




# BOOK OF SOLIDARITY

PROVIDING ASSISTANCE TO UNDOCUMENTED MIGRANTS  
IN BELGIUM, GERMANY, THE NETHERLANDS AND THE UK

VOLUME/01

 PICUM

PLATFORM FOR INTERNATIONAL COOPERATION  
ON UNDOCUMENTED MIGRANTS

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# Introduction

“Und man sieht nur die im Licht stehen, die im Dunkel sieht man nicht.”  
*Bertold Brecht*

## Aim of the Book

In many countries in Europe, undocumented migrants live in a situation of marginalization. As they do not possess a legal residence permit, they are often excluded from services that help to meet basic needs such as health care, shelter, food and clothing, as well as legal advice and protection, education and training. Their exclusion creates social problems that need a response by civil society.

Many citizens<sup>1</sup> and civil organizations provide humanitarian support to undocumented migrants. The mission of this book is to highlight the manifold ways solidarity is extended to undocumented migrants in Belgium, the Netherlands, Germany and the United Kingdom. The focus of this book is thus on assistance to undocumented migrants and the rights of help providers. The reason for focusing on help providers and conditions in which assistance is provided (as opposed to the rights of undocumented migrants themselves) is due to the alarming tendency to criminalize assistance to undocumented migrants, which albeit in an indirect way strongly affects undocumented migrants themselves. Some member states of the European Union have provisions in their aliens laws to penalize assistance to undocumented migrants. The European Union recently approved of this approach by adopting a text that includes the same provision.

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

## A Word on PICUM

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

## Project Partners

PICUM has been the lead agency in executing this first phase of the Book of Solidarity Project. It has been assisted by two partners, BAG Asyl in der Kirche (Germany) and ASKV Steunpunt Vluchtelingen (Netherlands).

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

ASKV Steunpunt Vluchtelingen is a non-governmental organization actively supporting and campaigning for the rights of both documented and undocumented refugees. The organization exists for fifteen years. In this period experience has been built up in the individual aid to undocumented refugees and in campaigning. ASKV Steunpunt Vluchtelingen participates in different networks and platforms on a local, regional, national and international level.

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

# Methodology

This book is the first of a three-volume series. Volume 1 covers Germany, the Netherlands, Belgium, and the United Kingdom. The second volume covers France, Spain and Italy and the last volume covers Austria, Denmark and Sweden. This first phase has to a large extent been an explorative phase. It has been carried out with a minimum of resources<sup>2</sup>, relying to a large extent on the network and expertise that PICUM gathered in the course of its young existence.

## Research Questions

The main aim of this book is to “make solidarity visible”. PICUM wishes to support and contribute to the work of organizations that provide assistance to undocumented migrants. During the course of the research, it was felt that an inventory of existing initiatives would be superficial and would have no added value for organizations. Thus, the book developed in the direction of an organizational/ethical exploration of the context in which assistance is provided to undocumented migrants.

Organizations were asked the following general questions about their work:

- Can you describe any particular project for undocumented migrants within your organization? If not, in which ways are you mostly confronted with undocumented migrants?
- In your opinion, what is the general attitude of citizens, media and official institutions in your city towards undocumented migrants?
- How does legislation influence your work?
- Does your organization work with other organizations or is it linked to a network/umbrella organization?
- To what extent do you advise an undocumented migrant to change his/her illegal status?
- Are any structural changes needed in the future to improve the possibilities of social and humanitarian assistance to undocumented migrants?

Several questions of an ethical nature have also been presented to a wide range of organizations:

- What is the nature of the relation between the client and help provider? (Necessity of a clear aim when providing help to undocumented migrants, need to make a selection at the doors of your organization, and the criteria for this selection)
- Does your organization come across conflicts between legal provisions and ethical considerations?
- Do you face tensions between reporting criminal behavior (role of citizen) and protecting your client (role of help provider)?

## Methodology

The methodology for the general questions consisted mainly of visits to organizations and in-depth, qualitative interviews. Where this was not possible due to lack of time, phone interviews and written questionnaires were used. Written information on organizations was also analyzed if it was not possible to set up an interview or receive a completed questionnaire.

The methods used for the organizational/ethical questions were dealt with on another level. A “Working Group on Ethical Guidelines” was set up, gathering people from the different countries with expe-

<sup>2</sup> Funding from the European Commission was only guaranteed in a later stage.



rience on the ethical dimensions of social work (for a list of participants, see annex). This working group exchanged information by correspondence, and had a meeting in Brussels to discuss several ethical dilemmas that had been put forward. Their brainstorming session resulted in some discussion statements that were presented to many social workers at a workshop on "Ethical Guidelines for Assisting Undocumented Migrants", held in March 2002 in Oirschot, the Netherlands. The result of these workshops was a draft version of ethical guidelines, which was adopted by the PICUM General Assembly on 11 October 2002. The guidelines have been included in the annex of this book.

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

In May and in the beginning of June 2002, PICUM organized several "feed-back workshops". The aim of the workshops was to present the draft version of the Book of Solidarity to the organizations involved, and to have a discussion with them on the contents of it. The following workshops were held: London (21 May 2002), Bonn (24 May 2002), Utrecht (29 May 2002), Brussels (31 May 2002), Berlin (5 June 2002).

Thanks to the high degree of involvedness and constructive criticism of the participants, the workshops proved to be very productive. Following the advice and comments received during these workshops, the contents of the draft version were adapted.

## Sample of the Organizations

Some main categories were put forward to assure a balance between the various kinds of organizations to be included in this book. These categories were adjusted during the course of the project, as more information was gathered on the different realities in the countries selected:

- different areas of assistance (health care, gender issues, education,...)
- big organizations/small organizations
- migrants' organizations/others
- government funded organizations/organizations without government funding
- church groups/autonomous groups
- volunteer initiatives/professional organizations

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

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

## Course of the Research

An Editorial Committee composed of people with experience in the field and active members of PICUM provided assistance to the PICUM secretariat and had several meetings to discuss the proceedings of the book (Editorial Committee members are listed in Annex).

A Steering Committee composed of academics working in relevant fields was consulted on theoretical questions, and had one meeting in Brussels to reflect on the findings halfway and one at the end of this first research stage. Several members of this committee have contributed texts to this book (Steering Committee members are listed in Annex).

The first step in this project was to make an inventory of organizations that provide assistance to undocumented migrants. This was carried out in August 2001. To expand the inventory, we relied on our existing network and attendance at several conferences. Information on the project and a short questionnaire were then sent to organizations. This was followed by visits and interviews at organizations in the following two months. A first analysis was then made. The Editorial Committee was consulted several times in November and December 2001, and the Steering Committee met in January and July 2002. More interviews were held in the meantime, and the questionnaire, criteria and the sample itself were adapted. The last interviews were completed in February and March 2002 and the analysis was completed. Parallel to this the ethical code was developed as described above. In May and June a draft version of the book was presented to the interviewees in several national workshops, and the report was finalized in October 2002.

## **Brief Presentation of the Book**

The first chapter aims to shed a light on the context in which undocumented migration takes place and in which undocumented migrants live. It reflects on the reasons why undocumented migrants are here, and it presents an overview of the social and economic aspects of living conditions of undocumented migrants in Germany, the Netherlands, Belgium and the United Kingdom.

The second chapter presents some key elements of legislation in the four countries that concern assistance to undocumented migrants, aiming to reveal the strategies of criminalization of assistance to undocumented migrants used by authorities.

The third chapter is an analysis of the information gathered in the interviews with the organizations, as well as the discussions in the workshops on the ethical code. It begins with a description of the various areas in which assistance is provided, and then focuses on questions of an organizational/ethical nature. Various examples are highlighted in many areas of assistance.

The fourth chapter finally offers some elements for reflection on arguments for assisting undocumented migrants.

# The Context: Undocumented Migrants

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

*John Steinbeck, The Grapes of Wrath*

## Introduction (1.0)

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

## Undocumented Migrants: Who Are They? (1.1.)

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

### Illegal Entry Versus Illegal Residence

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

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

### Differences Amongst Undocumented Migrants

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

Empirical research shows that there is a wide variety of people and careers represented among irregular residents. On the level of coping with problems of daily life that irregular residence can bring

about, a difference can be observed between migrants who once had legal status and those who never did. Research in Belgium on survival strategies of undocumented migrants pointed out that rejected asylum seekers who have had a legal position in Belgium seem to be better informed about their rights and the procedures to be followed than people who have never legally resided in Belgium. One possible explanation is that rejected asylum seekers on average have more contacts with NGOs that inform them of their rights (Adam et al 2002).

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

#### Center of Life

In his extensive study on undocumented migrants in the city of Leipzig in Germany, Jörg Alt distinguishes two main types of undocumented migrants: those who have decided to remain in Europe on a permanent basis, and those who keep their center of life in their country of origin while commuting to and from Europe regularly (Alt 1999). Alt's research reveals that the biggest groups of undocumented migrants present in Germany are "undocumented refugees" and "undocumented workers"<sup>3</sup>, and to a lesser extent individuals who come to Europe for family reunification. Undocumented refugees mainly consider their host country as their new center of life. It is not surprising that refugees consider return to their country of origin impossible, as they do not see a perspective for the future. Accordingly, their fear of discovery and expulsion is very high and they make every effort to remain hidden and inconspicuous. Migrants who are in Europe due to family reunification usually plan to stay for an indefinite period of time. On the contrary, according to Alt, many of the undocumented workers still consider their center of life to be in their country of origin. Their motivations for migration are material needs and loss of perspective. Many of them are married and have relatives who are still living in their country of origin. A common example is of individuals who have work in their country of origin but can barely earn a living. A considerable group of people migrates to Europe only temporarily to earn enough money to carry out a major undertaking, such as building a house. These migrants still have their center of life in their country of origin and therefore commute occasionally, according to their financial possibilities, between their country of origin and their place of employment. They are less afraid of discovery and deportation, and because of various reasons they achieve re-entry into Germany rather easily.

<sup>3</sup> The term "undocumented refugees" refers here to rejected asylum seekers (individuals who have applied for political asylum but who have been refused) as well as undocumented migrants who have not applied for asylum but who may face persecution upon return to their country of origin. The term "undocumented worker" refers here to employed individuals who do not have a legal residence permit to reside in the country and/or do not have a legal working permit.

## Bibliography

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## What Brings Them Here? (1.2.)

At the beginning of the presence of undocumented migrants in Europe is the "decision" of the migrant to leave his or her country. Whatever has been presumed and said about the motives of undocumented migrants, organizations that maintain contact with them on a daily basis generally have no doubts about their well-founded reasons to be in Europe. Undocumented migrants are only "illegal" by verdict of the country they end up in, not by the verdict of the reasons why they leave. These reasons will be addressed in the following section on the root causes of migration.

### The Root Causes of Migration<sup>4</sup> (1.2.1.)

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

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

#### Armed Conflict; a Pervasive "Culture of Violence"

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

#### Ethnic and Racial Conflict

Most existing states are inhabited by peoples of various ethnic, racial, linguistic, cultural and religious traditions. Some 40% of the world's countries have five or more different ethnic groups. This is partially the consequence of histories of migrations and colonial partitions. Recently there has been a virulent resurgence of violent efforts to re-divide territories and create new states based on exclusive,

<sup>4</sup> This section is a summary of a paper entitled "Seven Causes of Migration in the Age of Globalization," presented by Patrick Taran at International Migration Policy and Law Course for Asia-Pacific, 1999. Permission has been granted by the author for this summary, which has been made by PICUM, to appear in the *Book of Solidarity*.

single-ethnic identities. The resultant armed conflicts, “ethnic cleansing” and brutal expulsion of peoples have become major causes of forced human displacement today.

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

#### Globalization of the Free Market Economic Model

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

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

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

#### Environmental Degradation and Disasters

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

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

#### Development-Induced Displacement

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

environment and the displacement of people from their traditional lands is becoming of increasing concern.

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

#### Denial of Democracy

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

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

#### Abuse of Power/Corruption

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

#### Conclusion

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

### **Undocumented Migrants as Desired Contributors to Our Economies (1.2.2.)**

In research on undocumented migration from Mexico to the US, Krissman points to the fact that, as for many complex issues, in order to understand undocumented migration both supply and demand factors must be carefully considered (Krissman 2001). On the one hand, there is a huge number of undocumented migrants waiting at our borders (supply), and on the other hand, there is within our borders a huge demand for labor carried out by undocumented migrants (demand). In the debate on undocumented migration, however, one side has prevailed according to Krissman, since the invention of the term “illegal alien”. Supply perspectives effectively blame “them”, and do not look at the role of actors in the US. Most academics and policy makers focus on the would-be migrants – the supply – rather than the demand for undocumented workers. Krissman goes even further, by stating that the timing, numbers, and types of migrant flows are determined almost entirely by actors in “labor-receiving” nations.

There is no European research as a basis for such far-reaching conclusions, but it can be stated that this demand side also needs to be brought in the European debate. Also in Europe, undocumented migrants should not be seen as only asking for our help and acceptance. Large groups of people

come in and are not asking for help. As stated before in this book, the help provided by our organizations concerns a rather limited public. Undocumented migrants in general give more input to our society than our society gives to them, since they are workers. Many of our economical sectors have a strong need for flexible and cheap labor: the garment industry, domestic workers, the construction industry, the agricultural sector, etc. In Dutch horticulture for instance, for the past 30 years, 20% of the workers in the sector have been undocumented (this has to be further investigated). They do not only perform jobs that are hard to find candidates for, but because of their lack of rights, their wages and other labor conditions are systematically under the level of what is agreed upon on at the union level. OKIA recently calculated that a market gardener saves between 5.000 and 10.000 Euros in one year by employing an undocumented migrant. If the Foreigner's Service makes an inspection, then the market gardener is fined 1.000 Euros and the undocumented worker is usually deported. It is not an exaggeration to state that the labor of undocumented migrant is partly supporting the export position of the sector. Such a conclusion can be made for the sector in more regions in Europe, and in the United States (OKIA 2002). Besides horticulture there are a number of other sectors that give a comparable picture (Forum Civic Européen 2002).

So there is a considerable demand for undocumented labor. The main reason why this kind of labor is so desirable, is because it is cheap and flexible (not regulated). It could be stated that any undocumented migrant who is prepared to work under certain (bad) conditions and willing to do this below a certain wage level, can come to Europe and find employment in a few weeks time (Forum Civic Européen 2002). This need of our economies combined with a continuing migration pressure and a denial of rights for immigrants, creates a situation in which part of the population of strong economies has no rights, having a structural share in sectors of the labor market that do not appeal to locals. (OKIA 2002)

It could be stated that labor migrants who contribute to society should receive something in turn. The system of not recognizing their labor has the advantage that there are no obligations: they came here out of their free will.<sup>5</sup> And they will come anyway. But these migrants often spend their best years here. Education as well as care for the elderly are at the expense of (the family in) the country of origin. And although the search for solutions will come across far more complications than can be demonstrated within this scope, many more arguments can be presented for the necessity (or even: the obligation) of such a solution (OKIA 2002).

#### Repression vs. Compassion: an impasse

Public discussion on undocumented migrants is basically focused on two standpoints: on the one hand, undocumented migrants are perceived as a burden for society, and their presence should be avoided, while on the other hand, they are seen as poor, defenseless people in need of help. The first perception lies at the basis of the current policies in Europe: restrictive controls on entry and residence are put into place, and where possible social services are denied. The arguments of organizations providing assistance to undocumented migrants are mostly restricted to the second perception: they provide help to people in need, and they make a moral appeal against an ever more restrictive aliens law. (OKIA 2002)

In a certain way this leads to an impasse, in which the first standpoint seems to gain power of persuasion, especially in light of recent developments in Europe. Although the restrictive approach taken by governments to fight illegal migration does not appear to be effective (or maybe because

<sup>5</sup> A Dutch politician (Jaap de Hoop Scheffer) stated in 1998: 'They do have an alternative, they can go back to their country. If they don't do that, they choose a horrible life in the fringe of society, they choose exploitation. That is their own choice. (...) They will be exploited, they will be working for five guilders in the harbor of Rotterdam; but they do have the alternative to go back, so it is their own choice.'



this approach does not lead to a decrease in illegal migration), the demand for even tougher measures is becoming harder. The moral appeal of those who want to support and help undocumented migrants seems to be insufficient to turn the tide. Moreover, in the public/political opinion, an immunity or even irritation is developing concerning the focus on the suffering. It could also be questioned if the focus on these elements is beneficial to the undocumented migrants themselves: this approach urges them to constantly put forward their weakest sides, running the risk of losing their self-respect. This focus on the contributions of undocumented migrants might be a useful new element to bring in into the debate (OKIA 2002).

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## Social and Economic Aspects of Living Conditions of Undocumented Migrants (1.3.)

### Introduction (1.3.1.)

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

### International Standards: How It Should Be (1.3.2.)

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

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

#### Right to Fair Working Conditions

There is a difference between the right to work and the right to fair working conditions. Concerning the right to work, Article 23 of the Universal Declaration on Human Rights (UDHR), for example, is said only to apply to workers ordinarily residing in a country. But since many undocumented migrants are workers (who work in the informal labour market), the right to fair conditions of work is very relevant and important. The principle of safeguarding at least safe and fair working conditions such as remuneration for all workers, also for those who are undocumented, is expressly protected in instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Interna-

tional Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families (ICMW) and the ILO-Convention No. 143, all of which attempt to promote equality amongst migrant workers and nationals. Houben (1999) refers to research carried out by Hammer (1999) on migrant workers in Israel to highlight that remuneration should not be dependent on legal residence in a country:

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

The above mentioned ICMW is a very important instrument for the protection of the rights of undocumented (and documented) workers and their families. The convention has not yet entered into force. However, the 20th ratification required for the entry into force, is expected to be made soon. Nineteen states have now ratified or acceded to the Convention.<sup>6</sup> As of the entry into force, the convention will be binding only for the state parties. This convention will be a powerful universal instrument for upholding the human rights of all migrant workers.

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

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

Article 25

1. Migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

Reference to the right to fair and just working conditions for all workers is also made in the International Covenant on Civil and Political Rights (ICCPR), which forbids any forced or compulsory labor (Article 8) and attributes to everybody the right to legal personality (Article 16).

<sup>6</sup> Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka Tajikistan, Uganda and Uruguay. Eleven states have signed the Convention, the first step towards ratification: Bangladesh, Burkina Faso, Chile, Comoros, Guatemala, Guinea-Bissau, Paraguay, Sao Tome & Principe, Sierra Leone, Togo and Turkey.

## Right to Social Assistance and Social Security

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

International Convention for the Protection of the Rights of all Migrant Workers and the Members or their Families

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

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

This right to social security for everyone is referred to also in Article 22 of the UDHR, Article 9 of the ICESCR and Article 26 of the Convention of the Rights of the Child (CRC). The ILO Convention No. 143 (Article 9.1) states that undocumented migrants should enjoy equal treatment with other foreigners, at least concerning past employment. Upon closer investigation this article only guarantees rights to migrant workers who were once legally employed, and after losing his/her residence permit continued to pay contributions. For all the other undocumented workers it guarantees the right to be restituted in case of an industrial accident.

## Right to Housing

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

### Right to Health Care

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

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

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

Article 28

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

### Right to Education

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

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

Article 30

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

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## The Social and Economic Situation of Undocumented Migrants in Belgium<sup>7</sup> (1.3.3.)

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In discussing the social and economic situation of undocumented migrants, we chose to use the concept of survival strategies as used by Bauman (1995). Contrary to nationals and legally established foreigners, the situation of undocumented migrants, through their precarious position, is more of "survival" than of "quality of life". Although undocumented migrants are not necessarily threatened to die from hunger, they never know what tomorrow will bring. This insecurity of their existence justifies the use of the concept of "survival strategies". In this text we will try to outline the different strategies used by this group to surmount the different social and economic obstacles, resulting from the absence of a residence permit, to access to housing, health care, education and income by work or other means.

### Social Situation

#### Housing

To obtain housing, as well as other basic needs, undocumented migrants seem to highly depend on their network of social relations (at least if they have such a network). These networks may be made

<sup>7</sup> This text is essentially based on the results of a research funded by the King Baudouin Foundation and executed by Steunpunt Mensen Zonder Papieren, GERME (ULB) and CEDEM (ULg). (Adam I., Ben Mohammed N., Kagné B., Martiniello M., Rea A. (2002), 'Histoire Sans-Papiers', Bruxelles: EVO.)

up of different individuals. One type of social network is family or friends who reside in Belgium and who help undocumented migrants upon arrival or in times when they don't have enough income to pay the rent. This type of network is especially prevalent amongst undocumented migrants coming from countries from where guest workers were formerly recruited (Morocco, Turkey) and from former Belgian colonies (e.g. Congo). It is quite common for many undocumented migrants to stay with their family or friends who are legal residents in Belgium. The second type of network is made up of compatriots and/or people of the same cultural or religious background. We noticed that the "injection of values" and "restricted solidarity" (as used by Portes (1995)) exists especially amongst sub-Saharan Africans. A large number of Africans were able to count on the solidarity of their ethnic community when they didn't have a place to stay. A small group of undocumented migrants, mostly rejected asylum seekers, depend on NGOs for accommodation or rent deposit. The *sans-papiers* who found accommodation on their own often received information in ethnic or religious places. It is also there that they can find flatmates to reduce costs.

An aspect that characterises undocumented migrants' housing is their residential mobility. Many are forced to live as nomads because of the uncertainty of their income and the illegality of their presence in Belgium. People living with their family or friends often feel uncomfortable and conscious of being a burden. So they mostly try not to stay too long at one place, even if they are staying with family members.

Most undocumented migrants seem to live in districts of large cities where large numbers of foreigners live. This is due to both the cost of the accommodation and also to the fact that they are likely to stay unnoticed there. Even though the law does not forbid people staying illegally in Belgium from signing a lease, the problems they face looking for accommodation are multiple, especially when they have little financial means. The relationship between landlords and tenants is biased by the absence of the legal status of the latter. Their undocumented position makes it almost impossible to reclaim their rights when the landlord asks for high rent, does not honour commitments or refuses to return the deposits when the tenants leave the flat. We say "almost" impossible because no disposition in Belgian law prevents an undocumented migrant from starting a civil or penal procedure in court. The interviews revealed that several landlords take advantage of the legal inferiority of the undocumented, asking for high rents for precarious accommodation. A modification of the Belgian aliens law<sup>8</sup> has added these landlords to the list of people who can be persecuted for not providing humanitarian help to illegal migrants. The offence is then "having made abuse of the vulnerable position of an illegal foreigner in renting accommodation with the objective of realising an abnormal benefit." If the employer of an undocumented person is also the landlord, this creates a double dependence of the migrant.

