



BOOK OF SOLIDARITY

PROVIDING ASSISTANCE TO UNDOCUMENTED MIGRANTS
IN SWEDEN, DENMARK AND AUSTRIA

VOLUME/03

 **PICUM**

PLATFORM FOR INTERNATIONAL COOPERATION
ON UNDOCUMENTED MIGRANTS

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Sponsored by the European Commission

Edited by PICUM

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Michele LeVoy, Project Researcher
Nele Verbruggen, Project Coordinator

Introduction

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

John Steinbeck, *The Grapes of Wrath*

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

Many citizens¹ and civil organisations provide humanitarian support to undocumented migrants. Volume III of the *Book of Solidarity* aims at highlighting the manifold ways solidarity is extended to undocumented migrants in Sweden, Denmark and Austria. The focus of this book is on assistance to undocumented migrants and the rights of help providers. The reason for focusing on help providers and conditions in which assistance is provided (as opposed to the rights of undocumented migrants themselves) is due to the alarming tendency to criminalize assistance to undocumented migrants, which albeit in an indirect way strongly affects undocumented migrants themselves. Some Member States of the European Union have provisions in their Aliens laws that penalise assistance to undocumented migrants. The European Union recently approved of this approach by reaching political agreement on a text that includes the same provision.

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

A Word on PICUM^(1.1)

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

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

Project Partners ^(1.2)

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

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

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

Methodology ^(1.3)

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

Research Questions

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

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

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

Research Methods

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

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

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

In April 2003, PICUM held several “feedback” workshops to discuss the draft version and relevant issues for each country concerning undocumented migrants. Organizations that were interviewed during the course of the research were invited to participate, as well as researchers working on the theme of undocumented migrants in the respective countries. Workshops were held in Stockholm (23 April 2003) and Vienna (26 April 2003). Thanks to the high degree of involvedness and constructive criticism of the participants, the workshops proved to be very productive, and elements of the discussions were incorporated into the final version.

Sample of the Organizations

Various types of assistance and thematic issues were taken into consideration in determining the organizations to be included in the project. An attempt was made to achieve a sample that included organizations that provide direct help in areas of basic social rights, as well as those that work on a more structural level. The size and level of work were two important elements: small, local organizations were included as well as large ones whose scope of activities often extended to regional or national levels. There was an equal interest in visiting organizations that worked only with volunteers (and received no funding) as well as those that were almost entirely funded by the government. It was also deemed important to interview migrants’ groups in the various countries.

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

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

Course of the Research ^(1.4)

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

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

The first step in this project was to make an inventory of organizations that provide assistance to undocumented migrants. To expand the inventory, we relied on our existing network and attendance at several conferences. Visits were made to organizations in February and March 2003. A draft version was presented to organizations at the workshops in April 2003, and the final version was completed in July 2003.

Overview of the Book ^(1.5)

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

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

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

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

The Context: Undocumented Migrants

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

Undocumented Migrants: Who Are They? (2.1)

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

Illegal Entry Versus Illegal Residence

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

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

Differences Amongst Undocumented Migrants

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

Empirical research shows that there is a wide variety of people and careers represented among irregular residents. There are differences amongst undocumented migrants in terms of ethnicity, gender, educational level, and knowledge of the host country language prior to arrival, just to name a few. All of these and other factors play a role in adaptation. On the level of coping with problems of daily life that irregular residence can bring about, a difference can be observed between migrants who once had legal status and those who never did. Research in Belgium on survival strategies of undocumented migrants pointed out that rejected asylum seekers who have had a legal position in Belgium seem to be better informed about their rights and the procedures to be followed than people who have never legally resided in Belgium. One possible explanation is that rejected asylum seekers on average have more contacts with NGOs that inform them of their rights (Adam et al 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 labour market, and assume daily life as an undocumented migrant. Some people are forced to an illegal situation when their asylum claim is rejected, but have serious and well-founded fears of returning to their country of origin. Others wish to return but their country no longer allows them entry. Individuals who resort to trafficking organizations as a means to flee face a very particular situation. These include children who are sold to trafficking organizations, and women attracted by false promises of a bright future. They often find themselves in desperate situations. They did not choose a life in illegality and are unwilling and unable to cope with the very hard survival conditions.

Center of Life

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

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

What Brings Them Here? (2.2)

At the beginning of the presence of undocumented migrants in Europe is the “decision” of the migrant to leave his or her country. Whatever has been presumed and said about the motives of undocumented migrants, 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 Forced Migration³ (2.2.1)

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

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

Armed Conflict; a Pervasive “Culture of Violence”

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

Ethnic and Racial Conflict

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

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

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

Globalization of the Free Market Economic Model

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

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

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

Environmental Degradation and Disasters

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

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

Development-Induced Displacement

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

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

Denial of Democracy

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

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

Abuse of Power/Corruption

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

Conclusion

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

Social and Economic Aspects of Living Conditions of Undocumented Migrants (2.3)

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 Sweden, Denmark and Austria. These texts focus mainly on access to basic social rights such as housing, health care, education, and on ways to earn a living through employment and conditions of work, as well as access to social assistance.

