of origin/return (CoO) which can be unlocked and fostered by improving the reintegration of returnees in the local community of their countries of origin. Therefore ERSO’s focus is on the improvement of the social and professional reintegration of returnees and the involvement of the local society in that process (community-based approach).

The ERSO Network does not intend to promote voluntary return and persuade migrants to leave the EU, but to offer them support to take a free and self-determined decision on return and – if they decide in favour of the return – to help them to fully reintegrate in their local society. ERSO Network members strongly distance themselves from providing assistance to forced return initiatives. Nevertheless this category of returnees is also in urgent need of reintegration support and cannot be ignored. Therefore ERSO Network members still provide these returnees with support and assistance after their return where possible.
Sustainable return will not be effective unless supported by a strong network of service providers in the country of origin. Moreover, independent monitoring during the post-return phase ensures that returnees are not subject to protection risks upon return to their countries of origin and that they can access reintegration services. Protection concerns can relate to the security and/or reintegration prospects of returnees, particularly where the overall situation in the country or the circumstances for specific individuals and groups (e.g. ethnic minorities, unaccompanied and/or separated children, and trafficked persons) remains fragile. Monitoring activities build confidence among returnees and encourage voluntary return. They can also help identify and address shortcomings in the return process.

**Conclusion**

While there is a growing awareness in destination countries about the human rights abused faced by irregular migrants in detention as well as court cases of unlawful deportations for which States had been found guilty, there is less awareness as well as redress for migrants who are returned to their countries of origin. A guiding principle on assessing sustainable return could encompass a number of rights (i.e. civil and political rights, access to public and social services, to property, protection against violence, etc.) but social factors must be incorporated in evaluations of sustainability and reintegration programming. This includes work to help people to rebuild networks as well as work to break down stigma and expectations.

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**Specific activities implemented by ERSO include:**

- impartial counseling and/or assistance to unsuccessful asylum seekers and migrants in an irregular situation regarding their voluntary return and reintegration;
- reintegration measures after return in partnership with civil societies in countries of origin; in order to contribute to the development of the local society the migrant returns to, tailor made reintegration packages are designed applying a community based approach;
- capacity building measures such as information and awareness raising campaigns aiming at informing potential migrants about migration laws and policies and implications of irregular migration.

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**In Latin America a similar initiative called LATAM developed a network providing assistance from the identification of beneficiaries in countries of destination to their endurable reintegration in countries of origin. It pretends to reinforce and support Latin American civil society organisations with additional tools to respond to this phenomenon as well as to create links with European civil society organisations and networks.**

**Activities carried out by the Latam II project include:**

- the creation of a virtual platform linking the organisations’ network: it will be used at institutional level as well as a tool for people willing to return;
- and the definition of a common methodological protocol on the process of voluntary return and reintegration.

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• Promote voluntary and sustainable return, and develop information campaigns and awareness-raising strategies to inform potential returnees of all available options, as well as circumstances in countries of origin.

• Foster partnerships with key actors, and create appropriate referral mechanisms in the countries of origin linking with local organizations working in the community where the migrant originally came from.

• Train authorities and civil society actors on how to ensure humane and dignified returns in accordance with human rights standards.

• Monitor the situation of migrant detainees to ensure accountability and transparency in their treatment.

• Engage in return counseling, tailor responses to meet specific needs of returnees during and after the return process, and provide post-return monitoring.

• Encourage the participation of returnees in reintegration plans, and monitor reintegration activities that benefit the individual and the community in the country of origin.

• Promote cooperation between destination countries and countries of origin with regard to return and reintegration.
Conclusion

This guide has aimed at identifying practical solutions that address the human rights concerns of migrants at various stages in the migration process.

Human rights play a crucial role in the decisions to migrate and many migrants have all suffered some kind of constraint on their rights in their country of origin. Violence and fatalities are increasingly appearing as a common feature of international migration movement. Discrimination, criminalization, isolation, marginalization, destitution, and sometimes full exclusion from society are part of the realities faced by undocumented migrants once they reach their country of destination. During the process of return, detention and deportation are most likely to occur if the return is forced, and this clearly undermines the reintegration process in the family or community of origin.

The examples illustrated in this guide have tried to challenge laws, policies and practices which violate migrants’ rights and thus contain tools and information that undocumented migrants as well as their advocates can use to seek justice and compensation. The examples cited show how human rights protection starts in the country of origin, well before the migration process begins. Informing migrants about their rights, conducting research and collecting evidence, building alliances and transnational cooperation, undertaking political lobbying and strategic advocacy, developing communication skills and campaigning, and mobilizing and empowering migrants are all methods that should be used by a wide range of actors to promote a much broader acceptance as well as realisation of undocumented migrants’ human rights.

Beyond policies that prioritize irregular migration prevention and restrain the human rights of migrants, numerous initiatives undertaken by CSOs as well as governmental actors integrate a human rights approach, facilitating safe migration and ensuring migrants’ protection. This is a significant challenge that has rarely been adequately addressed, but practice on the ground has the potential to better inform the decision making process and stimulate policy change.