### Health Care

International treaties as well as the Belgian Constitution (Article 23) establish the right to social, medical and legal assistance. This assimilation of principles is, however, of an uneasy application, especially for undocumented migrants. The right to healthcare is nevertheless guaranteed in Belgium since the law provides the right to "urgent medical care" as the only social assistance available for illegal migrants. The Royal Decree of 12 December 1996 and Article 57§2 of the Law on Public Centres of Social Assistance of 8 July 1976 regulates this right. Urgent medical help can be preventive as well as curing. It covers different kinds of medical care: medical intervention, delivery, medicine, medical examination, physiotherapy, etc. Psychological aid is nevertheless excluded. The many *sans-papiers* suffering from psychological problems due to the uncertainty of their difficult situation are thus unable to benefit from this aid. In reality a large number of undocumented migrants do not know about the existence of this right or are badly informed about it. Rejected asylum seekers seem to be the most informed group. They are aware of this right by the official letter announcing that: "because

<sup>8</sup> Law of 15 December 1980

of the end of their asylum-procedure they will no longer benefit from social assistance except for “urgent medical care”. This group also has more contact with NGOs who inform them about the existence of this right. People who have never legally resided in Belgium seem to be less aware.

Reality nevertheless shows us that undocumented migrants use different formal and informal strategies to try to obtain medical assistance. Among the formal strategies are the (rare) use of private health insurance and supplementary private health insurance. The latter are the semi-public institutions that cover the obligatory health insurance for Belgian residents. Some undocumented migrants are still covered by this insurance after the expiration of their residence permit. The most used formal strategy is “urgent medical care”. Informal strategies for access to medical assistance (which are also more often used than formal strategies) include: borrowing papers from documented residents, mostly compatriots; payment of the full price of the medical assistance by themselves (which often leads to the accumulation of debts) or with the help of others (collection made in their ethnic or religious communities, mostly used for serious medical intervention; gift from NGOs or individuals); negotiations with doctors about the costs of the treatment (doctors of foreign origin as well as Belgians) and consultation at organisations delivering free medical assistance such as Médecins Sans Frontières, Medicine for the People or Free Clinic.

### Education and Vocational Training

In Belgium, there is a difference in the access to education for undocumented minors and adults.

The right to education for children is established in different international treaties and national dispositions. In reality, though, access to education for undocumented children in Belgium has until recently been difficult. A decree of the French Community, dated 30<sup>th</sup> of June 1998, regulates and guarantees the access to education for undocumented minors. Similarly, a circular letter of the Flemish Minister of Education gives the right to these children to attend school. Moreover this text guarantees that the headmasters of the school do not have to inform the police about the administrative status of the children and their parents, and guarantees that they will not be arrested within the vicinity of the school. Furthermore, schools receive subsidies for undocumented children. Since this legislation went into force, it appears that most undocumented parents have registered their children in school. Schools seem to play a fundamental role in the integration of undocumented migrants, a role that largely goes past their educational mission. For many undocumented parents, it is their only contact with an official institution. Various schools also seem to provide moral and material support to undocumented families. The education of their children often is a strong motivation for the parents to stay in Belgium, even in difficult circumstances. They hope that better education than in their country of origin will give their children and themselves a better future.

Access to education for adults seems to be more arbitrary: some are refused registration while others are not, even though they are in the same situation of illegal residence. This difference can be explained by the absence of regulation in this field. Except for access to official vocational training (VDAB, FOREM, ORBEM/BGDA) no regulation forbids access to education for undocumented adults. On the other hand, there are no measures that guarantee this right for undocumented minors. The possibility to pursue courses begun during the validity of a residence permit or to begin an educational program as an undocumented migrant not only depends on the kind of educational institution and the type of education, but also on the motivation of the migrant. For some migrants, education itself constitutes their reason for migration. These people often fight to pursue their studies in spite of the many financial and administrative difficulties. The most followed courses by undocumented migrants seem to be language courses given by NGOs that provide assistance to sans-papiers.

### Economic Situation

In this section, we will attempt to discuss how undocumented migrants obtain their livelihood in Belgium. The illegality of their residence strongly conditions their access to a livelihood due to their exclusion from the labour market and social benefits.

Three sources of livelihood can be distinguished:

- 1) livelihood provided by public or private aid;
- 2) income from work;
- 3) income from criminal activities. The research did not provide us with sufficient information about criminal activities committed by the undocumented to allow us to go further in depth on this subject.

#### Public Assistance (Institutions of the Welfare State)

The mission of the public centres of social assistance in Belgium is to guarantee a dignified existence to every person living in the country. Since 1984, undocumented migrants have nevertheless been exempted from this right. They can only claim the previously mentioned "urgent medical care". This discriminative measure has been accepted by the Belgian constitutional court as "a means whose results permit to reach the desired objective, namely to urge the concerned person to leave the country".

Only a small group of "sans papiers", namely rejected asylum-seekers who are waiting for their appeal from Belgium's highest administrative court<sup>9</sup>, the State Council, still benefit from social assistance. This appeal does not suspend the order to leave the country that has been notified to them, so these people are staying illegally in the country. Since January 2001 this aid has no longer been monetary. To benefit from this aid, these people have to go to special centres where they receive food and housing. Because of the illegality of their stay, they risk expulsion from these centres. This way of proceeding thus undermines their right to social assistance.

Concerning the right to social assistance, the case of undocumented migrants who applied for regularisation in the Belgian campaign of January 2000 must be mentioned. The Regularisation Law (22<sup>nd</sup> of December 1999) stipulated that applicants will not be deported from the country while waiting for their answer. They are thus officially tolerated, but do still not have a residence permit. The law nevertheless does not give them the right to social assistance. Several labour courts, however, decided that social assistance must be granted to regularisation applicants since they are officially tolerated in the country.<sup>10</sup>

#### Private Aid (Individuals or Organisations)

Many undocumented migrants we met did not have a job at the moment of the interview. Since they cannot depend on the institutions of the Belgian welfare state, they depend on the charity of individuals or organisations. The individuals are mostly members of their ethnic community living in Belgium. A small group of "sans-papiers" was nevertheless financially supported by family members living in other migration countries or in the country of origin. In several cases a whole community mobilised to provide financial help, for example for medical treatment or a funeral. These are examples of "restricted solidarity" as used by Portes. Different NGOs provide support to undocumented migrants. Rejected asylum seekers usually address NGOs to benefit from support. This private assistance given by the ethnic community, other individuals or NGOs is sometimes monetary, but mostly in kind.

#### Work

Undocumented migrants do not have access to the (official) Belgian labour market. To be able to work, foreigners must have both a residence permit and a work permit. Because of their legal situation, informal work is frequently associated with illegal migrants. It should nevertheless be pointed out that informal work is not restricted to undocumented migrants. Many informal jobs are held by legal residents, both Belgian nationals and foreigners with a valid residence permit. The statistics of the

<sup>9</sup> After using all means of appeal that suspends a given order to leave the country.

<sup>10</sup> At the end of 2001, the "cour d'arbitrage" ruled that these migrants do not have right to this social assistance. In the course of July 2002 however, Cassation decided the opposite.



Ministry of Employment indicate that 90% of the infringements of their inspection concern Belgians or legal residents (Krzyszto 2002).

An exception that exists to the impossibility for undocumented migrants to work legally concerns the *sans-papiers* who applied for regularisation in January 2000. Although they still do not have residence permits, the Minister of Employment decided to grant them the possibility to work officially after having obtained a temporary work authorisation. There is another possibility for undocumented migrants to work declared. It concerns illegal migrants who formerly had a residence and work permit and who continued at their official job (paying taxes and social insurance premiums) after their residence and work permit expired. These are very rare cases that slipped through the meshes of the strictly regulated Belgian labour market. It should be noted however that even though the labour is "declared", it is not "legal".

As we mentioned above, the informal labour market concerns Belgians and legal residents as well (and essentially) as illegal migrants. Nevertheless, the informal work of an undocumented migrant presents some distinctive characteristics. When a legal resident holds an informal job, the income provided is rarely his/her only livelihood. It mostly accompanies social benefits or a legal job. For undocumented migrants, their informal job is mostly their only source of income. The kind of retribution against the employer also varies according to the status of the worker. The retribution is stricter for an employer when employing an illegal migrant. The risk of being caught represents the loss of social benefits for the legal resident (if s/he received them). But an undocumented migrant risks the loss of his/her only source of income, as well as deportation from the country.

To find a job, undocumented migrants mostly mobilize their social capital in their own ethnic circles. Rejected asylum seekers who were dependent on social benefits during their asylum procedure seem to be less integrated in their ethnic network. Once they become undocumented, they seem to have more difficulties finding informal jobs than undocumented migrants who never stayed legally in Belgium.

The following sub-sectors in Belgium frequently have some kind of activity of informal work: retail trade, ethnic shops as well as second hand shops; car wash and filling stations; catering: pita restaurants, Turkish and Chinese restaurants (mostly ethnic, non European); food-processing industry: conditioning and packaging; service sector: call centres, mailing service; horticulture sector: tomato culture, fruit picking; prostitution; and even sports (young foreign football players). In addition, the usual sectors: the clothing industry, agriculture, construction, renovation, domestic services, etc. In Brussels more than half of the infringements concerned the construction sector (Krzyszto 2002:59).

Undocumented workers thus participate in the functioning of the global labour market. What distinguishes them from other economic agents is the precariousness of their situation. They hold jobs at the bottom of the ladder and salaries at the bottom of the scale. They cannot complain without the risk losing their only livelihood. Nevertheless, in case of an accident, Belgian legislation provides the right to a grant from the Fund for Work Accidents, at least if certain conditions are fulfilled: it must be proven that the place of accident is the workplace, and that one is working in Belgium for an employer who falls under Belgian legislation, and who will furnish a certificate of the physical damages suffered by the victim. The principle exists, but in reality it is unlikely that an undocumented migrant will begin such a procedure.

Some undocumented migrants (unofficially) work as freelancers, for example as cleaning ladies for different households, as hairdressers or as carpenters. With this type of employment, they are not dependent on an employer. A considerable group of undocumented migrants seem to earn their living very well by working as informal freelancers. Few sources exist about the profile and qualifications of undocumented workers. Among the 130 undocumented migrants interviewed in the framework of our research, all kind of professional qualifications could be distinguished. Nevertheless, the

expectations and perceptions of professional integration in Belgium did not differ between a *sans-papiers* with a university degree and an illiterate person. The priority is the access to an income to be able to survive. Rarely were the undocumented able to mobilize their human capital for a job according to their profile, with the exception, in some cases, of qualified workers and technicians.

### Conclusion

Although some basic socio-economic rights are guaranteed for “sans-papiers” in Belgium (the right to education for minors and a restricted right to medical assistance), the reality of undocumented migrants in Belgium, as well as in other European countries, is of socio-economic exclusion and legal non-existence: no right to social assistance, a restricted right to medical care and the impossibility of access to the labour market.

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## The Social and Economic Situation of Undocumented Migrants\* in Germany (1.3.4.)

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Despite the rhetorical claim that Germany is “not a country of immigration”, all statistics show that in recent decades Germany has experienced levels of immigration which compare to those of classic countries of immigration such as the United States. In addition to these high numbers of legal migrants, it is assumed that an increasing number of migrants are undocumented, i.e. without legal residency permits. Due to many restrictions in labor migration and family reunification laws since the mid-1970s, it has become very difficult to receive permanent legal status. After the curtailment of the right to asylum in the German Basic Law in 1993, the situation for refugees and asylum seekers has also aggravated.

In the same year, border controls between Germany and many neighboring countries were reduced due to the Schengen Accord. In addition, East and Southeast European countries opened their borders for emigration. The number of migrants who escaped from war and persecution (especially from former Yugoslavia) and those who tried to earn a living for themselves and their families in Western Europe increased severely in the early 1990s. Many of these migrants overstay their visitor or tourist visas, while others cross the borders unchecked or clandestinely. It is assumed that hundreds of thousands have to live undocumented in Germany.

\* Undocumented migrants: migrants that do not have the legal right to reside in a country and would be ordered to leave the territory if they would be controlled.

This situation will not change under the new Immigration Law of 2002. On the contrary, the “simplification” of the visa system eliminates the temporary protected status or “Duldung”, which will leave thousands without any rights or protection. Also, no provision has been made to enable undocumented migrants to “legalize” their status nor to give undocumented migrants civil or social rights.

With regard to the control of migration, one of the major differences with countries such as Great Britain is the requirement to carry an identity card. Every resident in Germany has to carry proof of identity at all times and has to show it when being checked by the police. Since 1998, new forms of identity checks have been carried out in various public places, such as in train stations or on major highways. The purpose of these controls is foremost migration control. Unlike former controls, police officers are not required to give a reason why a person is being checked. It is obvious, however, that these controls target people who do not look “German” in the perception of the officers. Therefore, there is a permanent atmosphere of control and repression, which has severe consequences for the daily lives of undocumented migrants.

There is a growing need to learn more about the living conditions of undocumented migrants in Germany. Both their social as well as their economic situation contrasts to those in other European countries – not only due to police control, but also due to other institutional and legislative differences.

### Social Situation

In international comparison, Germany is considered to be a “strong” or a “conservative” welfare state. The vast majority of the population is protected by state regulated social security systems, including migrants with permanent residence status. Unfortunately, this is not to the advantage of undocumented migrants. Not only are they excluded from all social services, but all providers of public services, including the labor office, the welfare office, schools, and public clinics, are required to inform the Foreigners Office (*Ausländeramt*) about any irregularities in the immigration status of their clients (§76 Foreigners Law). Thus, social security institutions are used as mechanisms of migration control and to exclude undocumented migrants from social rights.

### Health Care

Since undocumented migrants are not covered by public health insurance, health care is a very difficult issue for undocumented migrants in Germany. Albeit having the right to emergency treatment, hardly any will risk entering a hospital even in case of severe injuries. It is disputed among migration lawyers, if even health care providers in clinics and hospitals are required to report undocumented migrants under §76 Foreigners Law. Many hospitals did report undocumented migrants to the Foreigners Office in the past, though.

Any treatment is very costly for undocumented migrants, since they either have to pay in cash or they need private health insurance which covers health care in Germany. If the hospital administration fears that the bill will not be covered, this will be reported to the Social Security Office and could subsequently be reported to the Foreigners Office as well.

Therefore, undocumented migrants have to develop their own strategies to receive medical help. Some return to their country of origin for medical care, while others receive services by borrowing an official insurance card from a friend or a relative. Most, however, get help from social networks that organize health care by circumventing controls. In general, these networks are based in local and migrant communities, while some are established by activists or church based groups. They provide counselors, doctors, medicine and in some cases they even co-operate with local hospitals and clinics.

### Housing

To rent an apartment on the official housing market is nearly impossible for undocumented migrants. Property owners are required by law to make sure that their tenants enlist with the local registration

office. Additionally, landlords frequently request proof of income, which is nearly impossible to provide for migrants that are officially not authorized to work. Since there is no anti-discrimination legislation for private contracts in Germany, discriminatory practices of landlords are common and migrants – regardless of their immigration status – are confined to less attractive housing areas.

Again, the undocumented develop strategies to avoid controls on the housing market. They live in the homes of their legal relatives, share rooms with other migrants, pay provisions to legal residents who act as the formal tenant or they rent on the unofficial housing market. Subsequently, housing can be very expensive and, quite frequently, apartments are overcrowded. Homelessness is common among undocumented migrants, since many lose their accommodation if they cannot pay the rent.

### Education

Schools are also required to report to the Foreigners Office if they receive any knowledge about irregularities concerning the immigration status of students or their parents. Before a migrant family can send their child to a public school, they first have to check with the local school department. The school department provides them with assistance, but also checks their immigration status.

However, many teachers and principals see education – not migration control – as their major task. They believe that children should not be punished for the undocumented status of their parents. With the involvement of as few people as possible – sometimes only the principal and the head teacher – they allow children of the undocumented to participate in class. There is a lot of pressure on these children, since for security reasons they are not allowed to talk about their situation in school, but this is still better than staying at home.

There are two major constraints to this practice: first, undocumented pupils cannot receive official grade reports and diplomas; second, in case of an accident the children of the undocumented are not protected by the general accident insurance which covers all other students. The latter is often given as an argument by schools and kindergartens as to why they do not allow children of undocumented migrants in their institution: the school and the teachers could be held responsible in case of an accident.

Thus, the living conditions of undocumented migrants with children can be very difficult, especially if they are single parents and have only little time for their children due to economic restrictions and poor working conditions.

### Economic Situation

For many, poverty and huge wage gaps between sending and receiving countries are a major reason to migrate. Even if wages for migrants are low compared to the average income in the receiving country, they are often many times higher than in the country of origin. But even for those who do not come because of economic need – family members or refugees – there is a necessity to earn an income. This is especially true for undocumented migrants in Germany, because they cannot rely upon public assistance.

### Public Assistance

Undocumented migrants cannot receive public assistance (*Sozialhilfe*) from the local welfare offices. To apply for public assistance, they would have to prove that they are local residents, that they are in economic need, and that they have no other source of income. During the application, their immigration status could be checked and reported to the Foreigners Office. Hence, undocumented migrants avoid the welfare office and try to earn a living on the labor market.

### Work

As in other European countries, there is a growing informal sector which provides job opportunities to undocumented migrants. Many employers hire undocumented migrants, because neither taxes nor

social security payments are deducted for them. Also, undocumented migrants are hardly ever employed according to union tariffs. Even though extremely exploitative wages are exceptional, the press reports almost daily about employers who fail to pay the agreed wages. Finally, undocumented migrants are preferred because of their high "flexibility": unlike regular workers, they take care of children and elderly for weeks without any break, work short or long hours without prior notice, and can be dismissed from one day to another.

But since not only the welfare system, but the German labor market is also highly regulated, controls to prevent irregular employment are carried out frequently. Even in "protected areas" such as households or small workshops, there is a risk that the local labor office in cooperation with custom officials and police will control the work site. Some of these checks are arbitrary, but most are carried out after hints are given by the public, e.g. from neighbors or business competitors. The risk of an individual who does not look "German" being controlled on a German work site – regardless of citizenship or immigration status – is high, since both the labor office as well as the public easily assume that such people are working irregularly.

To evade controls, undocumented migrants try to avoid working in public places. Preferably, they work as domestic workers, in restaurant kitchens, as cleaning staff or in other indoor, non-public jobs. Employers are usually informed about the undocumented status of their employees. They have an incentive to protect their workers from controls, since they also have to fear legal sanctions from the labor office. Since undocumented migrants cannot find such jobs on the official labor market, they use their social networks to receive information about the unofficial labor market. In most cases friends and family help them to find a more or less "safe" place to work. Sometimes they are already contracted as undocumented workers in the country of origin. Some are unfortunate and get exploited by criminal employers (e.g. in the sex industry) who take advantage of their insecure status and force them to work for very low wages and under intolerable working conditions. However, with the growing extent of a migrant's social network, extreme forms of exploitation become more unlikely.

### Conclusion

The living conditions of undocumented migrants in Germany differ greatly depending on their social and educational background, their gender, whether they plan to stay for a short period of time or permanently, etc. But the atmosphere of repression, which derives from the extensive migration controls, affects all undocumented migrants alike. Yet this repressive atmosphere is counterbalanced by the existence of social networks and solidarity. Most of the help undocumented migrants receive is provided by social networks which are based in the migrants' communities. But solidarity is not only shown by family and friends of the migrants, but also by church based groups, political activists, teachers, local communities, health care providers and many more. Even though most of this solidarity is organized clandestinely, it tries to compensate for the social exclusion of migrants and is part of a struggle for the rights of undocumented migrants. Without the solidarity of legal residents, the living conditions of undocumented migrants would be even more precarious in social and economic terms.

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## Undocumented Immigrants' Survival in the UK<sup>11</sup> (1.3.5.)

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The UK is a multi-ethnic society, the result of hundreds of years of immigration. There are 54 ethnic minority groups with more than 10,000 members each in the UK, mostly concentrated in Greater London and other major conurbations such as West Midlands and Manchester. Many immigrants

have been economically and socially successful and contribute to the UK's cultural and economic diversity (Commission on the Future of Multi-Ethnic Britain 2001). Most members of ethnic minorities have full citizenship; and the Racial Equality Act and its enforcement agencies are in place to prevent discrimination and to promote equal opportunities. But still, their lives are affected by individual and structural racism (Commission for Racial Equality 1995). For the past 30 years, the dominant ideology was that "good race relations require firm immigration control" serving to justify a "zero-migration policy" in particular from non-white countries (Joppke 1999). As yet, immigration policy has been deeply informed by racist considerations. Because of a lack of legal opportunities for immigration, some migrants are remaining or working despite visa restrictions; and because of this lack of choice many ethnic minority communities are joined by undocumented members. Meanwhile, the system is moving from one that has been mainly informed by racist considerations to one that is increasingly responding to economic considerations. The focus on controlling New Commonwealth and asylum-related inflows has been extended by a more positive view on economic aspects (Home Office 2002).

Traditionally, UK immigration legislation and implementation concentrates on its external borders and even beyond since the UK is placing immigration officers at some foreign airports. The hurdles to enter the country result in increasing visa application refusals (110,000 in 2000) or removals on the border (38,000 in 2000) (Home Office 2001). But from the mid 1980s a system of internal controls has taken shape. Successively, public services of all kind have added some kind of immigration or residence status checks to their assessment procedures (Gordon 1985; National Audit Office 1995). In some recent moves, the employment of illegal workers has been made an offence (Section 8), identity cards for asylum seekers will be introduced, in-country immigration staff have new powers and the staff level has been increased to target irregular immigrants. In consequence, the figure of deportations and removals is rapidly increasing, and has doubled from 1999 to 2000 to a disgraceful high of 50,600. 43,000 were refused asylum seekers, which are prioritised by the government. The UK is aiming to catch up with the more rigid European standards, and fight any past "laissez faire" image (Home Office 2002). Today, the law is rather strict and represents a system of exclusion of many documented and undocumented immigrants alike.

However, in detail and when it comes to implementation the picture is less consistent. For example, the absence of departure records; a population register; of an obligation to carry identity documents as well as the deregulated labour market or the culture of opposing racial discrimination gives way to opportunities of undocumented lives in the UK. And also "work place raids are just incredibly unpopular, ... people were complaining to the local council and [that] was saying that this is upsetting community relations in the area, ... the local community starts organising and attacking the police, ... and it's also unpopular amongst employers, they immediately go to the local member of parliament".<sup>12</sup> Consequently, the law, such as Section 8 on illegal employment has not necessarily been fully implemented.

#### Undocumented Immigrants in the UK: The Overall Picture

The situation of undocumented immigrants in the UK is characterized by three features. Firm entry controls keep out those perceived illegitimate or unwanted. Those who get through arrive in a highly deregulated society affecting any aspect of life, such as labour markets, public services and housing. Internal controls are less developed than in the Netherlands or in Germany. A thriving economy absorbs the economically active and the fittest. On the other hand, any such neo-liberal framework based upon a highly competitive struggle for jobs and resources inevitably leads to the exclusion of

<sup>11</sup> This chapter is based on two research projects conducted from 1997-99 and 2000-3, funded by the ESCR, resp. the European Commission, see Jordan and Duvell 2002; Jordan and Duvell 2003; we interviewed 80 undocumented Brazilian, Turkish and Kurdish, and Polish immigrants evenly divided into both sexes and covering all age groups and periods of stay. For more information see [www.iue.it/rsc/iapasis](http://www.iue.it/rsc/iapasis); [www-user.uni-bremen.de/~fduvell](http://www-user.uni-bremen.de/~fduvell)

<sup>12</sup> Interview with Joint Council for the Welfare of Immigrants, 1998

the less fortunate, those who do not come for economic motives or are unable to compete for whatever reason.