International Standards: How It Should Be (2.3.1)

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

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

Right to Fair Working Conditions

There is a difference between the right to work and the right to fair working conditions. Concerning the right to work, Article 23 of the Universal Declaration of Human Rights (UDHR), for example, is said only to apply to workers ordinarily residing in a country. But since many undocumented migrants are workers (who work in the informal

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

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

The ICMW is a very important instrument for the protection of undocumented (and documented) workers and their families from exploitation and the violation of their human rights. It entered into force on July 1, 2003, and is binding for the 22 countries that have ratified (in order of ratification): Egypt, Morocco, Seychelles, Colombia, Philippines, Uganda, Sri Lanka, Senegal, Bosnia-Herzegovina, Cape Verde, Azerbaijan, Mexico, Ghana, Guinea, Bolivia, Uruguay, Belize, Tajikistan, Ecuador, El Salvador, Guatemala and Mali. Ten countries⁴ have signed the convention, the first step towards ratification.

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

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

Article 25

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

⁴ Bangladesh, Burkina Faso, Chile, Comoros, Guinea-Bissau, Paraguay, Sao Tome & Principe, Sierra Leone, Togo and Turkey.

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

Right to Social Assistance and Social Security

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

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

Article 27

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

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

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

Right to Housing

The right to housing is interrelated to the right to health care, since adequate housing is fundamental for living in dignity, for one's physical and mental health, and for the overall quality of life. The UDHR recognises that everyone has the right to a standard of living adequate for the health and well being of an individual and of his/her family, including food, clothing, housing, and medical care and necessary social services (Article 25). This is

also referred to in Article 11 of the ICESCR. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states in Article 14 that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas ... to ensure ... the right ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications...”. This is also confirmed in the Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and in Article 27 of the CRC.

Right to Health Care

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

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

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

Article 28

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

Right to Education

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

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

Article 30

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

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

Additional Information

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

<http://www.december18.net>

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

The Social and Economic Situation of Undocumented Migrants in Sweden

Michael Williams, FARR - Swedish Network of Asylum and Refugee Support Groups (2.3.2)

All persons who are officially resident in Sweden have a personal identity number based on their date of birth (yy mm dd) and four other figures. This 10-digit number is used widely to check the rights of access of individuals to social and economic rights. Those without personal identity numbers are basically denied access to these rights

unless there is special legislation covering a particular group, such as asylum-seekers or EEA (European Economic Area) citizens. However all persons present in Sweden and in need of emergency medical care have the right to treatment but will probably be billed for it according to the so called 'tourist-rate'. This means that if a person has no insurance coverage or friends who can pay the bill he or she will be required to pay the sum or be registered as a bad debtor.

Undocumented migrants are by nature difficult to identify in any regulated system and it is therefore difficult to ascertain the actual level of this phenomenon in Sweden. Most people believe that rejected asylum seekers constitute the major part of this group even if there is a growing phenomenon of illegal labour immigration in the black or informal sector of the economy, notably from certain Latin American countries. Prostitution and forced prostitution involving illegal migrants is also of growing concern.

The only regular statistics held on one category of undocumented migrants is the list put together by Rikspolisstyrelsen on the number of rejected asylum seekers that are the object of removal orders but cannot be located. At present that figure is around 3,400. Some of these persons may well have moved on to another country or even returned to their country of origin. However it is felt that most of them are in hiding in Sweden living on the hope that a new application to the Aliens Appeals Board will lead to their being able to regularise their situation.

The social and economic rights of asylum seekers are regulated in Lagen om Mottagande av Asylsökande, LMA ((The Law regarding the reception of asylum seekers) SFS 1994:137).

Each asylum seeker is photographed and if over 14, fingerprints are also taken. The applicant is then issued with an identity card based on the information provided by the applicant. Name, date of birth, nationality, colour of eyes and height are recorded as well as the case number of the asylum applicant. It is stated on the document that this is not a proper ID card but in practice it is accepted by the post office for cashing the payment of subsistence allowances. These cards are issued for a limited period of time and renewed during the asylum procedure if the applicant is still in Sweden. Even children are issued with these cards. When accessing health care these cards must be shown.