“Illegal” immigration is a war cry of the right and the government, as is “bogus” asylum seekers. Undocumented migrants, the term preferred in this article, is a taboo topic, there is a culture of silence, and the traditionally adversarial culture is contributing to the fact, that it is difficult to address the topic at all. The vast majority of those migrants and travellers who finally become undocumented have entered the UK legally, for example on a tourist or student visa forming a very small proportion of the global passenger flow into the UK. They may be refugees, labour migrants or family members.

There are three different groups in the UK. The first group are overstayers from the Old Commonwealth (Canada, Australia, New Zealand, South Africa, Jamaica). These are likely to be well-educated “white” professionals, who may work in the white-collar sector of the City of London. They have never been perceived as a threat or indeed an issue for the public. The second group is associated with ethnic minorities from the New Commonwealth (India, Nigeria, Barbados etc.) and Pakistan. Members of this group may be living in the UK for many years, technically they would be visa overstayers too, but many of them would possibly not even be aware of their immigration “offence”. Other than during the 1970s and 1980s, this group is now attracting less public attention. It is mainly the third group, the newcomers, often from countries that have no historical or cultural link with the UK, and either associated with refugees or “economic migrants” from poorer countries that is perceived and defamed as “illegal immigrants”.

This chapter concentrates on the latter category for the main reason that members of the other two groups are more likely to be somehow integrated and less visible to the immigration authorities. At some stage they have been legally staying and possibly working in the country, for example as working holidaymakers or as overseas students who overstayed their visa limits. From that time, they may still be registered with the relevant welfare agencies and the health service, they will often pay taxes and make their National Insurance contributions. Because the UK does not keep departure records and residents’ register and because data exchange is not always implemented it is not known to the authorities who remains in the country. This group of people represents a rather strange category of quasi-legal irregular immigrants.

Except in 1974 and 1978, there have never been large scale amnesties for undocumented immigrants. However, there are provisions for case by case regularisations. After 10 to 14 years of a mix of legal and irregular stay, long-term undocumented immigrants can apply for leave to remain under the 14-years-concession (Immigration Service (undated), Chapter 35). Since 1989, between 1,400 and 3,300 individuals each year have qualified for such a form of individual regularisation.

#### Undocumented Migrants: Why Do They Come?

Reasons for migration are as countless as individual life stories. However, the four main motivations are employment, family reunification, refuge and education. Migrants may be undocumented prior to an asylum application or because their claim has been refused; because they are refused to stay with their families; because they are restricted from working; because there are no provisions to switch status; or because they are refused visa extensions as a consequence of changed life perspectives. Refugees come because they hope for freedom from persecution and because of the UK’s human rights record. Relatives obviously come within migration systems that link ethnic minority communities to their countries of origin. Workers come because of the labour market situation - shortage of staff, demand for labour, the prospect of good earnings - constitutes a major attraction.

In an integrated global economy, firms (and public sector organisations) draw their staff from all over the world, to transfer them between branches in different countries, or to benefit from professional training provided at the lowest cost. Only some professions are acknowledged such as IT experts,

doctors and nurses, teachers and social workers and qualify to immigrate under the work permit scheme for non-EEC employees. But other workers too want to take advantage of opportunities for higher earnings abroad. And with an unemployment rate of 3.5 percent in 2002 and near full-employment, the rationale behind the existence of an irregular migrant workers population is the demand for labour by the service industry, such as cleaning; hotel and catering; retail trade; textile; construction and food processing; and agricultural work. This unequal treatment of immigrant workers either as work permit holders, other immigration categories or as undocumented is based upon class, race and gender concepts (see for e.g. Anderson 2000).

However, many of those employees, who have been staying and working legally before becoming undocumented are quite likely to still have their national insurance number, a tax code and maybe even a UK driver's license, which in absence of an obligation to carry a passport is usually accepted as an identity document. Besides, there are 20 million National Insurance numbers more in the system than residents in working age and they are easily available on some black markets. Finally, implementation of employment restrictions is weak; raids are unpopular with employers and local communities. Last but not least, the government policy prioritizes failed asylum seekers. Apart from high profile and publicity raising enforcement operations, irregular work appears to be a possible survival strategy.

#### Where to Find a Job?

The background is the UK's deregulated labour market, which contributes to precarious and low paid jobs. Finding a source of income is the principle means for an independent life and therefore crucial for the general living conditions. But these vary considerably from group to group. The Polish and Brazilian men and women we interviewed for example managed to find employment within days of arrival, often in pre-arranged jobs, mostly in the textile and catering sector (see also Jordan 1999). They began with very low salaries at around Euro 3.00, but within a year they were able to move upwards and improve their earnings considerably. That shows that members of some groups manage to become self-supporting basically from the beginning on. The prospects for undocumented Turkish and Kurdish immigrants for example were different, for them it was more difficult to find employment, which is often within ethnic niches; they suffered from long periods of unemployment, hence from severe poverty and deprivation and were less likely to improve their position.

#### How to Find Accommodation?

The overall picture is one of exorbitant high rents in London and some other areas, poor inner city boroughs and run down housing. Ethnic minority communities suffer disproportionately from these conditions. But because (undocumented) immigrants usually have some kind of contacts to which they turn first they have to rely on these networks until a job is found and accommodation may be arranged. That adds another burden to already deprived communities. Otherwise, once a source of income has been found privately rented accommodation is freely available, as there is no system of residence registration in place. Because rents are generally high in London, undocumented immigrants as well as other low-income Londoners are likely to reside in the poorer boroughs, and in cramped accommodation sharing houses, flats or even rooms with others. But again, many are able to improve their situation.

Housing associations are of charitable status, as non-government bodies they are not obliged to check identity or immigration status though they often do; it may need a sensitive representative to ensure that housing association staff do not ask. Eligibility for council housing requires being legally in the country established through immigration status checks (Housing Act 1996). In case of a regular immigrant once being accepted and placed in council housing of non-secure tenancy category but at some stage becoming undocumented frequently leads to eviction, only in some cases that may be avoided.<sup>13</sup>

<sup>13</sup> Interview, housing department officer, London, 23.3.1998



### Access to Public Services

The overall picture again is one of cuts in public services and a crumbling quality in social services, housing health, and education. The service culture of Old Labour has rather been replaced by an enforcement culture, that increasingly restricts access to public services (DSS 1998). Some groups of legal immigrants and in particular asylum seekers have been excluded from many benefits. Whilst it is already problematic for UK residents to find adequate services undocumented immigrants by law have no explicit entitlement to social service anyway. In course of asylum-related legislation and changes in social security regulations immigration status checks or residence checks linked to length of residence has been successively added to most assessment procedures.

Research findings suggest that undocumented immigrants stay away from any public authority and do not think of approaching public services except maybe health services or primary education. Linking “illegal immigration” to “abusing the welfare state” is based upon a myth.

However, access to public services is not always explicitly related to immigration status or preconditioned by a comprehensive check of immigration status. And also the actual check is frequently left to local and internal policy and frontline staff practice level. For example, it was found that information given by applicants verbally or by filling a form will not always be checked or questioned, words or answers in forms are taken for granted at least in some London boroughs or by some authorities (for e.g. in NHS, housing benefits, social services and community care services).

### And What If Someone Gets Ill?

The National Health Service (NHS) as any other public service suffers from cuts, decreasing quality, and long waiting lists. However, it is accessible to undocumented immigrants. General Practitioners (GP, family doctors) are not subject to NHS charges regulations and therefore not required to ask for immigration or residence status,<sup>14</sup> registration only requires self-certification of some kind. If GPs refuse to take on immigrant patients, that is rather because of discrimination against “blacks” or foreigners. Hospital treatment subject to charges is available at any time; also accident or emergency (dental) treatment will be given unconditionally. Treatment free of charge depends on two criteria: residence for not less than 12 months or intention of permanent residence but not on immigration status.<sup>15</sup> If the answer is yes to one of the questions no further documentation or evidence is required (Department for Health and Social Services 1988).

In case of difficulties, the health advocates system where in place supports immigrants, documented or undocumented regardless of their status to get the service and treatment a patient needs. Those migrants, again documented and undocumented, who do come from not so far away countries may often prefer to travel home for example for a dental surgery or for giving birth to a children because of the waiting lists, poor services and general fear.

### Can the Children Go to School? What About Further Education?

Primary education for children is not subject to immigration control, hence not dependent on the parents' immigration status nor can admission authorities “compel parents to show passport or answer questions about their immigration status” (Department for Education and Employment 1996; see also DfEE 1993). Attempts to implant immigration checks into primary school admission practice were rejected by the National Head Teacher Association and the National Union of Teachers (Guardian, 1/6/1996). Access to (further) education subject to charges is not explicitly restricted to legal immigration status, a student categorised as an overseas student will simply be subject to charges.

<sup>14</sup> It is matter of discretion to take up an individual as NHS patient as regulated in Terms of Service, para 4 (makes it obligatory to any GP to immediately treat anybody in need); National Health Service, FPN 353, April 1984; Circular letter NH 9FP (84 7) contains guidance on overseas visitors.

<sup>15</sup> Criteria is ordinary residence as defined by court ruling *Sha v Barnet Council* [1983] 3 All ER 226

Free education or further education for adult immigrants is linked to immigration status and ordinarily residence test (Education (Fees and Awards) Regulations 1994)), checks are related to “means tested state benefits” dependent on legal immigration status (Further Education Funding Council 1997).

In practice, many teachers, refugee support teachers or heads of school will do their best to make sure that any child, regardless of immigration status, gets the education they are entitled to. As yet, children rights to education have priority over immigration legislation. Further education for adults is a matter of financial resources rather than of immigration restrictions.

#### Legal Aid and Other Advice Services

Undocumented immigrants have access to legal aid; there are also numerous advice agencies usually free of charge (law centres, citizen advice bureaus, migrant support agencies, etc.) that either serve any resident or maybe particular ethnic minority communities. However, beyond asylum or applications on compassionate grounds there is not much they can do. Employment related problems by and large are not addressed. Most undocumented migrants will not approach an agency unless they see a change to regularise their status through an asylum application, a marriage, the 14-years-concession or some other options. And in that case it is rather a solicitor than a voluntary agency that can help. It is often the most desperate and lonely that try to find some help by advice agencies or community organisations.

#### Social Services, What is Accessible?

Services in general are deteriorating, access has become increasingly conditional for any residents and the culture of checks and enforcement is on the advance. By and large, monetary welfare services such as job seekers allowance, social benefits, child benefits or housing benefits are not accessible to undocumented immigrants, as they depend on an “ordinary residence test”. Only in some rare cases, it may not become known to the authorities that an applicant lacks a legal immigration status. However, non-monetary social services such as childcare or counselling do expect but do not require social workers to establish a client’s status. Provisions under the Community Care Act 1990 cannot refuse a service on the ground of immigration status, neighbourhood officers or social workers do not need to ask for immigration status but for residence only to simply establish whether or nor a client belongs to the service’s area. There are many social workers who still try to include as many clients as possible in their services; there are those who adapt to New Labours’ culture of “tough love”; and there are some who exclude on racist grounds.

Those who are destitute can only turn to the few church shelters and charities that support such people; or they may even end up sleeping rough on the streets.

#### Conclusion

The pre-conditions for undocumented immigrants’ access to public services and their opportunities in general lie in a complex mixture of reasons: the traditional preference over pre-entry or border controls rather than on internal immigration controls; traditionally strong organisational autonomy; powerful civil rights including data protection; professional ethics and local Codes of Good Conduct or Good Practice; individual and structural racism, and anti-discriminatory legislation (Race Relations Act 1976). Relevant actors are any civil society organisation or ethnic minority agencies opposing discriminatory immigration status checks, and trade unions that back refusal to incorporate immigration control policy into job description (National Association of Teachers in Further Education, 1996; UNISON, 1993).

Organisational culture within public services often rejects involvement in immigration policy or whatever may be seen as discriminatory practice. In many public services except benefits agencies and some housing departments there is widespread hesitation to police on immigration matters or to act in an investigative manner. Even in cases where suspicion on immigration offences arise clients are

rather sent away than reported to Home Office or police, “there isn’t a sort of atmosphere of reporting people who might be illegal”, “we don’t feel that we are the police around this”.<sup>16</sup> However, the implementation practice differs from regions and organisations, it depends on culture and ethics within each local authority and of each individual officer. Ethnic minority community and advice centres, law centres and solicitors will know about the local situation.

Young, healthy undocumented men and women who either managed to get employment or who are fortunate enough to be supported by friends, families or communities may be able to secure a decent live and even improve their social status. But those who are unemployed or beyond working age, individual women or single mothers, minors, isolated individuals or those affiliated to already deprived families or communities, elderly or ill suffer most their exclusion from average welfare provisions.

Despite the structural exclusion of undocumented immigrants from most social and political rights there is no “sans papiers” movement to challenge that, as in France, Spain or Switzerland. It would be helpful to discuss why that is so. It may partly be explained because there are so many possibilities for survival in the shadow economy. Also there is little tradition of amnesties to fight for. And because of the legacy of the Thatcher era, the culture of collective action has been weakened and replaced by one of individual approaches that meanwhile seem more rewarding. Last but not least, migrants are rather organised along ethnic lines that have replaced former concepts of “black struggle” which makes the self-organisation along problem status more difficult (see for e.g. Sivanandan 1985). Consequently, individuals rather turn to their ethnic community organisation, or an advice agency than organising themselves for collective action as a social entity of “sans papiers”.<sup>17</sup> Maybe it is time to do something about it?!

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### Undocumented Migrants in The Netherlands (1.3.6.)

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Since 1992, the Dutch government has taken various measures to control migration of aliens to the Netherlands.<sup>18</sup> Dutch migration policy can be characterised by growing attention to the combat of illegal labour and illegal stay. This results in the development of a "discouragement-policy", that exists of a more strict approach to employers, who illegally hire employees, an intensification of inspection by the Aliens Police and other agencies (like Labour Inspectorate) on illegal stay and employment, the advancement of an effective expulsion-policy and the introduction of an obligation to present identification-documents.

In July 1998 the "Koppelingswet" or Linking Act came into force.<sup>19</sup> The Linking Act can be seen as the centrepiece of migration control in the Netherlands. The Act establishes a link between the lawfulness of the stay in the Netherlands and the extent of claims on welfare provisions that can be made by the immigrant. In order to achieve this, the Aliens Act as well as 25 other acts, concerning social security, housing, education and health care were amended. Since the introduction of the Linking Act, the entitlement or access of aliens to secondary or higher education, housing, rent subsidy, facilities for the disabled, health care and all social security benefits -including national assistance- has become dependent on their residence status. Entitlement to these public services is restricted to aliens with lawful residence. Only publicly funded legal assistance, imperative medical care and education for children up to the age of 18 remain accessible to all aliens (including undocumented migrants).

The apparent need for such a strong measure of migration control can be doubted. Various studies show that even before the highly complicated and elaborate forms of control as introduced by the Linking Act were enacted, just a tiny number of welfare provisions were granted unjustly to illegal residents.<sup>20</sup>

<sup>18</sup> These measures consist inter alia of an extension of visa-obligations, fees for residence permit applications, the reduction of the remedies in immigration cases, a more restrictive asylum policy and family reunification policy and the introduction of rules against so called marriages of convenience.

<sup>19</sup> Act of 26 March 1998, *Staatsblad* 1998, no. 203.

<sup>20</sup> TK 1988-1989, 21248, nr. 2. *Heroverwegingsrapport De positie van niet-Nederlanders in Nederlandse stelsels van sociale en culturele voorzieningen* (Reconsideration of the position of non-Dutch citizens in Dutch systems of social and cultural public benefits), Den Haag, juni 1988.

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Since its introduction, various studies have been conducted to assess implementation of the Linking Act in the field of housing, education, health care and social benefits (Etman and Korpel 1997, Fahrenfort et al 2001, Van der Leun 2001, Glasgow et al 2000, Staal and Engelen 2001, Reijneveldt and van Herten 2000). Without doing justice to the accuracy of these studies, it can be concluded, contrary to the provisions of the Linking Act, that access to services in the area of education for people under the age of 18 and in health care is not always guaranteed. Medical care and education are often offered by a concentrated, small amount of doctors and schools. Also, the idea that illegal immigrants hardly claim social benefits can be confirmed (Van der Leun 2001). The same holds true in the area of public housing services. If made at all, claims to social benefits and to public housing services seem to be effectively denied to undocumented migrants since the introduction of the Linking Act.

Forms of informal inclusion complement these processes of formal exclusion. Here, organisations for undocumented migrants play an important role. Humanitarian organisations provide help and shelter where formal institutions fail to do so. Their involvement with illegal immigrants falling out of the scope of entitlement to public services is twofold. On the one hand, people working in the four domains as described are aware of the work done by the humanitarian organisations and often, when the decision not to render help seems particularly harsh, the illegal migrant is referred to these organisations. On the other hand, especially in the domain of health care and education, by making use of their own network, many organisations refer illegal immigrants to doctors and schools of which they know that these will render their services.<sup>21</sup> Thus, illegal immigrants are appointed to humanitarian organisations, but they in turn appoint their protégés to several institutions. Hence, an alternative network of assistance to undocumented migrants is being formed.

In some cities, local authorities have taken measures in order to limit the effects of the Linking Act for the most vulnerable group of illegal immigrants. Local funds and networks were set up to provide an alternative safety net. Humanitarian organisations were often involved in the preparation of these “bypasses” and part of the enforcement of the provision was attributed to them. For example, in one city where a fund was set up, a formal institution controlled its administration but the four humanitarian organisations operating in that city could claim refunds from the fund. In another city, it was decided that the local authorities would subsidise a humanitarian organisation so that a certain group of undocumented migrants could continue to receive benefits after their claim to social benefits had expired due to the Linking Act.

A broad variety of activities is undertaken by humanitarian organisations in order to support undocumented migrants. Support can consist of practical, social, legal and financial help. Practical forms of help, aimed at making life in illegality more bearable, are for example the practice of referring migrants to doctors and schools as mentioned above. By offering social help, organisations can also try and make undocumented migrants learn to deal with the tensions and insecurity that follows from their unlawful residence. At times, organisations try to work with the migrant on the development of a realistic perception of the future that might involve making the option of return a subject of discussion. With regard to juridical help, some organisations either have the expertise to offer juridical help with procedures themselves or they have connections with lawyers to consult.

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<sup>21</sup> These practices offer an explanation for the fact that health care and education is offered by a small amount of doctors and schools. Most illegal immigrants do not go to schools and doctors to ask their services themselves but receive help from humanitarian organisations in this. Doctors and schools that fall outside the scope of the organisation’s network are just not being asked to render their services. Also, at its implementation, the opponents of the Act pointed out that the fact that all sorts of data containing information on the residence status of the immigrant are being linked to another, would prevent the illegal resident from claiming benefits that he or she is still entitled to. Fear of the information on the residence status being passed on to the Aliens Service, sometimes in fact does produce the effect of illegal immigrants not claiming their rights.

In most municipalities several humanitarian organisations operate next to one other, but their goals and activities and the group they concentrate on are quite varied. Almost every organisation applies its own criteria as to whether or not assistance can be offered. These choices in the concentration on a particular group of migrants to be helped and the criteria to be applied in the selection within this group are often determined by the organisation's historical and ethical background. The decision to render support to undocumented migrants sometimes stems from a religious background, but can also derive from humanitarian considerations. Apart from that, visions on migration policy also shape the character of the initiatives (Mulder 1998).

Several recent developments have caused many organisations to revise and strengthen the criteria applied. Whereas shortly after the introduction of the Linking Act, illegal immigrants could be offered help, now most organisations had to shift their focus on migrants that still, to some extent, have the prospect of obtaining a residence status. Due to several recent developments in migration policy, new groups of migrants fall outside the scope of central governmental reception and are in need of humanitarian assistance.

The first of these new categories of aliens is that of the rejected asylum seekers. These aliens have to leave the Netherlands but in many cases do not, for a variety of reasons.<sup>22</sup> Until recently these aliens kept the right to reception provisions as long as they co-operated in the assessment of their identity and nationality, so that the necessary travel documents could be obtained. In the year 2000, however, the government introduced a new and stricter policy.<sup>23</sup> This new policy starts from the assumption that asylum seekers take steps to prepare their return even before a decision on their asylum request has been made. After an irrevocable rejection of the request for admission, the rejected alien still has a period of 28 days to return voluntarily. If s/he has not left after that period, all reception provisions come to an end.<sup>24</sup> The central authorities thus use withholding reception provisions as a means to force these aliens to leave the country.

As a result of this stricter return policy, over the last period of time more asylum seekers than before have actually appealed for accommodation to various municipalities and humanitarian organisations after a term of leave of 28 days.

In addition there is an increasing group of asylum seekers that is staying lawfully in the Netherlands, but that is nevertheless not eligible for reception. Such is the case for the so-called Dublin claimants<sup>25</sup> and the aliens who have submitted a repeat request for asylum and are allowed to await the decision on that request in the Netherlands.<sup>26</sup> Here, too, the government tries to discourage these asylum seekers' stay in the Netherlands by withholding reception provisions.<sup>27</sup> In some cases these asylum seekers also turn to municipalities or humanitarian organisations for assistance.

<sup>22</sup> In 2000, 16,1662 rejected asylum seekers were booked by the Immigratie- en Naturalisatiedienst (IND) (Immigration and Naturalisation Service (INS)) as having left; 2,027 of them have actually been expelled and 3,188 have left under supervision or with a return regulation; 10,871 persons have been booked out when INS checks lead to the conclusion that the persons had left their last known address. See: *Rapportage Asielketen* (Report Asylum Chain), 9 February 2001, TK 2000-2001, 19637, no. 559.

<sup>23</sup> TK 1998-1999, 26646, no. 1, *Notitie Terugkeerbeleid* (Memorandum Return policy).

<sup>24</sup> The question whether the alien 'co-operates' to his return or not, is no longer relevant. Only aliens who cannot leave 'without blame' are allowed to remain in the reception. This concept 'without blame' is interpreted in a very restricted way and only applies to stateless persons and particularly concerns Palestinians.

<sup>25</sup> This term refers to asylum seekers with regard to whom the Minister of Justice has submitted or will submit a request for transfer to another state, party to the Dublin Convention (Trb. 1991, 129), as the asylum request has to be submitted in that other country.

<sup>26</sup> These asylum seekers cannot appeal to the *Regeling verstrekking asielzoekers en andere categorieën asielzoekers 1997* (1997 Regulation of provisions for asylum seekers and other categories of aliens).

<sup>27</sup> This development also occurs in other European countries (Bank: 2000)

At a local level, protest against the consequences of Dutch migration policy has started to emerge. Since the introduction of the Linking Act, municipalities can no longer provide facilities for these categories of aliens on the basis of the National Assistance Act. Under the influence of the new developments in migration policy and in addition to the bypasses set up in reaction to the Linking Act, more local initiatives have emerged with various constructions to offer some relief in particular situations. This relief can consist, among other things, of the establishment of a relief fund, of placing empty buildings at the disposal of people in need, and of establishing a support and information center (NRC 22/02/2001, *Algemeen Dagblad* 23/10/2000). In many cities, the local administration financially supports these initiatives. In addition to the activities undertaken by the humanitarian organisations, a great amount of municipalities themselves have set up various structures for the reception of these immigrants. After being confronted with a growing number of churches asking for guidance in their attempts to offer reception in their parishes, one humanitarian organisation has set up a model for providing care. About forty different municipalities have used this model and its criteria<sup>28</sup> for the foundation of their reception facilities (*Trouw* 27/09/2001, *Trouw* 14/01/2002)

As a result of all these initiatives, a shadow network of centres for the homeless, churches, societal organisations and private persons has emerged, which organises the reception of these aliens (*Algemeen Dagblad* 23/10/2000). In this connection a return to charity can be discerned. Thus the former governmental care in situations of need has been replaced by mutual care or help based on private initiatives.<sup>29</sup>

Granting any form of reception at a municipal level causes tension in the administrative relations between central and local authorities.<sup>30</sup> Municipalities take the position that they are competent to offer reception to rejected aliens, on the basis of Article 124, Section 1 Constitution and Article 108 Municipality Act. These articles state that the municipality has the autonomy to run its own financial household and would therefore offer sufficient basis for autonomous municipal care taking. Also, the threat that homeless illegal immigrants pose to national health, the public order and safety is often used as an argument for the decision to offer reception facilities. Furthermore, municipalities legitimise their actions by arguing that the central government does not take up its responsibility of granting reception to migrants that are lawfully resident. Unlike that of humanitarian organisations, their motive to provide assistance has a political character: by publicly challenging the consequences of migration policy, the municipalities try and have the government pick up the broken pieces again.<sup>31</sup>

The present situation threatens to result in a deadlock. On the one hand, the severity of the various Dutch municipal administrators can make or break the severity of the Dutch return policy (Pattje

<sup>28</sup> Reception stands open to immigrants that are legally resident (asylum seekers that have submitted a repeat request for asylum, immigrants that have submitted a request to be granted a residence permit on regular grounds, Dublin claimants). Illegal immigrants will be granted reception only when they are willing to cooperate in the return procedure, or when their medical or mental condition poses a threat to society.

<sup>29</sup> An example of such a private initiative is the Irina fund (see [www.irinafonds.nl](http://www.irinafonds.nl)). This fund gives small-scale financial support to female asylum seekers in the Netherlands staying with private persons, awaiting the decision on their admission. Female asylum seekers with a legal perspective, who wrongfully do not enjoy governmental protection, can also apply for financial support. The fund consists of gifts from anonymous contributors.

<sup>30</sup> See for example, *VNG-magazine* 2 March 2001, p. 21-23.

<sup>31</sup> From reactions by the Ministers of Justice it can be deduced that they – albeit reluctantly – recognise municipal autonomy in this field, but at the same time, they make a moral appeal to municipalities not to thwart the centrally directed aliens policy. In answer to parliamentary questions about the initiatives of various municipalities in this field, the State Secretary of Justice, Kalsbeek, indicated that municipalities offering provisions to aliens, who no longer have a right to governmental provisions, act in conflict with the spirit of the Linking Act, which she regretted (TK 2000-2001, Annex Handelingen no. 959). However, she did not hold out concrete measures against these municipalities. The Minister of Justice, Korthals, stated in reply to parliamentary questions: “Structural help in lengthening the stay in the Netherlands is in conflict with the spirit of the Aliens Act and the government policy based on it. When help or information is given on humanitarian grounds, aimed at the situation of the alien – e.g. help in arranging return – a municipality can act administratively in an autonomous way” (TK 2000-2001, Annex Handelingen no. 762).

1999). On the other hand, considerations of a humanitarian nature advocate this more flexible attitude of municipalities. The present situation also entails a risk of legal inequality. Rejected asylum seekers, Dublin claimants and aliens who submit a repeat request for asylum are very dependent on the variety of criteria used by the various municipalities and humanitarian organisations. The local initiatives fear a growing amount of these groups of immigrants and with it, a confrontation with a growing demand for reception at a local level. As stated before, some municipalities and organisations have therefore decided to offer reception only to Dublin claimants and repeat applicants or make an independent decision whether a repeat request for stay in the Netherlands will be successful or not. The question whether or not the immigrant has the perspective of obtaining a residence status or is willing to cooperate in his/her return has become crucial in the decision of granting a request for reception. These developments make it very difficult for illegal immigrants to receive assistance other than that offered within the scope of education and health care.

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### Back to International Standards (1.3.7.)

Although some efforts have been made by states to recognize the rights of undocumented migrants, it can be stated that in general, the situation of undocumented migrants is being ignored by policy makers, excluded by law, discriminated against by official institutions. They are an easy target to be exploited in the labor market, especially women. They have no voice, are criminalized, and live in constant fear of being deported. They are violated in their most fundamental human rights. The framework described in the beginning of this chapter remains largely unimplemented.

The situation of illegal migrants reflects the jurisdictional struggle between state sovereignty and its control over immigration versus the obligation of the state to uphold the human rights of all individuals found within the territory. It appears that social policy is becoming an important instrument in



combating immigration, especially illegal immigration. It is however questionable if this policy of cutting down social care passes the general test of equal treatment, i.e. if this measure is objective, reasonable and proportional to the aim of combating illegal migration. It is also questionable if a social policy can be a legitimate tool in the fight against illegal immigration and if the claim to sovereignty as conceived nowadays can be so strong as to preclude the application of international norms to illegal migrants. (Houben 1999)

## **General Attitude Towards Undocumented Migrants (1.4.)**

### **Introduction (1.4.1.)**

In the course of the interviews that have been carried out, the general attitude of citizens, official institutions and the media in the different countries towards undocumented migrants was discussed extensively. The answers allowed for a wider understanding of the social and political context in which organizations have to work on a daily basis to provide help to undocumented migrants. This is presented in the following section, to conclude the chapter on the context. It should be noted that the conclusions cover the four countries researched; considerable differences have not been observed.

### **Citizens (1.4.2.)**

It is difficult to make some conclusions on the attitude of citizens to undocumented migrants. Seemingly, most citizens do not differentiate between different groups of “foreigners” (e.g. refugees, undocumented migrants, migrant workers, etc.). One interviewee explained that the public in general sees them as one group, regardless of their status:

*“Whether they’re legal or illegal often doesn’t matter; very often asylum seekers and undocumented migrants are considered the same.”*

When trying to focus on the reactions on the specific group of undocumented migrants, it is difficult to generalize a certain attitude. As many of the interviewed organizations had bad experiences as well as good experiences, some of them were convinced that solidarity is growing, while others stated the opposite. On the one hand, there are many initiatives taken by citizens to help undocumented migrants, while on the other hand, there is a lot of racism and intolerance towards undocumented migrants. Even within one country, the perception of organizations of the solidarity with undocumented migrants may vary from one region to another. For example, racism – of which undocumented migrants are victims as much as legal migrants – may be more present in some cities in Germany (especially in areas where foreigners have not traditionally been present) than in others.

Intolerance towards undocumented migrants can be seen more easily in some sectors than in others. For example, the housing market is one area in which organizations continually spoke of racism towards undocumented migrants. Often the inability of undocumented migrants to find housing is due to racism as well as ignorance of their rights:

*“It is very hard for undocumented migrants to find housing, because many landlords do not want to rent; they think that renting to an undocumented migrants is illegal. This is a problem too of racism (towards foreigners in general).”*

Nonetheless, certain factors do positively influence citizens to support undocumented migrants. Specific actions such as regularization campaigns or local actions have brought unexpected demonstra-

tions of solidarity. One interviewee who helped undocumented migrants make their cases in the regularization campaign in Belgium spoke of the numerous handwritten letters of support written by employees, neighbors, teachers, and others who personally knew an undocumented migrant. Another interviewee said that during that same regularization campaign, many people brought food, clothing, and came and talked to undocumented migrants and generally showed a lot of support. One negative effect, though, is that much of the support was short-lived and mainly extended during the regularization campaign itself. Yet some citizens who mainly showed their support during the campaign did so to contribute to long-term coexistence with their neighbors, the undocumented migrants:

*“During the regularization campaign, it appeared that more people than we thought in ‘Antwerpen Noord’ (a low-income neighborhood in Antwerp, Belgium), people who have to fight for their own existence, did not lose their compassion and reacted positively towards the people in the campaign. They also did this out of a concern for their neighborhood and the quality of living together.”*

One interviewee noted that regarding the growing solidarity, the focus on trafficking can partly be held responsible:

*“Undocumented migrants benefit from solidarity by citizens, they are seen as victims of people who take advantage of their precarious situation (e.g. by making them work undeclared or in female trafficking/prostitution).”*

One interviewee in the UK felt that citizens’ attitude towards undocumented migrants was not necessarily of their own making, but highly influenced by outside sources:

*“I think that generally speaking, the British people feel quite well towards them (undocumented migrants). I think that they’re just feeling chased by the media and the politicians.”*

### **Official Institutions (1.4.3.)**

The general impressions of official institutions are that they are restrictive and ignorant of many issues faced by undocumented migrants. There is also the impression that authorities see undocumented migrants as criminals. A common observation is that officials do not have much respect for undocumented migrants and are too bureaucratic. Nonetheless, officials working on lower levels who have more direct contact with undocumented migrants seemed to be less negative towards and generally more aware of issues faced by undocumented migrants. This could also be due to the different levels of authority, as one interviewee suggested:

*“We observe that several authorities support initiatives that provide reception to undocumented migrants. As local policy makers with different competences, they put more accent on humanitarian reception than the federal policy.”*

### **Media (1.4.4.)**

The coverage of undocumented migrants in the media often gives a partial picture of their real concerns and even serves to encourage misunderstanding. What is presented in the following section is not a profound analysis of the media in Europe and their ways to represent undocumented migrants, but must be read as the impressions help providers have of the position of the media.

The media will often talk about “illegal” people without making a distinction between various groups of people such as refugees, migrant workers, undocumented migrants, etc., and without raising public awareness of the important issues faced by undocumented migrants:

*“There is a general problem with the press that there is not an active pedagogical effort to sensitize people to the problems faced by undocumented migrants.”*

Some organizations said that it is not uncommon for undocumented migrants to be described in the press as “dangerous,” “scavenging”, “beggars” or “sponging off the system”. Undocumented migrants are often scapegoats for many societal problems. The press may also focus on certain categories of undocumented migrants, such as female victims of trafficking/prostitution, and give more coverage of them than other undocumented migrants, such as rejected asylum seekers. Some organizations said that this differentiation is due to the fact that sex slaves are seen as victims from the start, whereas asylum seekers are rejected because they are “bogus” or “economic migrants,” and thus are given unfavorable press coverage. Other factors such as illegal entry and international politics may also serve to contribute to unsympathetic media coverage of undocumented migrants:

*“Since September 11<sup>th</sup>, media have partly shown a hostile attitude towards people without legal status. Illegal entry is sometimes related to suspicious aims. There is a certain danger that what has been developed over the last two years in the public discourse in openness for migrants will disappear.”*

Nonetheless, not all media consistently seek to create a bad image of undocumented migrants. It is reassuring to know that some journalists (especially in the mainstream press, as opposed to the tabloids) try to objectively report on the particular issues faced by undocumented migrants:

*“There are some journalists who present more of a “human side” and try to present the social and human rights of undocumented migrants. They also highlight the political situation that many undocumented migrants flee from in their countries.”*

## **Conclusion (1.5.)**

There are various ways of becoming undocumented, various ways to lead one’s life as an undocumented migrant. The only thing all undocumented migrants in Europe have in common is the lack of an official authorization to reside in the country where they are. Also regarding the reason why they are here, it is not possible to generalize. It is obvious that such a diverse group has diverse reasons to come to Europe. When analyzing the reasons for the presence of undocumented migrants in Europe, the fact that there is a considerable demand for their labor should be taken into account.

The plight of undocumented migrants is similar in most countries, showing a denial of a number of internationally recognized rights. Although there are differences between Belgium, the Netherlands, the UK and Germany, in general undocumented migrants run big risks of social exclusion and marginalization, especially since governments in all of the countries seem to be using social policy to combat illegal migration. Apart from a restricted access to basic social rights, undocumented migrants in all of the countries described suffer from the repressive atmosphere, are afraid to attend public places, threatened by deportation. Some of the contributors in Chapter 1.3 pointed at the importance of social networks and solidarity, coming both from the migrants’ communities and from political activists, church based groups, teachers, local communities, health care providers and many more.

According to the organizations that were interviewed and that will be presented in Chapter 3, the attitude of the society at large towards undocumented migrants varies from very supportive to very negative. The media can play an important role here in showing the human side of the story, but often takes incorrect language and negative information from policy. Although “official institutions” are in general seen as restrictive and ignorant, in the experience of the organizations much depends on the personal conviction of the policy executors.

# Legal Hindrances to Solidarity

## Incriminary Legislation in Belgium, Germany, the United Kingdom and the Netherlands (2.1.)

The aim of this chapter is to present the current dynamics in the European states researched to penalize solidarity and assistance given to undocumented migrants. As in the rest of the book, we focus mainly on assistance provided by citizens and civil organizations, and less on services provided by official social institutions.

This chapter has an explorative character, and does not intend to provide an in-depth legal analysis. By pointing out some examples in Belgium, the Netherlands, the UK and Germany, we aim to reveal some components of strategies that legislators use to criminalize assistance provided to undocumented migrants.

First and foremost it should be mentioned that in all the countries studied, there is confusion concerning the legality of assistance provided to undocumented migrants. The aliens laws of all four countries contain an article or paragraph on the penalization of smugglers and traffickers, and sometimes also on the penalization of those who assist undocumented migrants in their irregular residence. It is often not very clear if social and humanitarian support also fall under these restrictions.

Additional confusion is created by several other legal provisions that concern the assistance provided to undocumented migrants: the duty to report for official institutions, the law on legal advisors, etc. In the following we will briefly present some examples of such problematic provisions.

### Germany (2.2.)

Article 92a of the Aliens Law

In the German Aliens Law (BGBI. I S. 1354), reference to assisting undocumented migrants is made in article 92a. The article clearly states that anyone who helps an individual without a regular residence permit can be punished.

*§ 92a Assisting Illegal Entry*

*(1) With detention up to five years or with a monetary fine will be penalized, whoever encourages or helps somebody to commit actions as meant in § 92 Abs 1 n° 1, 2 or 6 or Abs 2<sup>32</sup> and*

- 1. does this for financial gain (...), or*
- 2. repeats these actions or acts in the benefit of several foreigners*

Article 92a is a general rule, not covering all specific cases regarding the different forms of assistance. Taking into account the administrative rules ("Verwaltungsverordnung") specifying the Aliens Law reveals that e.g. transporting, finding accommodation, arranging for translations in order to hide a migrant, can all be seen as support for entry or for residence and can therefore be fined. Articles 92a and 92 include the basic principles from Articles 26 and 27 of the Penal Code, referring to instigators and assistants in criminal offences (Alt and Fodor 2001).

<sup>32</sup> Concerns all individuals who do not have a legal permit to enter or reside in the territory

Article 92a states that anyone who assists undocumented migrants will be penalized if it is done for financial gain, or if it is done repeatedly or in the benefit of several foreigners. There is serious confusion in Germany and amongst German lawyers regarding the interpretation of this article. According to jurisdiction, people providing assistance to undocumented migrants could be sued if their behavior caused the migrant to decide to illegally stay or overstay. In order to be sure not to be sued, humanitarian organizations should have clarity on the individual reasons for the illegal stay. One of the problematic elements here is that, if it results in a court case, it must be proven what made the undocumented migrant stay. This can only be done by the undocumented migrant him/herself, who in most cases is already deported.<sup>33</sup>

In practice, there are not many cases known in which this article has been effectively applied. Notorious are the "taxi driver trials". Taxi drivers transporting undocumented migrants near the border of Poland (not across the border) were condemned and imprisoned, and their drivers' licenses were taken away. Ever since, taxi drivers check the identity cards of the people they are transporting unless these people are "clearly" German. The German border police distributed leaflets to all taxi drivers warning them to "transport persons who had obviously entered Germany illegally, or who looked suspiciously like "illegals". FFM, the German Research Center for Migration and refuge, brought these cases out into the public. The organization argued that such extensive controls do not only harm so called "illegal" immigrants, but that they also reproduce and reconfirm already existent racist stereotypes of who is considered to be a welcome member in Germany and who is not (Seyb 2000).

Yet until recently such cases have been exceptional. There was a tendency to ignore and to tolerate the assistance that was given to undocumented migrants. Judgments on church asylum for example have been exceptional. However, in the last year, the number of cases pending against priests who provided church asylum increased.<sup>34</sup> Even though most of the cases in the past have been settled before they came to court, the mere possibility that it could happen creates a fear of providing assistance to needy undocumented migrants.

As a part of the proposed new German immigration law which will enter into force in January 2003, all these rules will be the same as in the current law. In addition, this humanitarian support is a new reason for expulsion and deportation of a legal foreigner. If the person providing assistance is a foreigner, in future he or she can be fined but in addition can also be deported for doing so.<sup>35</sup>

### **Article 76 of the German Aliens Law : Duty to denounce**

As mentioned in the introduction, some provisions indirectly penalize assistance, e.g. the duty for official institutions to denounce the presence of undocumented migrants. An example of this is article 76 of the German Aliens Law :

*§76: Transmission to registration office for foreigners:*

*(2) Public boards must inform the registration office of foreigners immediately if they receive knowledge of:*

- a. the stay of a foreigner who does not have any kind of residence permit or "Duldung" (Convenience of Authorities);*
- b. the offence against a local restriction or*
- c. any other reason for deportation, (...)*

<sup>33</sup> Information obtained from Dr Ralf Fodor, Berlin

<sup>34</sup> They have been sentenced on the basis of 'article 92a of the Aliens Law linked with article 27 of the Penal Code'.

<sup>35</sup> Information obtained from Georg Classen, Flüchtlingsrat Berlin

- (5) *The federal Ministry of the Interior lays down (...) that all*
- a. *registration offices*
  - b. *offices for state affairs*
  - c. *passport offices*
  - d. *social services and youth boards*
  - e. *justice, police and offices for regulations.*
  - f. *job centers*
  - g. *revenue and declaration offices*
  - h. *trading offices must, without any request of the registration office for foreigners, inform them of all personal facts of any foreigner.*

This means that any member of an official board must pass on any data regarding individuals without residence permits to the relevant sections of the Ministry of the Interior. Any member of any public office is obliged to do this, immediately and without being asked, and will be penalized if he/she does not obey this rule. This has as a consequence that e.g. even though undocumented migrants can theoretically apply for money at the social service (since they are legally considered as “persons obliged to leave the country” whose rights are mentioned in § 53 of the Aliens Law) this office is obliged to denounce them, which could eventually lead to deportation (Braun and Würflinger 2001).

Since the focus of this book is on assistance provided by citizens and organizations, the duty to denounce that is imposed on official institutions could appear to be of less relevance. However, schools are also considered official institutions. The right to education, which is a basic social right for undocumented minors, is compromised by this regulation. In Germany the law on schools is decentralized, meaning that every state has the power to decide if schools have the duty to denounce undocumented pupils.

#### Law on Juridical Advice

The German “Rechtsberatungsgesetz”, the law on juridical advice, stipulates the conditions one must answer to be allowed to provide legal advice. This law is originally an anti-Semitic law dating from 1935, used during the Nazi period to discriminate against Jewish lawyers. In an article on this law, Dr Helmut Kramer argues that it is nowadays abused by public institutions to deny undocumented migrants their basic rights and to render assistance to them problematic. Indeed, most undocumented migrants cannot afford to pay for professional legal advice, and are dependent on the services of e.g. social workers. Several social organizations have contested this regulation. Where it aims to protect undocumented migrants against low quality and expensive advice, as a result many bona fide organizations are criminalized for providing the very necessary, essential, and affordable legal assistance undocumented migrants need.

Although most of the procedures against helpers based on this law have been suspended in the last years, many public authorities still refer to it. Kramer states that nobody is obliged to accept and obey a summons served by the police on the basis of this law. Even though it is known that the attorney general might use his/her power to serve a summons in case the “accused” neglects the request to present him/herself at the police office, in reality there is no case known of an attorney general doing so. Thus this law is mainly used to intimidate refugees, migrants and their helpers (Kramer: 2002).

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## United Kingdom (2.3.)

Article 25 of the Immigration Act 1971

In the United Kingdom, as in most of the countries in Europe, most attention is paid to assistance regarding illegal entry. Yet Article 25, §2 of the Immigration Act of 1971 refers also to assisting illegal residents:

*"Without prejudice to subsection (1) above a person knowingly harbouring anyone whom he knows or has reasonable cause for believing to be either an illegal entrant or a person who has committed an offence under section 24 (1) (b) or (c) above<sup>36</sup>, shall be guilty of an offence, punishable on summary conviction with a fine of not more than £400 or with imprisonment for not more than six months, or with both."*

On the basis of this article a bona fide organization could assist undocumented migrants, if it is not done for profit; one is deemed to have some kind of ethical basis.<sup>37</sup> With the introduction of the new White Paper in February 2002, however, the Home Office expressed its determination to penalize assistors more seriously:

*"Those who facilitate the illegal entry of people to the UK or harbour them once here – be they employers or not – need to understand that they are committing a very serious offence, which will in future carry a potential 14 years prison sentence."* (art 5.7, Home Office 2002)

The Mayor of London, Ken Livingstone, reacted firmly against this provision. He states that:

*"the Bill makes it an offence knowingly to help anyone to breach immigration law adopted by any member State of the European Union. This extraordinary measure would apply equally to breaches of all kinds from trafficking people as slaves for sale into prostitution, to just giving shelter to someone who is in the country illegally. (...) The Mayor endorses the use of tough measures against exploitative trafficking but cannot accept that offering support or accommodation to an illegal migrant should be classified as the same kind of offence, subject to the same draconian maximum sentence. It is a misdemeanour which many citizens of London and other UK cities could be drawn into, in some cases just by family loyalty, love or common humanity. This clause willfully ignores the reality of social relationships in a city with global links, risks causing grave injustice and could damage community relations in London. The Bill's provisions on assisting unlawful immigration must be revised to distinguish clearly the lesser offence of harbouring illegal immigrants or helping them to stay in the UK, ensuring that any penalty for it will be proportionate and fairly reflect its social context."* (Livingstone 2002)

Law on Juridical Advice

The United Kingdom has a similar law as Germany regarding juridical advice. The Immigration and Asylum Act 1999 (Part V) established a scheme to regulate immigration advisors in the United Kingdom. The act set up the Office of the Immigration Services Commissioner (OISC) as an independent public body to ensure that immigration advisors are fit and competent and act in the best interests of their clients.

<sup>36</sup> Referring to illegal residence

<sup>37</sup> Information obtained from Community Law Center Islington, London, UK.

Since 30 April 2001 it has been a criminal offence for an advisor to provide immigration advice or services unless their organization is either registered with the OISC or has been granted a certificate of exemption by the OISC, or unless the organization is otherwise covered by the act. (OISC 2001) Like in Germany, also in the UK many social organizations have contested this regulation.

#### Criminalization of Undocumented Migrants Themselves

It could be stated that at the core of the problem of criminalizing assistance to undocumented migrants lies the criminalization of the migrants themselves. If they would not be perceived as wrongdoers, the help provided to them would consequently also be considered less problematic. This criminalization is on the increase in many European member states, and was according to many people who are following the evolutions in the field of migration reinforced by the events in New York on September 11<sup>th</sup> 2001. One example of criminalization of undocumented migrants is the "Immigration related Crime Hotline" in the UK. On the Home Office website, the following message appears:

##### *"Immigration-related crime hotline*

*It is our responsibility to ensure that the appropriate action is taken against those who seek to abuse the Immigration Rules for financial gain. These people are:*

- *Human traffickers/people smugglers who arrange the illegal transportation of people with or without their consent to the UK*
- *Employers and gangmasters who use illegal labour*
- *Facilitators of rackets such as bogus marriages*

*If you have any information on these three specific subjects, we would like to hear from you. Call (...) in confidence to tell us what you know. We will not ask for your name and your call will not be traced. An operator will make a note of all the details and the information will be passed on to the appropriate unit." (Home Office, 2002)*

Albeit endorsing measures aimed at combating trafficking and exploitation of migrants, several social organizations recognized the criminalizing effects of such messages. Authorities stimulate citizens to abuse the weak legal positions of some of their neighbors, colleagues, and even family members. It is not at all improbable that this hotline could be used by people with other intentions than undertaking action against abuse of immigration rules. In general these kind of messages undeniably contribute to the establishment of a certain negative image, and enhance public paranoia about providing assistance to undocumented migrants.

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## **Belgium (2.4.)**

#### Evolution of Article 77 of the Aliens Law

Article 77 of the Belgian Aliens Law of 15/10/1980 concerns the possibility of giving assistance to undocumented migrants. In its original version, the article stated:



*“Each person knowingly helping or assisting a foreigner, either in the actions preparing or facilitating his illegal entry or illegal residence, or in actions accomplished, can be punished.”*

In 1996, a “humanitarian clause” was added to this article, excluding from penalization all assistance that is given for humanitarian reasons. The following wording was used:

*“In case the help to the foreigner is provided on the basis of merely humanitarian considerations, the previous part does not apply.” (BS 05/10/1996)*

However, it turned out that this formulation was biased. In April 1997, Ms. Verschaeve, a Belgian woman, was condemned by the court of the city of Bruges for living together with her partner while being aware of his irregular residence status. The judge stated that the above-mentioned humanitarian clause only applied to charity organizations. Friendship and love relations were, according to the judge, not to be considered “humanitarian considerations”, since the latter should have an “objective and verifiable background”, and should be to the benefit of only one party. Ms Verschaeve was eventually acquitted in appeal.

It should be noted that the Verschaeve case was not the only case, but was given a lot of publicity and evoked a strong reaction in society. Following this case, discussion began on the genuine interpretation of this article. This led to a change in the article (Law of 29 April 1999) as follows:

*“In case the help to the foreigner is provided on mainly humanitarian considerations, the previous paragraph does not apply.” (BS 26/06/1999)*

Essential is the replacement of the term “merely” by the term “mainly”. In the discussions on the adaptation of the article, it was stated that the main aim of the help provided should be humanitarian, while a possible secondary aim could perfectly be of economic nature.

This Belgian experience shows how a wording that at first sight is clear, can still give room for interpretation in different directions.

### Duty to Denounce in Belgium

The duty to denounce irregular residence to the Foreigner’s Office is not mentioned in the Belgian Aliens’ Law. Article 29 of the Code of Criminal Procedure states that every authority, every public officer or civil servant who, while executing his profession, is confronted with a crime or an offence, is obliged to denounce this to the public prosecutor. Because irregular residence or irregular entry can be considered as such an offence, official institutions are obliged to denounce undocumented migrants. However, Article 29 only involves a moral obligation; not to act according to this article does not imply a penal sanction. Moreover, this article is not applicable to persons bound by professional discretion. (VMC 2000)

At some points the necessity was felt to explicitly underline the fact that it is not obligatory to denounce undocumented migrants. Regarding schools for example, a circular letter of the Flemish Minister of Education gives the right to undocumented children to attend schools. This text guarantees that they will not be arrested within the vicinity of the school, and guarantees that the headmasters of the school do not have to inform the police about the administrative status of the children and their parents (VMC 2000).

### Bibliography

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## The Netherlands<sup>38</sup> (2.5.)

### Introduction

Regarding the situation in the Netherlands it needs to be stressed that it is for the moment difficult to make any conclusions, since things are changing every week. Many suggestions are made these days, some of them questionable regarding their sense of reality. An example is the proposal to install a duty to report for schools and teachers, a proposal that has been rejected because of enormous political protests. It is not sure whether all the new proposals, such as the proposal to penalize providing of accommodation will be rejected so easily.

### Recent developments

Aliens arriving in the Netherlands have to register. If they do not do this, they are in breach of the Aliens Law. To date this is only a petty offence (leading to imprisonment of maximum 6 months).

Undocumented migrants in general are not searched for intensively. Apprehensions of undocumented migrants are mostly the consequence of general controls, of controls on informal employment, or take place as a result of a presumptive criminal offence. The Aliens Law of 2000 however extended the power of criminal investigation. Before, the competence to arrest people to determine their identity, nationality and residence status could be used only in case of concrete indications of illegal stay. According to the new law, it is possible to arrest aliens whenever there is a reasonable presumption of illegal residence.

The Strategic Agreement (Strategisch Akkoord) 2002 goes one step further and announces that illegal residence will be liable to punishment. The Minister of Foreign Affairs and Integration however weakened this intention soon by stressing that illegal stay will not be considered a felony, but only a petty offence. In this way the Strategic Agreement does not differ much from the original Aliens Law.

Making illegal stay a felony instead of a petty offence, would have considerable implications regarding complicity, and would in this way affect the legality of providing help. Indeed, complicity to a felony is liable to punishment, while complicity to a petty offence is not.

The Strategic Agreement also states that municipalities are not allowed to offer alternative help to rejected asylum seekers and to undocumented migrants in general. It is however clear that many municipalities, and organizations and institutions within these municipalities, in reality do provide help and will continue to do this. To date there have been no sanctions against municipalities or private organizations.

### Smuggling

Article 197a of the Penal Code aims to combat smuggling of human beings. The article forbids to assist somebody for financial gain in entry or residence in the Netherlands or to provide this person with means or information, knowing or having serious reasons to suppose that the entry or the residence is illegal. The core of the offence "smuggling in human beings" is that the state is protected against undocumented foreigners. The Dutch State is considered as a victim here, contrary to the offence of "trafficking in human beings".

Criminalization of Undocumented Migrants: the Persona Non Grata-Regulation  
Until the new Aliens Law in the Netherlands went into force (1 April 2001), there was hardly a practice of declaring a person "undesirable" because of illegal entry or residence. In the preparation of the

<sup>38</sup> Information in this subchapter was provided jointly by Joanne van der Leun and Anton van Kalmthout

new Aliens Law, it was announced that the instrument of declaring a person undesirable would be applied in a broader sense. Contrary to what used to be the practice, since April 2001 no criminal offence has to have been committed. A foreigner who is “repeatedly” apprehended by the police, can be declared undesirable for the mere reason of not having the right papers. To declare a person “non grata” has as a consequence that the person will be deported and cannot return to the Netherlands. S/he will no longer be allowed to apply for a legal residence permit, and short visits can also be refused. A persona non grata who is apprehended again can obtain a criminal conviction and a prison sentence.<sup>39</sup>

## Discourse on the European Level (2.6.)

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

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

During its presidency in 2000, France made four proposals relating to undocumented migration. The first proposal concerned “Carriers’ sanctions”, while the second was on “Mutual recognition of expulsion orders.” The two other proposals concerned the prevention of facilitating unauthorized entry and residence. These last two proposals are the few proposals in which the theme of illegal residence is more or less directly considered. The text that the Council reached political agreement refers to the following sanctions in Article 1:

*Each Member State shall adopt appropriate sanctions on:*

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

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

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

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

<sup>39</sup> Information obtained from FORUM, Utrecht.

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

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

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

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

### Recent Developments

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

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## Conclusion (2.7.)

It is an alarming tendency that solidarity with undocumented migrants is criminalized and penalized in many countries. The evolution in the direction of using access to social rights to control migration, as described in Chapter 1, is taken one step further by penalizing humanitarian and social assistance to undocumented migrants. At the level of the European Union, this evolution is rather affirmed than discouraged, in spite of the fact that “solidarity” is one of the indivisible, universal values on which the European Union is based (Preamble of the European Charter of Fundamental Rights).

We presently witness that in developing a migration policy, each repressive measure is being replaced by a more repressive measure, a development induced by the determinedness to stop migrants from coming to Europe. In this logic, measures are not checked against any ethical standards.

Some countries are explicit in criminalizing assistance to undocumented migrants, while others have unclear legislation. In the next chapter we aim to examine the influence of these various forms of incriminatory legislation on the solidarity of citizens and civil organizations.

# Providing Assistance to Undocumented Migrants: The Reality

## Introduction (3.1.)

As was mentioned in the chapter on the methodology used, interviews were carried out at various types of organizations in Belgium, the Netherlands, Germany and the UK. Due to the particular framework of the project, the interviews were not exhaustive, but they did consistently reveal various categories of assistance provided to undocumented migrants regarding access to their basic social rights. These categories have been described in the first section of this chapter. The remaining sections in the chapter focus on issues of an organizational nature, such as the target group of an organization, or the balance between policy work and direct assistance. These issues also may pose certain ethical dilemmas for organizations, and thus are discussed from an ethical perspective as well. Discussions during the workshops on the drafting of “Ethical Guidelines for Assisting Undocumented Migrants” (held in March 2002, see annex) were directly linked to some of the questions asked during the interviews with organizations, and have been included.

Direct quotes from organizations interviewed have at times been included, as well as quotes from participants at the workshops. It was considered important to ensure the anonymity of organizations and participants, and thus the names of individuals and organizations have not been included in direct quotes. An exception was made for organizations profiled in the examples. These organizations gave their consent to publicize their name and specific details where relevant.

## Basic Social Rights (3.2.)

### Introduction (3.2.1.)

The main areas in which the organizations interviewed provide direct assistance to undocumented migrants are health care, education, housing, employment, legal advice and emotional support. While these categories of assistance all indicate the wide range of help that organizations provide to undocumented migrants, they are all essentially various types of general humanitarian assistance. As one German interviewee explained,

*“For an undocumented migrant, there’s not much you can do legally. It’s basically survival assistance.”*

Yet many organizations go beyond this survival assistance by engaging in raising awareness, working on policy issues, networking and spreading information to other organizations and professionals working in the field of migrants’ rights. Some organizations interviewed focus on particularly vulnerable groups of undocumented migrants, e.g. women, children, or undocumented migrants in detention.

### Health Care (3.2.2)

The problem

Many of the organizations interviewed provide assistance in the area of health care. Of all areas in which assistance is provided, health care seems to be in general the most accepted by the public and the authorities. As one interviewee stated,

*“The best you can do is reach is an understanding for the humanitarian aspects like the necessity of medical treatment. This is why most projects are working especially in this context.”*

One of the reasons why quite a number of organizations focus on this area is because access to health care is one of the most urgent problems faced by undocumented migrants. As described in Chapter 1, access to health care is in most countries problematic. The regulation on “urgent medical care” that is applied in Belgium and the Netherlands for example is rather complicated, not always known by both health care staff and undocumented migrants, and not sufficient (since it for example does not cover psychological assistance). Moreover, undocumented migrants are often reluctant to visit a doctor or go to a hospital and will rather resort to informal strategies: borrowing papers from documented residents, payment of the full price, negotiations with doctors and consultation at organizations delivering free medical assistance. The following example illustrates how problematic the access to health care can be for undocumented migrants:

*“An African woman had been treated in the emergency department of a university hospital for fever, infection and weakness. Since upon entering the hospital she had shown a false insurance card, the hospital administration became suspicious and they called the police to clarify the situation. The police took her to the police station, a few hours later she was brought to another emergency department with a broken arm. The arm was fixed and plastered for the night and an operation was planned for the next day. The woman, however, left before the operation because she feared she would be deported immediately afterwards.” (PICUM 2001)*

#### Methods

In assisting undocumented migrants to access their basic social right to health care, the method of work and the specific types of assistance vary very much amongst the different organizations. Regarding the methodology of the organizations, there are some organizations that have medical professionals working within their organizations, such as for example Médecins du Monde in Brussels, Belgium. Yet most organizations do not have this medical expertise within the organizations.

In Belgium and the Netherlands, where a procedure exists to provide urgent medical care for undocumented migrants, organizations working in this area mainly focus on assisting undocumented migrants in accessing the procedure. As mentioned above, the procedure is in both countries rather complicated, undocumented migrants are reluctant to consult doctors, and the relevant agents are often badly informed. All this leads to the fact that some organizations in Belgium and the Netherlands develop their own network of doctors and hospitals of whom they know that they are easily accessible. GIL (Gezondheidszorg Illegalen Leiden) for example is a Dutch organization that took the initiative to establish a protocol for all hospitals in the region to guarantee the accessibility and the quality of the care for undocumented migrants. They also developed a procedure for “referring”, which helps general practitioners to refer undocumented patients easier to hospitals. Finally they have been making several newsletters addressed to health care staff in the region, explaining the procedure.

In Germany, where no such anonymous procedure for urgent medical care exists, organizations have to fully rely on often large informal networks of doctors and specialists.

Büro für Medizinische Flüchtlingshilfe/Service for Medical Aid for Refugees,  
Berlin (Germany)

The “Büro für medizinische Flüchtlingshilfe” provides free anonymous medical treatment for refugees and undocumented migrants twice a week. The Büro is a non-governmental, self

organized project within the anti-racist movement. It is independent of any political party and does not receive any state funding. Everyone participating - the mediators in the office, the translators and doctors - works without payment. Additional costs for medication, x-rays, glasses etc. are covered by donated money.

Since the asylum law was nearly abrogated in 1993, the number of those who do not receive a kind of residence permit has risen, too. That includes also the number of undocumented migrants who do not have any access to medical aid. The bureau has been founded as a reaction to the changed political situation in Germany, with the aim of combining practical solidarity and political work.

The "Büro für medizinische Flüchtlingshilfe" understands its work as anti-racist and sees itself as part of the campaign "Kein Mensch ist Illegal" and the "Forschungsstelle Flucht und Migration". They also have a loose cooperation with other initiatives. The people working in the bureau share the opinion that every human being must be allowed to choose freely where to live and work. Apart from providing health care for ill people, they also take part in various actions against governmental discrimination of foreigners (discrimination of foreigners by national or local authorities) and against racist thinking and acting of the population.

#### Types of assistance

The type of assistance provided differs as well. Some organizations provide general medical assistance, while others specialize in certain areas. As mentioned above, psychological and psychiatric assistance is problematic for undocumented migrants in most countries. However, due to the conditions they may have fled from in their countries of origin, and also due to their extremely hard daily existence in Europe, many undocumented migrants need special psychiatric assistance. That is why in this area, many organizations, also in Belgium and the Netherlands, have to rely on their informal networks. Another specialization we came across is women's special health needs (e.g. pregnancy, rape, prostitution, etc.).

As demonstrates the above example of the Büro für medizinische Flüchtlingshilfe, several of the interviewed organizations assisting undocumented migrants in the field of health care combine the providing of assistance with a more structural approach to the issue. They for instance engage in political work or campaigning.

#### Medisch Steunpunt Mensen Zonder Papieren / Medical Support Point People without Papers, Brussels (Belgium)

The "Medisch Steunpunt Mensen Zonder Papieren" is an organization that wants to guarantee access to health care for foreigners staying illegally in the region of Brussels. One part of the working of the organization is centered on casework (individual counseling of undocumented migrants). Another part of the work of the Medisch Steunpunt is structural action related to access to health care and to obtaining (or maintaining) a residence permit for medical reasons. In this respect it communicates with various action groups, mutual aid associations and other social institutes.

Some of the organizations we interviewed also raise awareness amongst professionals, social services, the general public and undocumented migrants themselves about the right to health care for undocumented migrants. This counts both for countries without a specific procedure and for coun-

tries with a procedure, as mentioned above the latter often face the problem of a lack of being informed.

As described in Chapter 1, health care is one of the areas in which undocumented migrants in the UK can occasionally access services. Although there is no formal right to healthcare for undocumented migrants, in practice, some GPs and hospitals may not ask to see papers, which means services can be accessed. However, organizations interviewed in the UK find that many undocumented migrants live in fear of being apprehended and deported, which make it unlikely that they will actually go to see a doctor unless they have a major health problem. Furthermore, many migrants are unable to access healthcare because they do not have information or knowledge about how the health system works in the UK, or do not have sufficient language skills. Some organizations in the UK aim to raise awareness among migrants about their rights and to assist them in accessing these services. One example is the health promotion project run by the London-based organization, Kalayaan (February 2002 - February 2003). This project aims to raise awareness of migrant domestic workers about health and accessing health services. Clients can obtain assistance in registering with a doctor (GP) and the project also organizes workshops on health issues, exercise classes and access to further information.

### **Housing (3.2.3)**

The right to shelter is one of the most fundamental and at the same time most problematic social rights. FEANTSA (European Federation of National Organizations Working with the Homeless) stated that “decent housing and living conditions are the most basic needs of each individual. Gaining secure access to adequate accommodation is often a pre-condition for exercising many of the fundamental rights which form the foundations of all decent societies and should be enjoyed by everyone.” (FEANTSA 1998) The daily experience of the organizations we interviewed leads to the same conclusion. One interviewee stated:

*“It is necessary that more is done on shelter, albeit temporary shelter. This is important because to have a place to stay gives you more space and energy to get a clearer perspective.”*

Housing is a precondition for an undocumented migrant’s orientation towards a useful and valuable future (which could be return to the country of origin, applying for regularization, etc.). To exclude undocumented migrants from shelter means to put them in an even more vulnerable position of further marginalization.

As mentioned above in Chapter 1.4.2, the housing market is one area in which there is a lot of racism and intolerance towards undocumented migrants. Although a legal status is not always required to sign a rent contract, in practice many undocumented migrants have been refused housing because of a lack of papers. It should also be noted that in some cities in the countries selected there are general housing shortages. Undocumented migrants in Amsterdam, Frankfurt, or London for example, may face additional difficulties in finding housing due to the problems faced by the population in general to find decent and affordable housing.

In the area of housing (as well as in many other areas) undocumented migrants rely in the first place and to a large extent on members of their community and on their relatives. The assistance organizations provide ranges from facilitating contact and the housing agreement between the landlord and undocumented migrant, to actually providing a bed or other accommodation to an undocumented migrant. Because of the link between housing and positive developments in other fields, several organizations combine providing shelter with providing assistance in other fields.



#### “CAW Mozaïek Asiel”, Brussels (Belgium)

“CAW Mozaïek Asiel” is a shelter project with an intensive counseling meant for asylum seekers who recently arrived in Belgium and for undocumented migrants who are looking for a way out of their difficult situation. The “group aspects” (having dinner together) are for “CAW Mozaïek Asiel” as important as the individual counselling. Undocumented migrants are helped in juridical and administrative questions, in the search for a spending of their time, with medical questions and psycho-social treatment.

The length of the stay of undocumented migrants in “CAW Mozaïek Asiel” is mostly rather long. This is related to administrative slowness (of the regularization procedure, the appeal procedure, etc), and to the fact that many clients of “CAW Mozaïek Asiel” experience difficulties to find any other place to turn to due to their medical or psychological problems.

#### Jeanette Noëlhuis/Jeannette Noel House, Amsterdam (The Netherlands)

Jeanette Noëlhuis is a community offering shelter to undocumented migrants. They provide temporary shelter mostly to people that are in temporary need, awaiting to find an own place to stay. New guests are welcomed mainly after being send by other organizations that provide legal support to the migrants. They aim is *to* give hospitality until people can be on their own feet.

About fifteen people live together, and everybody has his/her own room. The dinner is the daily common moment. There is a test period of one month to see if things are fine between the resident and the others. After this month, an evaluation talk follows. People stay mostly for a period of six months. In the experience of the Jeannette Noel House this is enough time for a person to build out a network to find his/her way. After this period the clients are stimulated to leave the house.

Besides giving shelter, the Jeannette Noel House also welcomes people who only need food, want to use the shower and the washing machine, to watch TV and relax a bit.

The Jeannette Noel House also regularly organizes vigils at the nearby border prison and the stock market, and engages in civil disobedience against the military-industrial complex.

When recalling the legal provisions discussed in the previous chapter, it seems that providing assistance in the area of housing is most often targeted by these legislations. As a consequence, a high degree of confidentiality was requested by the organizations that were interviewed regarding the assistance they provide in the field of housing, mainly in Germany. Most German organizations that provide their own housing preferred to be discreet about these initiatives for fear of possible repercussions on their work.

### Employment (3.2.4)

As mentioned in Chapter 1.2, many of the undocumented migrants in Europe work. This is the case in Germany, Belgium, the Netherlands and the United Kingdom, without exceptions. Undocumented workers are mostly to a large extent dependent on their work. However, as they are undocumented, they often do not have a contract, social security benefits or insurance. This situation of being almost completely unprotected is very problematic. The organizations we interviewed are confronted with

various problems: workers who work extremely long hours, in dangerous and/or unhygienic conditions, workers who do not receive their wages or who receive less than was agreed upon, workers who are fired without being given due notice. In case of an industrial accident, the lack of official proof of employment renders it complicated and often impossible to have any health care refunded. In the case of apprehension of illegal labor, the undocumented worker will most of the time be deported without being able to claim his/her last wages.

Organizations provide various types of assistance in the area of employment. Some organizations provide advice and legal assistance on claims of non-payment of wages, exploitation, abuse, accidents at the workplace, etc.

#### Polish Social Council, Berlin (Germany)

The Polish Social Council was founded in 1982 as an umbrella organization of the various Polish associations in Berlin. Since then it has been continually growing and is now one of the most important self-help organizations of Polish immigrants that was started in the 1980s. Around 1992/1993, they began focusing on circular migrants who have been living in Germany illegally or who are illegally employed. Many of these people are Polish contract workers.

The Polish Council has three thematic areas of work: youth issues, trafficking of women, and employment. Regarding the latter, migrants will usually write letters, phone or come personally to the office to describe their situation concerning employment. A caseworker of the Social Council will examine the situation and determine the next step. If the individual's claims are well reasoned, then they contact the employers and try to reach a settlement without going to court. If a friendly settlement cannot be reached, then they take it a step further and contact a lawyer to bring the case to court.

The claims that individuals make usually have to do with entitlements to payment for work. People have the right to be paid for their work, even if they do not have the right to legal stay. The claims are legal even though the work itself is not legal. The most common claims are for salary (fraud, paid not enough money). There are also claims for accidents at work and people who are sick and need medical treatment.

The outstanding role of the Polish Social Council in the community is in stark contrast with its still extremely low budget. Therefore a big part of its activities have still to be carried out on a volunteer basis notwithstanding the steadily growing professionalism of its work since its beginning in 1982.

#### OKIA, The Hague (The Netherlands)

OKIA was established as a support committee for an organization of undocumented workers. On the one hand, they provide practical support to undocumented workers, and on the other hand they undertake political actions. OKIA takes part in a medical network, and has contacts with lawyers, etc. They also interfere in the political discussion. For example, they have been active in the regularization campaign of the so called "white illegals".

At this moment OKIA is trying to obtain more precise information about the contributions of undocumented migrants in various economical sectors in the Netherlands. For this aim they are also building a network.

Some work on a different level by trying to find undeclared work for undocumented migrants in the informal economy. One Dutch organization plays an intermediary role between workers and employers. They bring their clients into contact with possible employers, and offer these employers the possibility to pay for the work by giving a donation to the organization.

The ethical dilemma of providing work for undocumented migrants in the informal labor market was a topic of discussion at the PICUM workshops on drafting “Ethical Guidelines for Assisting Undocumented Migrants” held in March 2002. Some organizations are strictly against any type of illegal action, and may tolerate “offences” such as undeclared work, but will not organize and promote it. Others argue that to provide help in the most efficient way, it is crucial to help the undocumented migrant with looking for employment.

It was generally affirmed by the workshop participants that organizations should be open and clear about why their particular strategy would include illegal actions. They agree that their work should always be carried out in an atmosphere of clarity and openness. However, there was no consensus on the main question of how illegal actions on an individual level can have repercussions on the general human rights situation of undocumented migrants. For example, for an individual migrant it can be helpful to ask for asylum even if this person knows he/she is not eligible for asylum, for reasons of having access to support. On the other hand, the unjustified use of the asylum procedure enhances the pressure on this procedure, and leads to an ever stricter and more rigid procedure in all European countries. This has of course negative effects for real asylum seekers. The same problem is posed regarding informal employment. On the one hand, our organizations might promote the informal sector as a provider of incomes, while on the other hand they might chose to fight exploitation and lack of protection that are inherent to it and thereby reduce its capacity to provide jobs and incomes. The International Labor Organization (ILO) faces the same dilemma, and formulated the following answer:

*“There can be no question of the ILO helping to promote or develop an informal sector as a convenient, low-cost way of creating employment unless there is at the same time an equal determination to eliminate progressively the worst aspects of exploitation and inhuman working conditions in the sector.” (ILO 2002)*

The lack of general agreement on these questions is evidence of the many issues at stake in the issue of employment to undocumented migrants.

#### Zwart?Werk, Amsterdam (The Netherlands)

Zwart?Werk is a network of persons who are connected with organizations that care for and work in solidarity with refugees and undocumented migrants. The aim of Zwart?Werk is to defend the rights of workers in the informal sector, and where possible to mediate for paid work.

They work both on a practical and on a more structural level. On a practical level, Zwart?Werk assists a limited number of persons who are looking for a job in the informal market. Regarding the structural/political work, Zwart?Werk wants to give a clear signal to counter the repressive refugee policy in the Netherlands and the European Union. They specifically aim to fight the restrictive labor regulations, by raising awareness by the public. They mainly do his by distributing information leaflets, by participating in debates and by making publicity in the media. In a rather short time they grew out to a network of about 150 persons, organizations, and even political parties who publicly stated their support to Zwart?Werk.

Some of the organizations interviewed developed expertise in certain target groups. One example is the above mentioned Polish Social Council German that provides help mainly to workers from Eastern Europe. Kalayaan, an organization mentioned earlier, works with migrant domestic workers in the UK.

#### Kalayaan, London (United Kingdom)

Kalayaan was formed in 1987 to support and campaign for migrant domestic workers. The organization works closely with the United Workers Association (formerly Waling-Waling), which is a self-help organization of migrant domestic workers. Kalayaan supports the rights of all migrant domestic workers, as laid out in the Charter of Rights for Migrant Domestic Workers. These include the right to independent immigration status, full employment and social rights, and the right to join a trade union.

Kalayaan also offers practical support to migrant domestic workers. Advice and guidance is provided on a variety of issues, including immigration, employment rights, emergency accommodation, assistance in retrieving passports and belongings, finding work, etc. ESOL and computer classes are also available. Kalayaan provides a free legal advice surgery once a month with a qualified solicitor and makes referrals to further advice and specialized services. Since its foundation, Kalayaan has assisted about 4,500 workers who were forced to escape from abusive and exploitative employers.

Kalayaan also helped to set up the RESPECT network, which is a European network of Migrant Domestic Workers' organizations, individuals, trade unions, NGOs and supporters. The network shares information and expertise, produces publications, carries out project work, and campaigns for the rights of all migrant domestic workers in the EU.

#### The Role of Trade Unions

Cooperation with trade unions is another way of promoting employment rights. It could be argued that it is the role of trade unions to help all workers, also those without status.

It is often remarked that the higher the level of organization (national, international), the more open trade unions are for the issue of undocumented workers. The ICFTU (International Confederation of Free Trade Unions) for example, urges the unions to demand governments to legalize undocumented workers, to lobby for legislation to protect those working in the underground economy, to work with communities to provide support and legal assistance for undocumented workers, and to undertake special campaigns to organize migrant workers, including those who are undocumented. (ICFTU 2001) The ETUC (European Trade Union Confederation) referred in its comments on the European Commission's Communication on a Community Immigration Policy to the importance of giving priority to the employment of undocumented migrant workers who are already residing in Europe over using foreign labor.

*"The ETUC believes that using foreign labor makes no sense if there are already out-of-work immigrants, legal as well as illegal, living in the host country, especially if they have the qualifications to do the job. Vocational training for unemployed immigrants, and measures to regularize the position of illegal immigrants, should be a priority."* (ETUC 2001)

On a national level, there is the example of the T&G in the UK, a union that has a special interest in protecting undocumented migrant domestic workers. Despite the complications attached to their immigration status, the union encouraged migrant domestic workers to join and participate in branch activities, particular in union education courses. Workers were given advice and support at special

meetings to advise them on what little employment rights they had. (Anderson 2001) They assist migrant domestic workers who are recently legalized in trying to keep their job, indeed many employers find it less attractive to hire a legalized worker and in this way legalization contains a threat of dismissal. The T&G also accompanies undocumented workers in their claim for wages. Also on the campaign level, the T&G has been very supportive using their political experience and contacts in lobbying. In the Netherlands one of the biggest Unions, FNV, made a notable proposal on 1 May 2002 for trade unions to represent the interests of illegal employees. Although illegal workers are already allowed to join unions, the FNV now wishes to offer them advice and legal support, and provide them with the opportunity to lodge complaints concerning abuses at work. Efforts will be made to represent the estimated 46,000 to 116,000 illegal employees in sectors including cleaning, construction and agriculture. FNV stated that it no longer wishes to deny the presence of undocumented workers, nor to ignore the existence of a labor market ‘underbelly’ in the cleaning, agriculture, catering and care sectors. The economy needs illegal workers, with both high and low levels of skills, according to FNV, which will now seek to ensure that they are covered by collective agreements and social insurance and that their working conditions meet Dutch standards. (Grünell 2002)

Also in Belgium, trade unions and organizations assisting undocumented migrants are slowly but steadily starting negotiations on possible cooperation. In Germany, however, there is less open dialogue. Most trade unions publicly take a rather defensive position regarding the issue of migration in general. Yet last year, IG Metall, a big German trade union, issued a statement on labor migration, explicitly referring to undocumented migrants. The union states that with a view to the expected demographic evolution, they do not agree with the decision to admit migrants only for temporary labor. They referred to the necessity to “resolve” the situation of the 1.5 million people with temporary residence permits and the people without residence and labor permit. Humanitarian grounds, family situation and employment were named as possible criteria. (Pressedienst IG Metall 2001)

On the local level, however, the commitment of trade unions to the plight of undocumented workers is mostly problematic. In the direct communication with their members, many trade unions face problems overcoming the prejudices and resentment of legal workers towards their undocumented colleagues.

### **Education (3.2.5)**

Organizations that carry out work in the area of education for undocumented migrants focus mainly on facilitating access for adults to free language and literacy courses and on facilitating access to regular schools for minors. “De Vuurdoop”, a Dutch organization, takes part in research on the accessibility of education for undocumented children. They consider the possibility and desirability of installing a special “national school fund” for children. This fund would cover especially the school material and the travel costs.

Education for minors is protected by law and therefore should not be problematic (see Chapter 1). However, organizations often experience that schools are reluctant or even refuse to register undocumented children. Several interviewed organizations try to make personal arrangements with schools. These kind of personal arrangements are often the only way out in Germany, where in certain regions schools are supposed to denounce undocumented pupils to the foreigners’ police.

Regardless of the occasional difficulties, organizations interviewed spoke of a high degree of solidarity of school authorities themselves or parents of other (documented) children. The English organization NCADC (National Coalition against Deportation Campaigns) organizes i.a. campaigns against the deportation of children. In their experience schools are a good area to recruit people for action committees for such campaigns. Personal contact with children of undocumented migrants can have a very positive effect in generating solidarity.

One interviewee gave an example of a headmaster who prevented the police from entering the school premises. The headmaster told the police that it is their duty to teach the children, and that it is impossible to work if children are afraid of deportation. He underlined the basic principles of education:

*“How is it possible to teach about equality, democratic values and respect if they have just deported one of the children?”*

**RAA (Regionale Arbeitsstelle für Ausländerfragen, Jugendarbeit & Schule), Berlin (Germany)**

This organization aims to empower children to have personal development and considers school and children’s camps as a good platform for teaching and living democracy.

Their main aim is to improve the school environment. They have various artistic and literacy projects to empower community members. Specifically regarding undocumented migrants, they used to pick undocumented children up and bring them to school, now they have started to integrate the parents in an education project as well, because motivation of the parents/adults is linked to motivation of the children.

They give literacy and German courses; organize theatre and music workshops. They employ Roma to mediate within their projects. They have various projects to empower and further develop the community: stories exchange, theatre, German language courses.

### **Legal Advice and Assistance (3.2.6)**

The legal advice that organizations can give to undocumented migrants mainly focuses on legalization of an individual’s status. It is self-evident that this is a crucial issue for most undocumented migrants. There are several ways to legalize an individual’s situation, of which we will mention a few.

A first possibility is through “regularization”: this may be done within a regularization campaign or within the provisions of ongoing regularization in the existing legislature. Belgium has Article 9.3 in its Aliens law, providing a permanent possibility for regularization on humanitarian grounds. In the UK there is no such regulation, but there is the “long residence concession”, which states that people who lived in the UK for 14 years illegally may apply for indefinite leave to remain (see also Chapter 1.3.5).

**Steunpunt Mensen Zonder Papieren/Support Point for People without Papers, Brussels (Belgium)**

The “Steunpunt Mensen Zonder Papieren” developed a special tool to assist undocumented migrants in view of their regularization. After the regularization experience in Belgium, it was proven that it is very important to have proof of residence in the country. The “Steunpunt” therefore is currently experimenting with a “residence booklet”, a small booklet that can be given to undocumented migrants. When they visit social services, organizations, etc. they can ask them to stamp or sign the booklet. In this way undocumented migrants can gather proof of residence. At the same time it can be used by help providers, as a follow-up document. A third point is that it has a psychological effect for the migrants: it proves that they really are someone, that they have an identity. The Flemish government sponsors the project.

A second, more indirect way of legalizing the status of an undocumented migrant is to return to the country of origin. Several of the organizations interviewed provide counseling to migrants in the area of return to their countries of origin. Some encourage those migrants without further perspectives in Europe to consider the option of return. This is however a very sensitive issue, for some organizations it is a strict taboo to mention it.

There are more ways of legalizing status: a person can marry a legal resident, apply for asylum even if his/her case does not fall under the Convention of Geneva, etc. Whether or not an organization should encourage people to try this possibility is something that the different organizations do not agree on. The opinion of an organization on this matter apparently depends on the extent to which an organization agrees with "the system". An organization that is for "open borders" will more easily stimulate an undocumented migrant to try every possibility. Controversially, these same organizations are at the same time rather reluctant towards a regularization campaign organized by the state, because of a lack of trust in every action undertaken by the state.

Other issues in which legal assistance can be given are for example employment, as was mentioned above, as well as housing, etc. : in general information can be given on the rights they have. In 1997 the above mentioned "Steunpunt Mensen Zonder Papieren" published "A Legal Guide for People in Illegal Stay", pointing at all the rights undocumented migrants have. Although they are very limited, undocumented migrants do have some rights, and it is the beginning of all help providing to point undocumented migrants at their rights.

Some organizations are centers of expertise in this area, while others provide help by looking for lawyers who can take up the case. Often the support exists in accompanying undocumented migrants to official institutions, and do advocacy work on individual cases.

### Joint Council for Welfare of Immigrants, London (United Kingdom)

JCWI is an independent national voluntary organization, campaigning for justice and combating racism in immigration and asylum law and policy. This organization provides free legal advice, training courses, and a range of publications.

Since it was established in 1967, JCWI has helped many thousands of families and individuals with immigration problems. It has contributed to public discussion and debate on immigration and asylum policy and is active in monitoring developments in the European Union, where the agenda for UK's immigration policy is increasingly being set.

JCWI operates independently of central government funding to maintain its independence as a critical force for change to immigration policy in the UK.

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## Structural Work (3.3.)

### Awareness Raising (3.3.1.)

Many organizations try to create support for undocumented migrants by raising public awareness of the issue. Attention is asked for e.g. the use the Western economies make of undocumented workers, and for the difficulties they face in their daily lives for survival. Awareness has to be raised both by the public at large and by the authorities.

Concerning awareness raising by the public, organizations use a variety of methods including giving talks at schools and local groups, making press releases, contributing to newspaper articles, etc. The organizations try to underline the "human" side of undocumented migration:

*"The government and public opinion are generally against illegal migration. This is why we support public awareness raising campaigns at the community level to give concrete examples of undocumented migrants, present facts and details of personal circumstances. People will usually be more sympathetic and show more support if they know the personal story of an undocumented migrant. There are usually difficulties in getting people to think beyond the numbers, to think about people's lives and aspirations."*

Several organizations underlined these positive effects that personal contact with undocumented migrants can have on general understanding. The contact can often be the impetus for further involvement and commitment to helping undocumented migrants:

*"Many people know refugees only from the newspapers. They think that they should be helped, but prefer to keep them out of their backyard. We are taking up this task of being a bridge between citizens and refugees. I notice that their attitude really changes from the moment on that they know a refugee by name and by face."*

It has been emphasized that solidarity does not always happen instantaneously. This may sometimes be a long-term process of convincing citizens as well as professionals of the need to provide assistance to undocumented migrants. One interviewee who works as a medical doctor spoke of the ongoing efforts she made to convince her peers and the authorities of the importance of medical assistance to undocumented migrants:

*"To change the attitude of my colleagues has been a whole process over the last ten years. In the beginning, there were horrible situations, there were doctors who refused to treat illegals and then put*



*them out on the streets. The worst cases that I have seen, I included in an article for the Medical Revue. This eventually led to questions in the Second Chamber (Senate)."*

#### INLIA Foundation (The Netherlands)

The INLIA (International Network of Local Initiative to help Asylum seekers) Foundation is an inter-church organization, founded in 1988 by representatives of local religious communities, who were confronted with the harsh policies with regard to refugees in Europe and felt the need to support each other on a more permanent basis. They formulated their commitment to give concrete support to refugees in need in a covenant, called the "Charter of Groningen".

Subsequently, INLIA set up an office to coordinate the activities of the members of the Charter network, to provide information and support to those church communities that signed the Charter, and to give legal assistance and possibly accommodation directly to asylum seekers in need. Among the large numbers of asylum seekers (including elderly people and small children) who have to survive in the street are many who are legally staying in the Netherlands, waiting for a decision by the Ministry of Justice or an Aliens Court, as well as others who are willing to return to their country of origin after being denied asylum and declared illegal, but who cannot obtain the necessary travel documents due to lack of cooperation from their own authorities.

INLIA stimulates local faith communities and municipal authorities to combine their efforts and financial resources to give food and shelter to those people who are turned out into the street and have nobody else to ask for help.

Many organizations organize actions aimed at widening the base of public support, especially at the community level. The above mentioned JCWI works with a network of community groups for public awareness campaigns. If a migrant's legal status comes to an end, JCWI will work with the community organizations to "take up" a case by making publicity and ensuring community support. Also very active in this field are the NCADC and Point d'Appui.

#### National Coalition Against Deportation Campaigns (United Kingdom)

This British organization has the slogan "Bringing Together Families and Individuals Fighting Deportation". They put their efforts in organizing resistance to restrictive immigration legislation, by campaigning against individual cases. The NCADC has its own website and has a mailing list by which it sends out calls for cooperation.

#### Point d'Appui / Support Point, Liège (Belgium)

This organization is directed at people who support undocumented migrants. It provides assistance to Belgians, refugees who have political asylum status, and immigrants who wish to help and individual undocumented migrants or families in order to improve their legal and social situation. Ordinary people as well as professionals may contact this organization. This organization provides information for supporting individuals in the areas of legal assistance (e.g. the legal provisions for undocumented migrants, contact information of lawyers or social services);

basic needs (contact information of social services or other organizations that may provide housing, food, and clothing); medical assistance (contact information of doctors who treat undocumented migrants free of charge).

It is not only necessary to gather public support for these issues; public authorities must also become more sensitized to these issues. One organization explained their particular tactic for finding support on this level:

*“With officials there is still a lot of fear and a lack of understanding. But we often notice that there are some people (within official institutions) that might want to do something but have some reservation; they don’t dare to go for it wholeheartedly. We detect and unite these “yes, but...” sayers so that they can reinforce one another.”*

### **Policy Work (3.3.2.)**

Most organizations recognize the importance of working on structural solutions for undocumented migrants, and thus try to dedicate some of their time to policy work. This may be done through specific campaigns, contact with politicians, advocacy work, etc.

In sub-Chapter 3.3.4. we will go deeper into the balance between political work and practical work. For now, suffice it to indicate that whereas most of the organizations we interviewed combine political help with practical support, some organizations do only political work, such as Open Borders (“Open Grenzen”) in Belgium, and No one is Illegal (“Kein Mensch ist Illegal”) in Germany. It is evident that the political visions from the organizations operating in the field vary widely.

The examples of policy work are as varied as the types of organizations and thematic issues they deal with. One example comes from the above mentioned “Medisch Steunpunt Mensen Zonder Papieren”, that formulated in cooperation with representatives of the socio-medical services a number of proposals for the promotion of the access to Health Care of undocumented migrants. These proposals are laid down in a “joint appeal”, which was sent to doctors, hospitals, local health centers, etc., with the question to sign it. This “joint appeal” pleads for the elaboration of a Circular to clarify the Royal Decree of 12.12.1996 concerning Urgent Medical Care. The application of this procedure does not happen systematically and is insufficiently known by both health care providers and undocumented migrants themselves. A further aim of his call is to appeal to sympathizers to work for the attribution of a health insurance for everybody who is registered in the National Register. In this way also rejected asylum seekers and holders of a temporary residence permit will be eligible for a health insurance. The subscribers of this joint all commit themselves to take up further initiatives concerning other vulnerable groups that reside legally or illegally in Belgium.

Both Dutch and English organizations seem to have a real tradition of political campaigning. Following is an example of the Netherlands:

ASKV Steunpunt Vluchtelingen, Amsterdam (The Netherlands)

This organization focuses on the interests of refugees. They support rejected asylum seekers and try to render the restrictive asylum policy more human. ASKV describes its own work as solidarity based, aimed at political changes and at openness.

They have consultations where people are helped with juridical procedures, health care and practical problems. ASKV tries to look for housing if necessary. For this aim they have a limited own accommodation, and they mediate with other organizations. ASKV also helps the ones who want to follow course or engage in volunteer work. ASKV gives Dutch courses and computer classes. ASKV also distributes background information on what is driving refugees to come here: brochures, information sessions, interviews. It also carries out many campaigns and public actions.

One of their recent campaigns, organized jointly with other Dutch organizations, was the “Bus campaign”. To sensitize public authorities to the reality faced by rejected asylum seekers and the so called “Dublin claimants”<sup>40</sup>, who receive no housing or other benefits, this organization invited 40 asylum seekers of these categories on a week-long “bus tour” to various local authorities across the country. Each time the bus stopped at a town hall, the commune was asked to sign a declaration, and they made a request to the mayor to provide shelter for them for that particular evening. Faced by the huge publicity the actions were generating, some of the mayors conceded and brought the individual to their own home, where they were brought face-to-face with the issues through the presence of the undocumented migrant.

A specific issue of policy work and campaigning is the advocacy work that is done by many groups in many countries for the installment of a regularization campaign. More or less in dialogue with the authorities, many groups have been engaged at some time in lobbying for a general regularization campaign. In Berlin, for example, the Berlin Refugee Council, Asyl in der Kirche, Pax Christi and many other groups have done nearly five years of advocacy work, which resulted in the establishment of a “Härtefall Kommission”, a committee for “cases of hardship”. This committee works on local governmental level, other such committees exist in Nordrhein Westphalia and Schleswig Holstein. This committee could be perceived as a regularization commission on the basis of humanitarian criteria. The aim is to exhaust all possibilities the official institutions have to avoid custody and subsequent deportation, by legalizing the stay of undocumented people. The commission can only give advice; it has no power to take any decision, but it encourages the official institutions to use their discretionary power. Members of the commission of Berlin include the Minister of Interior Affairs of Berlin, the city representative for Alien affairs, the city representative for women’s issues, and four migration experts nominated by the governing parties. The commission meets twice a month and discusses about 12 cases every meeting. Only members of the commission can propose candidates. A decision is taken by majority of votes.

### **Networking (3.3.3.)**

Some organizations have networking as an aim or as an important part of their work. Networks of organizations focus mostly on one common theme or aim, and exist on various levels. The aim is mostly to have a stronger voice and to improve the expertise existing within the individual organizations.

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<sup>40</sup> Dublin claimants are asylum seekers whose cases are subject to a special procedure and could in a further stage be transferred to another member state. The Netherlands decided that these asylum seekers are not entitled to the general reception conditions.

Evangelische Kirche im Rheinland und Diakonisches Werk der Evangelischen Kirche im Rheinland/Evangelical Church in Rhineland and Diaconal Work of the Evangelical Church in Rhineland (Germany)

The Evangelische Kirche im Rheinland and the Diakonisches Werk der Evangelischen Kirche im Rheinland recently launched a new project, mainly aimed at networking in the field of undocumented migrants. Aims are:

- To build a network of already existing initiatives for undocumented migrants in the framework of the Protestant church of Rhineland. The network should give the opportunity for mutual help, transfer of information etc. This work is planned to be extended more or less for a bigger area than the "Rheinische Landeskirche", especially to the whole of Northrhine Westfalia in cooperation with other welfare-organizations.
- To undertake lobby work in the Protestant church of Rhineland. One aspect will be to distribute information in parishes about this work to raise the conscience for it as an important task for the church. Another aspect is the lobbying for this work in the structures of the church, e.g. in the synod.
- To build a network for medical care for undocumented migrants in this area.

In the field of undocumented migration, there are not many existing national networks. In most countries studied, there is not much structural cooperation between the different organizations providing assistance to undocumented migrants within one country. Networks are either regional or international, but seldom national. An example of a national network is the Dutch Platform for Migrants Without Residence Permit ("Platform Migranten Zonder Verblijfsvergunning"), which has existed for nearly 20 years. The Platform unites many organizations that provide help to undocumented migrants, and has regular meetings to discuss the developments in the area of undocumented migration in the Netherlands.

### **Information and Training (3.3.4.)**

Information sharing is mainly directed at people working in the field who have direct contact with undocumented migrants. Some organizations produce documentation or hold special seminars, conferences, or training sessions for lawyers, legal advisors and social workers on the latest developments in immigration or other areas of law. Other organizations act as clearinghouses by disseminating information on the latest developments in policies on the national and also European level concerning undocumented migrants.

Missionair Centrum / Missionary Center, Heerlen (The Netherlands)

The Missionary Center is a national institution that gives support and advice to organizations, institutions and persons who work with asylum seekers, refugees, and migrants in the Netherlands.

This institution holds training sessions for volunteers who would like to work with asylum seekers and rejected asylum seekers who are put out on the street and do not receive any governmental aid. During these training sessions, issues are addressed such as the legislation on asylum seekers, the specific problems faced by people that have to survive without any official support, etc. Considerable attention is also given to the question of societal support:

how is it organized, and how can it be widened? How can people be sensitized and mobilized on this issue? Every training session is followed by various study days on more specific topics that the volunteers frequently request more information about: access to health care, the informal economy, etc.

#### Association pour le Droit des Etrangers / Association for the Rights of Foreigners, Brussels (Belgium)

ADDE is a non-profit organization that brings together jurists, lawyers and social workers desiring to improve the information and training of people working in the field of foreigners' law. It organizes conferences and seminars for anyone wishing to receive training and information on foreigners' law. The trainings proposed are focused on practice and on Belgian regulations and European and international law. The organization also has up-to-date legal documentation and publishes the *Revue du Droit des Étrangers*. The organization also has a documentation center and has a service for individual appointments on legal matters.

#### Institute of Race Relations, London (United Kingdom)

The IRR conducts research and produces educational resources which are at the cutting edge of the struggle for racial justice in Britain and internationally. It seeks to reflect the experience of those who suffer racial oppression and draws its perspectives from the most vulnerable in society.

Published four times a year by the organization, the *European Race Bulletin* provides a rare opportunity for understanding domestic race policy in the context of European harmonization. It is the only comprehensive digest of race relations in Europe, collating and summarizing news reports from papers, magazines, NGOs and campaigns in every European country. It is essential reading for students, academics, researchers, campaigners, policy makers, educationalists, lawyers and all those concerned about racism, fascism and democracy around Europe. The bulletin provides essential information on asylum and immigration; policing and the state; racial violence and fascist parties; persecution of Roma and refugee rights.

## Other Types of Assistance (3.4.)

### Church Asylum (3.4.1.)

The term "church asylum" includes all cases in which protection is granted by parishes and church groups, as well as by organizations and individuals if their action is guided by their convictions and conscience. (Heinhold 2000)

The basis of church asylum is the law dating from the Middle Ages that states that a church is a space outside the jurisdiction of the regional courts, where supposed criminals can find a safe space and an independent jurisdiction. Church asylum in this way no longer exists, besides during services authorities are allowed to enter churches. The idea of church asylum as practiced nowadays is the effect on the public opinion and on the media of the moral conviction of a congregation and the acts that follow out of this conviction.

In several of the countries studied church asylum has been and still is important in the fight of undocumented migrants for recognition and for more rights. In Belgium, church occupations have been the concrete run up to the Regularization campaign of January 2000. Many churches and chapels opened their doors to undocumented migrants, which provoked considerable public support and put the government under pressure to tackle the problem. Afterwards it more or less died out.

In Germany, church asylum is still actively practiced not for groups but for single cases. Churches select rejected refugees of which they believe they have a good case. Reverends and priests have often been threatened with fees or criminal procedures, but in most of the cases these have been turned down.

Talking about the German church asylum movement, it is important to mention the “Wanderkirchenasyl” (rotating church asylum) for Kurdish asylum-seekers from Turkey. This was a big national event, and is still continuing. The government of Nordrhein Westphalia together with the churches decided to accept the participants on a case-by-case basis, which is now being worked out.

#### Bundesarbeitsgemeinschaft Asyl in der Kirche/The Ecumenical Committee on Church Asylum (Germany)

The national body in support of church asylum in Germany

- gives advice and practical help to parishes offering sanctuary to refugees;
- voices the concerns of parishes as well as other groups within church congregations whilst at the same time raises awareness amongst members of the general public;
- fosters international cooperation as well as the exchange of information between parishes and other groups committed to their (Christian) obligation to lend support;
- documents evidence collected on church asylum and makes it available to the public.

Since 1983 some 2,500 people have found protection in parishes against immediate deportations. Two investigations over a period of ten years showed that in more than 70% of the cases the activities of the church asylum groups achieved legal or humanitarian solutions in favor of the threatened asylum seekers. The attempts of congregations granting sanctuary are generally aimed at a new examination of the case by the authorities in light of all legal, social and humanitarian aspects, as well as to revoke the decision to deport. Giving shelter, food and support to unwanted aliens, church groups risk a political and legal conflict with state authorities.

In the Netherlands, the big initiator of church asylums is INLIA. They could be seen as the administration of the European church asylum movement. They inspired the German Asyl in der Kirche in the beginning. Both organizations went their own way afterwards.<sup>41</sup>

In case a rejected asylum seeker would be in danger when sent back, he/she can call for the help of one of the churches in the INLIA network. In the beginning of existence of the office, help was provided several times for individual cases, but soon it got organized on a more collective level. In this way INLIA asked its member-churches to protect Syrian-orthodox people from Turkey, Vietnamese, Iranians, etc. INLIA presents itself as a Christian and not a political organization, but has a good network in national politics as well.

<sup>41</sup> The European component of the work of the INLIA Foundation has become eroded over the years. It currently effectively operates in the Netherlands only, on behalf of approximately 300 local faith communities, although there are hundreds more in other European countries that base their work in support of asylum seekers in need on the guidelines in the Charter of Groningen.

In recent years, other organizations started to ask for help of churches in some collective actions as well. In Amsterdam, a rotating church-asylum for Congolese refugees was organized and was quite successful. Later, a similar system was developed for Iranian refugees. In both cases, the organizations were more inspired by their political conviction than their religious beliefs. The churches involved agreed with this political conviction and shared it.

### **Crossing Borders (3.4.2.)**

Rather sporadically, some organizations provide a particular form of assistance by transporting people to another country where e.g. their asylum claim may be more easily accepted. Their motivation to do this is purely humanitarian: they want to provide help as well as possible.

The conflict between ethics and legality was discussed at the PICUM workshops on the drafting of "Ethical Guidelines for Assisting Undocumented Migrants" in March 2002. As was referred to earlier in the section on employment, there was no agreement amongst participants on how far organizations should go in providing help. While some organizations are openly in favor of actions such as bringing people across borders or arranging undeclared work in the informal economy, other organizations vehemently oppose these activities, since they will not deviate from the legal provisions in the law.

For the Ethical Guidelines, PICUM found a compromise by stating it as follows:

*"If help providers are involved in a situation that is not strictly legal, it should be agreed upon with the client that his/her illegal action in which s/he is assisted is completely the client's responsibility. If a worker is in the situation that only a breach of the law could lead to the most efficient assistance for the client, this should always be discussed and agreed upon with a team. The consequences of this illegal action for other undocumented migrants, society at large, perception, etc., should be taken in consideration. In no case shall a worker in an organization individually decide on such a case."* (PICUM 2002)

### **Emotional Assistance (3.4.3.)**

In general, the difficult conditions in which many undocumented migrants live their daily lives make them very vulnerable as well as socially isolated. In addition, those who know that they will probably never qualify for a change in their legal status are sometimes only looking for emotional support.

Some organizations try to meet this need by being a place where people can drop by and meet in a relaxed environment. Organizations providing this type of assistance may work with volunteers from the local community as well as from the migrants' own communities. This setting may serve the purpose of integration and also be a means for undocumented migrants to have contact with their own community members.

#### De Meeting/ The Meeting, Brussels (Belgium)

The Meeting works on two levels. The first aim is to be a place where undocumented migrants can meet Europeans or Belgians, as well as people from their own communities and countries. They wish to create a "second home" so that people can drop by when they want, get something to drink, read magazines, etc.

The second aim is to inform people if they have questions or problems about any issue, including asylum procedure, regularization, housing, courses, etc. The organization offers a free

phone service (within the local area) and has an extensive database with contact information of organizations, social services, hospitals, etc. Some grassroots migrants' organizations that do not have their own infrastructure frequently use these services.

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## Special Groups of Concern (3.5.)

### Women (3.5.1.)

*Behshid Najafi,*  
AGISRA

#### Women and Migration

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

*"The patterns of migratory flows of labor are changing. Women and girls are increasingly involved in internal, regional and international labor migration to pursue many occupations mainly in farm labor, domestic work and some forms of entertainment work. While this situation increases their earning opportunities and self-reliance, it also exposes them, particularly the poor, uneducated, unskilled and/or undocumented migrants to inadequate working conditions, increased health risk, the risk of trafficking, economic and sexual exploitation, racism, racial discrimination and xenophobia, and other forms of abuse, which impair their enjoyment of their human rights, and in some cases, constitute violations of human rights."* (UN 2000)

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

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

#### Assistance Provided to Women

Some organizations that focus on general women's issues also provide help on particular issues faced by female undocumented migrants. One organization, highlighted below, focuses specifically on female victims of trafficking.



**AGISRA, Cologne (Germany)**

Agisra (Arbeitsgemeinschaft gegen internationale sexuelle und rassistische Ausbeutung/Working Party against international sexual and racist exploitation) is a Cologne-based organization that has given advice to migrant women since 1993. They mainly work with women who have been brought to Germany for forced prostitutions, for forced marriage or as domestic worker, women who are experiencing or experienced domestic violence, and refugee women. The restrictive aliens law, discrimination, racism and the structures of trafficking make a special support for these women necessary.

They provide medical, legal and emotional assistance, as well as educational sessions about women's rights. The support that is provided aims at the independence of the women, so that they can organize their own lives. The counseling provided by Agisra is free of charge for all women and anonymous. Workers at Agisra are qualified professionals, many of whom have migration experiences themselves.

Agisra also holds round table discussions on the problem of trafficking and invites a variety of individuals and institutions involved (public authorities, police, women's shelters, lawyers, advice centers, public health office) to participate in the debate. Agisra takes part in networks at the national and European levels.

**Unaccompanied Minors (3.5.2.)**

The special attention needed by children of undocumented migrants and unaccompanied minors is a particular area of work of some organizations interviewed. Parents wanting to protect their children for wars and persecution, and to improve their living conditions send their children to Europe. (BIVS 2000/2001) Also undocumented migrants, driven by desperation of a life in clandestinity may leave their children in a shelter, in the hopes that they will have better chances of survival when they are found alone.

Many of the interviewees stressed the vulnerability of this group and the necessity to have special assistance for them. 't Huis in Belgium is an example of an organization providing a special shelter only for children in such situations.

**'t Huis/The House, Aalst (Belgium)**

This organization provides shelter to unaccompanied minors. Some of them are residing in Belgium without a legal residence permit, and most of them do not have an adult who is legally responsible for them. The first aim of the organization is to be a "safe haven" for these youth to recover from what they experienced. The minors are also given advice, guided and supported to gain concrete and realistic perspectives on their future. In all the organization's activities, the interest of the minor and the International Convention on the Rights of the Child are taken as a starting point.

**Undocumented Migrants in Detention (3.5.3.)**

Another special group of concern to several organization are the detained undocumented migrants. The help that is provided to them varies.

The assistance that is provided to undocumented migrants in detention is both emotional assistance and legal advice, meaning basically that the undocumented migrants are informed about their rights and are explained the procedure of detention before deportation.

#### Jesuit Refugee Service (Germany)

Besides providing legal advice and social assistance, doing research, and establishing press contacts, the Jesuit Refugee Service visits deportation centers in Berlin, Brandenburg and Munich. They support the detained migrants in their legal, social and spiritual needs.

Regarding the legal advice, JRS for example assists detainees in reading and interpreting official correspondence, and discusses with them the possible steps to be undertaken.

The Jesuits organize weekly services in the deportation center in Berlin, they are mostly very well attended. The language of the services is English, Russian and German. Besides the services the Jesuits also provide individual spiritual support.

Especially in the UK and Germany, we came across organizations that have as a main aim to fight against the existence of detention centers. In these two countries, detention of undocumented migrants is huge. The following English organization campaigns for the closure of a detention center for asylum seekers and undocumented migrants.

#### Close Campsfield, Oxford (United Kingdom)

Campsfield House is an Immigration Detention Center close to Oxford. It used to be a youth detention center, but it re-opened as an Immigration Detention Center in November 1993. The Campaign to Close Campsfield is supported by refugee organizations, trades unions, political parties, student organizations and religious groups

The aims of the campaign are to close Campsfield, other detention centers, and detention wings in prisons; to stop immigration detentions and imprisonment; to stop racist deportations; and to repeal immigration laws which reinforce racism.

The campaign believes in peaceful protest. The strategy of the campaign aims at building up local public support and awareness of the issues; giving the detainees moral support and show that they are welcome here, and working with other organizations nationally to achieve the aims of the campaign.

There have been human rights camps outside Campsfield, lobbies of parliament, public meetings, debates, street stalls, video showings, art exhibitions and street theatre. "Close Campsfield" seeks to involve local schools, trades unions, religious and political groups in their activities.

Close Campsfield is member of Barbed Wire Britain, a UK Anti Detention Network that tries to halt the massive increase in immigration detention in Britain

It should be noted here, that for several organizations the fact of being against the existence of detention centers does not mean that they do not dialogue with these centers or provide their

services to the detainees. Although it is a dilemma for such organizations, most seem to take a pragmatic approach and contribute actively to making the detention conditions as humane as possible.

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## Migrants' Groups (3.6.)

As stated above, most help undocumented migrants receive comes from their own networks. Such networks are sometimes made up by members of the migrants' hometowns, but mostly consist of members of the "larger society", regardless of the place of birth, class, ethnicity etc. of those involved. (Krissman 2001)

In the four countries, the networks with an organizational status we have come across were mostly community groups. These groups are indeed mostly made up by people from one country or from a limited number of countries. They mostly do not make a distinction between undocumented and regularized people; they try to address the needs of the person requesting help.

They are to a bigger or lesser extent organized. Samahan, a Filipino organization from Belgium, is very strictly structured: with a National Commission, an Education Committee, a legal liaison, auditors, treasurers, etc. Their main objective is to promote and defend the rights, and promote the interests of migrant workers and their families, Filipino migrant workers in particular. The Sierra Leonean Progressive Union from Belgium and the Guinean Association for Culture and Democracy from the Netherlands have the same aim, to provide grassroots help to their compatriots living in Belgium and the Netherlands, whatever type of help may be requested. They respond to the needs of the person who requests the help. This is often help about how to find housing, how to go about administrative procedures, how to find a school or how to register at CPAS, how to get a pro deo lawyer, etc.

### Samahan (Belgium)

#### Vision Statement

SAMAHAN is an independent and democratic organization that actively promotes justice, equality and the rights of Filipino migrant workers in Belgium.

We commit our time, skills and active participation to build a stronger and more unified SAMAHAN that can provide moral, intellectual and spiritual support to Filipino migrant workers and contribute to our total development as persons.

Only by respecting each other, working together, deepening our awareness of social, political, economic and other issues that affect our lives as Filipinos and as migrants and expanding our links will we strengthen our solidarity with all Filipino migrant workers and arrive closer towards building a more just and humane society." (June 2002)

At some points there is cooperation between “support organizations” and “migrants’ organizations”. They both mostly have different approaches and different expertise, which makes them complementary. The migrant groups can for example perform as intermediaries between newcomers from their countries and the host society, the support groups can provide the migrant groups with knowledge on the host society.

Here it should also be remarked that there are some supporting organizations, especially in the UK but also in other countries, that see it as their aim to support and empower undocumented migrants so that they can organize and claim their own rights.

An example in Germany is Kein Mensch Ist Illegal, “no one is illegal”, a network working politically addressing local, national and European migration regimes. KMII has the opinion that many organizations providing assistance to undocumented migrants act rather patriarchal. KMII for itself pursues more a concept of cooperation with the undocumented migrants, they aim to support activities of undocumented migrants and encourage their “self-organization”.

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## Organizational Issues (3.7)

### Introduction (3.7.1.)

Until here, the chapters have been mainly of descriptive nature. The central question has been in which fields is help provided. Besides this, the organizations were also questioned on the reason why they work with undocumented migrants, the problems they encounter, their methodology, etc. These different organizational issues will be addressed here.

### Influence of Legislation on Work (3.7.2.)

The main aim of this book is to map the solidarity that exists with undocumented migrants in Europe, and to detect the elements that are hindering this solidarity. Restrictive legislation on assistance to undocumented migrants was described in the previous chapter as a problematic element. In our interviews, we asked the organizations in how far this restrictive legislation is actually influencing their work.

#### Inhumane Legislation is Not Obeyed

A general observation for this area is that not all organizations have a very clear understanding of the law and legal provisions on assistance to undocumented migrants. Even after working in this area for much time, some organizations still do not completely feel updated.

When asked about the impact of such legislation on the practical work of providing assistance, most organizations had other considerations than legal ones to justify their work. There was a general observation that on a daily basis, legislation does not necessarily hinder the practical work of providing help. In the Netherlands, none of the organizations interviewed was informed about the legislation, and nobody experienced it as a shortcoming not to be informed. They were very clear on their own motivations and had no doubts regarding the ethical correctness of their work. They did not find the legislation very relevant. In the UK, not many organizations were informed, and also for them it did not seem very relevant. In Belgium, although the legislation is

now rather clear, some organizations were doubtful. As will be discussed later, some organizations preferred to operate in a hidden way. In Germany, where providing humanitarian assistance to undocumented migrants is in certain cases prohibited and in all cases discouraged, none of the organizations we interviewed found the legislation a reason to stop doing what they thought was human and ethically correct.

The real negative impact of the legislation, however, is the paranoia that is brought about that prevents people and organizations from effectively being able to carry out work on policy. One interviewee stated:

*“Legislation definitely stimulates the taboos of assistance.”*

Legal provisions thus do not really prevent German organizations from providing direct assistance, but do prevent them from working on a structural level, by inhibiting them to speak out, to network, etc. The laws thus encourage assistance to remain underground and not within the mainstream of basic social assistance.

#### What is Legal?

Discussing the legality of providing assistance to undocumented migrants, it was revealed that in fact, every organization seems to draw its own lines of what is legal and what is not. The organizations participating in the workshops on drafting “Ethical Guidelines for Assisting Undocumented Migrants” in March 2002 had some serious disagreements on the legality of certain actions: some organizations stated that smuggling, arranging fake marriages were justified, because it are the laws that are illegal. Others did not agree with this, but would encourage their clients to abuse the procedures because they are unsatisfactory. Others reject all these actions and prefer to stick to the law.

This variety in standards is also noticed at the governmental level. Many stories are known from police officers, social services, etc., allowing certain things for undocumented migrants because they agree that these people are in need. Public authorities also sometimes refer clients to the organizations. One organization (somewhat cynically) referred to this lax attitude of public authorities towards undocumented migrants:

*“As long as they are here with us (at the organization’s shelter), they don’t have to steal their food and sleep in the streets – that’s more than fine for the authorities.”*

In this context could be referred to a recent research of a Dutch research institute RISBO called “New safety nets in the society”, where the area of tension is investigated between the formal framework of national legislation and the local practices regarding the execution of these rules. It is argued that if the executing agents do not agree with the policy as developed, this policy will remain largely ineffective. (RISBO 2002)

#### Cover Strategies

Some organizations use specific strategies to “cover” themselves from possible penalization. For example, some organizations officially work with people who accompany undocumented migrants (not with the migrants themselves). Other organizations use a completely different strategy and openly publicize illegal actions, in the hopes that their openness will form a sort of protection. An organization that provides undeclared work to undocumented migrants stated:

*“Within the last year we’ve been working, we’ve succeeded in organizing societal and political protection, which doesn’t give any guarantee that we will be attacked. But it does give the guarantee that the attack will not be firm and fatal.”*

### Target Group (3.7.3)

To have a view on the degree of specialization of the different organizations, and on the reasons why an organization focuses on undocumented migrants, we questioned the organizations on the target group they work for.

There are a lot of differences regarding the target group of organizations. Roughly, we can distinguish between the following four types:

- 1) Some initiatives are targeted specifically at undocumented migrants. They provide help to all kinds of undocumented migrants, and often also to people with a “precarious” status.
- 2) Some organizations are working for a certain target group which includes many undocumented migrants, e.g. Polish workers, migrant domestic workers, rejected asylum seekers, etc. In this way they provide help to a certain category of undocumented migrants.
- 3) Some organizations that have been working for years on asylum-, migration-, and anti-racism issues evolved in the direction of working with undocumented migrants, because they realized that these people are also very needy.
- 4) Some initiatives want to provide help to everybody, regardless of their status.

These four categories are equally present in Germany, Belgium and the Netherlands. It has to be noted that in the UK, until today there has been no political self-help organization or movement of irregular migrants or a network of solidarity solely to support these people. One explanation is that since there is no strict ID system, and the migration status is not yet linked to access to all social services, undocumented migrants in the UK have less “status-related” problems. They have basically the same problems as other migrants, which are problems of racism, language problems, orientation problems, etc. Another explanation is the bad image of undocumented migrants, in opposition to the focus on refugees. The distinction between “real” refugees and “bogus” refugees was made initially by the government, and was then taken over by the press. The NGOs are unfortunately accepting these increasingly rigid and inappropriate official definitions. Organizations in the UK talk more about asylum seekers, orientating themselves to the humanitarian case, rather than to the case for undocumented migrants. If NGOs take up the cause of the undocumented they may put their “legitimate” clientele at risk. Immigrants’ support groups providing advice to irregular migrants can find themselves the subject of front-page tabloid denunciations for abetting unlawful activity and abusing the taxpayers’ confidence (Anderson 1999 and 2002). Franck Düvell, who did some research in the UK and came to the same conclusion, states:

*“It derives more from a feeling of weakness and the fear of not being able to counteract the dominant view of illegals as criminals, guilty of scrounging, social security fraud and trafficking”* (Düvell 2000).

#### Openness

The first category of organizations, the ones that chose to work specifically for undocumented migrants, are in general rather open about their work. This does not count for the other categories: a distinction can be made between the organizations that are public about the fact that they work with undocumented migrants and the ones that are not. Looking at the reasons why some organizations opt to hide the fact that they provide assistance to immigrants without a legal status, two main reasons can be pointed at.

First, it seems that in all of the four countries studied, it is rather difficult to obtain funding for working with undocumented migrants. For this reason, some organizations prefer to hide the fact that they work with this category of migrants. This is also the reason why quite some of the organizations interviewed stressed the importance of not accepting funding from the government, because that would restrict their moving space.

Second, as mentioned above, legislation on humanitarian assistance for undocumented migrants also influences the degree of openness. Many of the organizations in Germany asked for discretion about the fact that they provide help to undocumented migrants, or about certain facets of their work. One big German established organization is informally known for the help it provides to undocumented migrants, but refused to cooperate in our project. It is remarkable also that in Belgium, where the law clearly states that providing assistance to undocumented migrants is legal, some organizations prefer to remain anonymous. The suggestion of illegality surrounding undocumented migrants is very strong, and although most of the organizations try to break this suggestion by being open about their work, others are not. The reason given by these organizations is the protection of their clients. They more or less trust that they will not be penalized, but are afraid that the police will search their office and find the files, or that the police will wait outside the office to apprehend and deport their clients. In the Netherlands, we did not come across any organization that seems to want to hide the work they were doing. As mentioned above, legislation is not so relevant for the interviewed Dutch groups. Regarding the UK, most organizations seem to be open.

### **Balance Between Policy Work and Direct Assistance (3.7.4.)**

The interviews revealed one organizational dilemma that almost all organizations face and have to cope with: the division of the working time between direct assistance and policy work.

#### **Direct Work Puts Rest Under Pressure**

Some of the organizations interviewed have a very clear and delineated mission: they focus only on research, or on information and training. On the other hand, of all the organizations providing direct assistance, none of those interviewed intended to do this full time. They all feel the need to do some policy work as well. Even when their first intention was to only provide direct assistance, faced with the problems of their clients, with their recurring problems, they often seem to develop a political vision and the desire to work on a more structural level. However, it seems to be very difficult for many of the organizations to find time to effectively do some policy work given the volume of clients that their organization helps. As one interviewee stated,

*“The nature of the problem puts people under pressure to work on a practical level. Because of this, the warning function (criticizing policies and stimulating debate) comes in second place.”*

This is a difficulty many organizations are confronted with: they feel the need to contribute to societal dialogue and to do policy work, but they do not have the time.

#### **Link with the Vision of the Organization**

It is interesting to note the findings of the Dutch research institute KLVMA, that analyzed the question of finding a balance between direct assistance and policy work (KLVMA 1999). In their report, that aims to describe and analyze the work of a sample of Dutch organizations supporting undocumented migrants, the links between the “kind of support” and “political vision of the organization” are investigated. The researchers state that the organizations interviewed that have no specific vision on the foreigners’ policy of the government mostly only provide practical and emotional support. The organizations that fully agree with the policy as it is executed by government provide practical and emotional support as well as also legal assistance in cases where the authorities have “made a mistake.” Of all the organizations that partly criticize the official foreigners policy, a considerable number would undertake political actions. Finally, all of the organizations that completely reject the legitimacy of the official policy provide political support and undertake political action, the fundamental critique they have being the basis of their work with undocumented migrants.

In our view, a few nuances should be made. First, this might be representative for the Dutch situation. When translated to the Belgian situation for example, it has to be stated that organizations that agree

with the governmental policy also undertake some policy work. There are some well-known, effective Belgian organizations that have very good relations with the authorities, that are even funded by the government, and that still do a considerable part of policy work to improve the situation. Another remark is that, as mentioned above, even when organizations have political critiques, the pressure of the daily assistance is so big that they do not have the time to do policy work.

#### Priority of One Over the Other

One more ethical question that came up in discussing the balance between policy work and direct assistance: if policy actions may hinder practical work, what is then the priority?

An example is when a campaign is carried out and publicity is made of individual undocumented migrants, the exposure of the client to the media and general public can often be negative for the individual (e.g. it becomes more difficult to live “underground”) but can bring a lot of benefit for the bigger group. Another example came from an organization whose aim from the beginning was to provide direct assistance and to do policy work on undeclared work in the informal economy. In the course of their work, however, they sought a creative way to work on the issue and publicized their activities as an “interim agency” for undeclared work. Their openness in publicizing these illegal activities has had serious constraints for their practical work:

*“We would be able to do it (provide undeclared work) on a larger scale, and with more ease, if we wouldn’t operate so openly. Our possibilities are limited by the fact that we combine our breach of the law with publicity. For the organization, this has a positive effect, but on the level of the concrete work we want to do, it’s a handicap.”*

#### **Finality of the Assistance (3.7.5.)**

A point on which the organizations differ from each other, is the point of finality, of the aim of the help provided. To get a view on this finality we presented our interviewees the question to what extent they advise the undocumented migrants to change their illegal status.

Almost all of the organizations stated that the most important is that the undocumented migrant is able to survive independently, in as much dignity as possible. More specifically on the question whether the aim is to achieve a legal status or whether they help also those who will most likely never fit the requirements for legal status, the answers varied considerably.

Some organizations said that the end result can only be legal status:

*“The aim of all counseling has to be to end the undocumented status, not the encouragement of parallel structures and the support of a life as an undocumented migrant without a clear perspective.”*

Others took an opposing view, by saying that the aim does not necessarily have to be to achieve legal status. One organization reiterated the fact that legalization is a very time-consuming and difficult procedure, and that undocumented migrants should also be made aware of this before engaging in the procedure. Others stated that the end result does not matter as long as it is realistic or as long as it is the choice of the undocumented migrants themselves. Most participants to the March 2002 Workshops on drafting “Ethical Guidelines for Assisting Undocumented Migrants” agreed that a durable solution does not necessarily have to be a legal perspective, but a viable and permanent situation in which people can survive in an ethically acceptable way. Even if it is not a legal solution, it can be durable.

Participants emphasized that help providers should always be very clear about expectations and reality of the assistance: promises should be made only if they are realistic and must always be kept.



It should always be clear to the help provider and to the client what the possible outcome of the help could be.

The issue of finality seems to be linked with two other elements: the length of time that assistance is provided and the selection criteria some organizations use.

### Selection

Faced with the large numbers of people needing help, organizations often have to make a selection of who they will help and who they will not help. Regarding the selection criteria that are used, there are once again many differences. Some organizations handle humanitarian criteria, directing help at the most needy individuals/groups. Other criteria can be to give priority to these cases that serve an organization's political aims, or that reinforce public opinion: individuals who are good public figures (e.g. who could easily talk to journalists and the public during a campaign), etc. Some organizations use the possibility of a durable solution and legal status as criteria in selecting which undocumented migrants will receive assistance. This can for example mean that assistance is provided to those who have the highest chance of receiving legal status, or those who have a potential for self-help: to individuals who can be empowered to actively seek to improve their situation (e.g. by trying to find work, housing, etc.) and build their own perspectives.

One participant emphasized that this reasoning is mainly due to organizations' constraints of time and means but also is part of the approach in empowering undocumented migrants:

*"Most help providers have such limited means that we have to prioritize. We have to set goals and work with them. If an individual has very pressing humanitarian needs, then we should provide help. But to change society on a long-term basis, we should focus on helping people who could have a more durable solution. If we help these people, then they can in turn help others. It is necessary to go step by step."*

### Length of Time

Interlinked with the issue of selection and finality is the length of time that assistance is provided. Organizations that usually do not have strict rules regarding finality usually do not put a limit on how long they will provide assistance. One organization highlighted their policy of unlimited help:

*"If someone asks us for help in making an application (within the legal framework for ongoing regularization), we will not refuse help, and we will put them in touch with a lawyer, even if we don't think that the person will be accepted. We will always provide help to an undocumented migrant, even if we know that the person will not be regularized."*

On the other hand, organizations that have stricter ideas concerning the finality of the assistance also set limits on the amount of time they will provide help. Organizations that provide shelter especially have this policy, due to the limited spaces such shelters usually have.

## **Relation to the Authorities (3.7.6.)**

### Attitude Towards Cooperation with Authorities

As mentioned above, it was generally observed that official institutions are often aware of assistance organizations provide to undocumented migrants. Some of the organizations we interviewed were funded by government, partly or fully, structurally or ad hoc. It depends on the country and on the openness existing at policy level for the issue. In Belgium, and especially in the Flemish region, more organizations are government-sponsored than for example in Germany. But also if there is no explicit recognition in the form of financial support, we have many examples of organizations that are asked for advice by authorities, or of undocumented migrants who are referred to these organizations by authorities.

Many organizations have contacts and cooperate with the authorities. This may be done to share expertise on specific issues faced by undocumented migrants, to improve public support, and also to be "covered" from penalization, as mentioned above in Chapter 3.3.2.

Yet cooperation with the authorities seems to have its drawbacks, both for networking purposes with other organizations, as well as for acceptance by undocumented migrants themselves. Some organizations that take initiatives against government policy are wary of networking with those that maintain contact with the authorities, even if they both support the same cause (e.g. assistance to undocumented migrants). It is also hard for some undocumented migrants to understand the logic of working against or within the system. One organization that cooperates with the authorities in Germany highlighted this:

*"It is difficult to explain to undocumented migrants that we (the organization) are part of the system, that we agree with the basics of Germany democracy but we are not an official institution and therefore are not obliged by law to denounce them."*

On the other hand, some organizations refuse any discussion, cooperation or "round tables" with authorities. This is a general principal of these organizations, and exceptions are made only in particular cases.

#### Organizations' Ideas on Task and Role of the Government

Very often during the interviews, organizations stated that assistance to undocumented migrants is actually not the task of NGOs, but is the government's responsibility. The government should take care of all people on its territory. Yet another opinion we heard is that legalizing assistance to undocumented migrants is not a priority, because that would be another way for the government to flee its responsibilities of regularizing people in irregular status; governments should focus more on providing legal residence to undocumented migrants rather than legalizing assistance to undocumented migrants.

Although many organizations would support legalization of assistance, some clearly indicate that certain areas of assistance should still be provided for by NGOs and that there should not be too many defined structures and procedures for assistance:

*"There are certain tasks that I want to keep doing myself. There are certain tasks that I don't want to give to local authorities, because you have to remain independent. I want to feel free to act out of my own vision on human rights."*

Another organization had a similar point of view and felt that governments and churches have different aims and responsibilities, and thus have their own agendas. Thus they feel that assistance could never really be legally provided by the government, as it does not fall within their perspective. One organization that receives government funding felt that by officially recognizing the work of the organization in providing assistance to undocumented migrants, the government is relieved of its duties to regularize their status:

*"All around me, people already said 'Isn't it strange, the government sends back undocumented migrants and at the same time helps you to help them.' But I think that this eases their conscience."*

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## Conclusion (3.8.)

This chapter reflected the high number of existing organizations, their diversity both regarding values and regarding working methods, and their extreme commitment to the plight of undocumented migrants, and the problems they come across.

Organizations provide assistance to undocumented migrants to help them access their basic social rights. We have found and presented examples of assistance provided in the fields of health care, housing, employment rights, education, legal advice and assistance. In these fields both direct assistance is provided and structural work is done: awareness raising, policy work, networking, information and training. Other types of assistance mentioned in this chapter are church asylum, the assistance in crossing borders with a view to achieving better help in another country, and the providing of emotional assistance. Quite some organizations have a certain degree of specialization, in one of the above mentioned fields, or in aiming at a certain well-defined target group: women, minors, or undocumented migrants in detention. Although not many migrant groups were interviewed, it is obvious that most help undocumented migrants receive comes from their own networks.

In interviewing organizations on the influence of incriminatory legislation on their work, it was revealed that such legal provisions apparently, and fortunately, do not really prevent organizations from providing direct assistance. However, they do prevent them from working on a structural level, by inhibiting them to speak out, to network, etc. The laws thus encourages assistance to remain underground and not within the mainstream of basic social assistance.

Regarding organizational issues, such as the target group of the organization, the balance between direct assistance and policy work, the finality of assistance and the relation to the authorities, what is most the apparent observation is the variety of opinions and organizational approaches. Organizations largely encounter the same problems and challenges, but depending on their political vision on migration policy and depending on their resources they provide different answers.

At several points, differences have been observed between organizations in the Netherlands, Belgium, Germany and the UK. We noticed, and had discussions on the fact that the whole approach to migration, both legal and undocumented, in various European countries seems to be broadly determined (or at least influenced) by their respective political traditions. This remains true despite an ever-greater tendency toward European harmonization in this area. Nation states have their specific migration histories and political cultures deriving from this particular background. To elaborate on this very interesting theme on the basis of such limited research would imply an over-simplification of empirical reality. This comparison of political cultures however is a new subject to go into that should be dealt with it at another time and in another place. (Anderson, 2002)

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# Reflections On Motivations For Providing Assistance

## Introduction (4.1.)

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

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

## Motivations for Providing Assistance (4.2.)

### Help Providers' Motivations (4.2.1.)

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

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

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

*"Until every one of us is free, none of us is free."*

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

*"It is not our duty to reject anyone."*

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

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

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

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

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

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

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

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

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

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

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

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

### **“Who Else if Not Us?”: Ethics in Immigration and Social Work with Undocumented Migrants (4.2.2.)**

*Franck Düvell,  
(University of Exeter)*

Social work<sup>42</sup> with undocumented migrants is a minefield, and often a taboo. By law they are not entitled to be where they are; they are “illegal”. But when they get ill, become destitute or get into trouble, many people help them, because they are family members, friends or professionals. These individuals act according to empathy, solidarity and an inner sense of duty: ethics.

<sup>42</sup> Social work in this context refers to assistance provided within a wide range of professions, and by many different individuals. These may be employees or volunteers who provide assistance of a social work nature to (undocumented) migrants they come into contact with via their professional tasks or by chance in other activities (e.g. campaigning, neighborhood solidarity, etc.). These individuals do social work regardless of their educational background.

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

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

### Globalisation, Ethics and Rights

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

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

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

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

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

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

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

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

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

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

such measures, in that they also provide for some good reasons to accept and to assist migrants whatever their status may be.

#### Ethics, Which Ethics?

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

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

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

In any case, one should beware of a one-perspective approach when discussing ethical implications. For example, what appears to be a criminal offence from the point of view of legality is help, assistance or a service from an individual ethics perspective. What may be justified from a social ethics point of view may be completely unfair from an individual ethics perspective. Seeking the equilibrium is the tricky bit; the concept of reflexive discourse ethics suggests that any decision shall be made in communication with the client (Oelkers 1992). However, all ethical codes listed above finally prioritise



individual ethics and the obligation one has for another individual. Social work in general “must be provided in the interest of people in need. ...Decisive is the degree of neediness” (Pietsch 1994). Individual ethics is taken as the first and foremost reference for professional ethics and makes clear statements for an obligation to help the patient or client regardless of their status.

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

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

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

**Conclusion: Why it is Ethically Advised to Provide Services to Undocumented Migrants**  
There is and there is not a straightforward concept of ethics in social work with undocumented migrants. Any act must be morally justifiable, must carefully judge between the well being of society and an individual, and give some priority to the negative consequences for the individual.

(i) Ethics represent an evolutionary concept. There was a time when slavery was deemed justified (Aristotle for e.g., see Rist 1982); it is presently perceived with outrage. With the concept of nation states adapting to globalisation, it is not unlikely that the idea of human beings being “illegal” will be condemned sometime in the future. There are good reasons (for social work) to be ahead of the time.

(ii) First, undocumented migrants contribute in many ways to our society and to family life by working or culturally. Therefore they deserve to be served; it is unfair and unjust to exclude them from reciprocal contribution by our society. Second, if they are in need, the ethical requirement, as corresponding with basically all professional or Christian ethics is pretty clear: there is an obligation to serve them regardless of their immigration status. Failing to act is failing morally. Third, as formulated by Hannah Arendt, the most basic imperative is “the right to have rights.” But if there is no one else to implement such rights, then it is left to the individual who an undocumented migrant comes to for help to provide this and thus implement “the right to have rights.”

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

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

(iii) From an ethical standpoint, there are no grounds for excluding non-members (who are morally equal with and identical to members) from the goods of membership of a political community that are consistent with the principles of equality and liberal democracy that we apply within such communities, including freedom of movement. This means that all exclusionary practices within a state, directed against irregular migrants, have no coherent ethical basis, because the rules of exclusion themselves have no such basis. Both immigration rules and rules that forbid irregular migrants to have access to collective benefits and services are unethically discriminatory (Cole 2000).

(iv) In frontline work we need to ask ourselves: “Do we have to establish a client’s status?”; “Do we need to know their status?”; “Is this relevant to the primary aim of our jobs?” Social workers become active because of the needs of an individual; they first are seen as clients. In some countries, like the UK, social workers, teachers and others are backed by trade unions that reject their members from becoming immigration officers by asking for immigration status. That may serve as a good example for what can be done.

(v) In an era in which “mental heritage [of the 20th century] makes history because of its unimaginable loss of ethics” (Smith 2002) it is more than justified to revive ethics and contribute to professional and indeed public debates about the relevance of ethics to the present. Without ethics we are reduced to the crude concepts of economics and power.

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

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### Good Citizenship (4.2.3.)

Didier Vanderslycke  
(Steunpunt Mensen Zonder Papieren)

#### Concept of Solidarity

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

public and political opinion, programs for active and democratic citizenship are developed as an answer to this phenomenon.

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

*Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice (Charter of Fundamental Rights of the European Union 2000/C 364/01).*

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

#### Making Solidarity Work

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

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

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

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

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

### “Internationalizing” the Social Security System (4.2.4.)

Didier Vanderslycke  
(Steunpunt Mensen Zonder Papieren)

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

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

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

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

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

This is also the basic premise of the International Convention on the Rights of all Migrant Workers and the Members of their Family, which was drawn up by the United Nations in 1990. Even though this Convention deals with more than only social and economical rights, it reflects the respect of its founders for the system of social security as it is conceptualized and realized in many European countries. If volunteers and professionals who are working with undocumented migrants plea for more “social security” for their clients, this

appeal needs to be understood in the spirit of the Convention. They ask that the EU-countries would apply as broad an interpretation as possible of the social protection of needy people, also if they are undocumented.

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

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

## Conclusion (4.3.)

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

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

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

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

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# Conclusions<sup>43</sup>

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

Undocumented migrants residing in Belgium, The Netherlands, Germany and the United Kingdom are living in a situation of predicament. They are socially excluded, are often non-existing in the eyes of policy makers and legislators, and are consequently very vulnerable to marginalization. All of the countries studied need and make use of the labor of undocumented migrants, but are at the same time not willing to give any rewards for their contributions.

Undocumented migration is fought in many ways. It is alarming that blocking access to social rights is one of these ways, and that the evolution tends to go in the direction of criminalizing and penalizing undocumented migrants themselves and the social and humanitarian help that is provided to them by citizens and civil organizations.

These forms of incriminatory legislation are creating paranoia in society regarding migrants in general, are enhancing the sphere of criminality, and are to some extent even blocking citizens’ solidarity to people in need. This is most obvious in Germany, but is also valid to a considerable extent in the Netherlands, Belgium and the UK. However, it appears that for many citizens, moral concerns prevail over legislation. They follow their own ethical considerations and disobey a law that according to them does not correspond to these ethical concerns.

As a result, (restrictive) social policy in the field of undocumented migration remains ineffective at many points. It is created at a central level – as a strategy to “enhance security” and to strengthen the deportation policy. Yet in its denial of humane and moral considerations it is not effective at a decentralized level, where it should be implemented.

We have attempted to make visible the solidarity that exists with undocumented migrants residing within the Netherlands, Germany, the United Kingdom and Belgium, by highlighting the many citizens and civil organizations that provide assistance to this vulnerable group in society. The solidarity that exists with European citizens and civil organizations is legitimate, and will not be stopped by laws that do not obey values of democracy and human rights.

As long as root causes are not dealt with and legal ways for migration are not established, undocumented migration is a phenomenon that is unlikely to vanish or even to diminish in the coming years. In this light, it is advisable for policy makers to recognize the presence of undocumented migrants in Europe and to approach them in a way respectful of their human rights. Although undocumented migrants are human beings, they are denied their human rights. And although solidarity is according to the European Charter of Fundamental Rights one of the indivisible, universal values on which the European Union is based, solidarity with undocumented migrants is discouraged and even penalized.

It is very hopeful and encouraging to realize the extent to which solidarity is provided in Europe to undocumented migrants. Thousands of citizens in Germany, the United Kingdom, the Netherlands and Belgium work every day to help people who are socially excluded. They are not only working in the interest of undocumented migrants, but also in the public interest. They value a society of inclusion, rather than exclusion, and their initiatives of solidarity are active expressions of how they wish to achieve this. Thoughtful and committed as they are, they contribute to changing the world, every day.

<sup>43</sup> This chapter contains a preliminary and rather general conclusion of this volume. More elaborate conclusions, containing comparative elements and policy recommendations, will follow the three-volume series.

# Ethical Guidelines

## Some Guidelines for Assisting Undocumented Migrants

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

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

### General Principles

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

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

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

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

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



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

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

## **Aims of Providing Assistance**

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

tives to offer that are acceptable to the client and cannot meet the options or wishes of the client, he/she can end the relation, because there is no definable aim to the process.

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

## Standard of Services

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

## Prioritizing

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

## Secrecy

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

17. If and when the provider obtains information on crimes by third parties during the course of his/her duties (e.g. trafficking of women and children, exploitation, misuse, forced prostitution, domestic violence, blackmailing of undocumented migrants), s/he should try to find ways and means to put an end to these practices. Problem solving strategies could include informing the public and authorities, without doing any harm to the client(s) who provided the information.
18. No information should be provided to third parties without the clear consent of the client, except for the one case mentioned in Article 16.
19. The client has the right to see his/her complete file at any moment. When the relationship comes to an end, the client has the right to take his/her file. Nonetheless, the organization is entitled to keep the client's essential personal data. If the client requests assistance again, s/he has to once again make the whole file available to the organization.

### **Political and Social Action. Transparency**

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

### **Legitimacy and Its Limits**

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

26. In some countries it is forbidden by law to assist undocumented migrants. These types of laws are subordinate to principle ethics that therefore have priority.
27. Actions undertaken, working methods and rules such as these guidelines that are used by organizations assisting undocumented migrants should be open and transparent. This appears to be a condition to earn the cooperation and support of other organizations, of the public and sometimes of (local) authorities.

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