Adult asylum seekers are only entitled to receive emergency medical or dental treatment. Children under 18 years of age are entitled to medical and dental care on the same basis as other children residing in Sweden. Since 2002 an important change has taken place regarding the right of access to health care of rejected child applicants. They now have full access to health care after the United Nations Committee made criticism about treating children in a discriminating manner. But still children of illegal migrants who have not sought asylum are excluded from this provision as are children that are relatives of asylum seekers but who themselves have not sought asylum. Moreover, the Committee's recommendation that these children should also have access to schooling has not been implemented.

Asylum seekers have to pay SEK 50 (€6) for medical and medicinal expenses and SEK 25 (€3) for other treatment. However, if an asylum seeker spends more than SEK 400 (€48) within a six-month period, the Migration Board must reimburse the difference.

Rejected adult asylum seekers in an illegal situation would have to pay over €100 for a visit to a hospital and be asked to provide a home address. Faced with these difficulties they frequently avoid contact with the official health authorities and when desperate for health care can turn to a few medical clinics that have been opened in the major cities on the initiative of NGOs and concerned health care workers. At these clinics consultation is free and suitable medicines for common ailments are available (sometimes donated by individuals prescribed medi-

cine which they no longer take). Doctors working as volunteers in this system can remit patients in need of emergency care to a regular hospital for treatment.

Occasionally treatment is provided in the private medical sector or by retired practitioners. They often waive any charges for their services or charge lower rates.

Housing and Work

For rejected asylum seekers who go into hiding housing can be available from different sources. Relatives or friends from the home country can put them up or if there is contact with a loose network of sanctuary movements then accommodation may be provided through them. To avoid being discovered by the police, persons living in sanctuary may have to move fairly regularly. Assisting rejected asylum seekers is not illegal in Sweden providing it is not done for a profit motive or in return for obligatory work. It is seldom that persons in this position work on the black market.

Other undocumented migrants can obtain work in traditional sectors such as restaurants, cafés, domestic services, cleaning, ethnic shops, construction, carpentry, renovation, hairdressing, fruit-picking, agriculture and prostitution. Those that are not self-employed are often at the mercy and whims of the employers. They may have been promised a regular monthly salary and limited hours but can end up waiting months for any income and forced to work long hours. Those who are self-employed are not as exposed and rely often on getting jobs by word of mouth. Cleaning-ladies can be recommended by well-to-do families to others.

In organised illegal labour migration those responsible may well be from the same ethnic group as those who immigrate. The latter have been recruited in the home country often with false promises of a bright future and the possibility to remit money to poor relatives back home. Some of them have been provided with falsified copies of a document that is given to asylum seekers whose cases are expected to take more than four months to resolve and who are therefore granted permission to seek active employment legally. This form absolves the holder of the need to have a work permit and is used to register at the tax authorities as someone with a right to legally work in the country. The tax authorities have issued special personal identity numbers for these people which are difficult to distinguish from regular personal identity numbers. They can therefore legalise their situation in part and actually pay tax on their earnings. The Migration Board has now requested the tax authorities to be more alert when these documents are produced. Also a new version of the document regarding a waiver for a work permit is being produced to make it more difficult to forge. Recently hundreds of Latin Americans were discovered working under these circumstances. Most of them submitted asylum applications to try and prevent a swift deportation but their cases have been rejected as manifestly unfounded.

Education

There is no legal access to education for undocumented migrants unless they are still in the asylum system. Within it children have the right to education and access to pre-school and nursery groups. Children between 16 and 18 are also allowed to attend senior secondary schools while adults are provided with a basic orientation course in the Swedish language and Swedish society but have no access to tertiary education or adult education courses.

The Social and Economic Situation of Undocumented Migrants in Denmark⁵

Katia Nielsen, *Komitéen Flygtninge Under Jorden (Refugees Underground Committee)* (2.3.3)

Introduction

The field of undocumented migrants is one of the most difficult fields to describe because of its very nature. Many of the statements in this chapter therefore have to be considered as a conglomeration of statements based on fragmented impressions and elaborated intuition. Other reasons worsen the possibilities to thoroughly describe the life of undocumented migrants. The fact that the political atmosphere in Denmark is becoming more and more hostile towards “aliens” makes NGOs, compatriots, families and friends of undocumented migrants increasingly cautious about delivering information that has a risk of compromising undocumented migrants.

The far-reaching surveillance of Danish society through the social security system makes it nearly impossible to survive or live a normal life as an undocumented migrant in Denmark. This hostile atmosphere is deteriorating the situation for those who help undocumented migrants. The risk of receiving a prison sentence tends to scare people from helping undocumented migrants. On the other hand many people have reacted towards this “shift to the right” in Danish politics and as a result have become involved in voluntary work as a form of protest.

The number of undocumented migrants in Denmark is impossible to pinpoint. It has been officially illegal to immigrate to Denmark since 1973. That means that in practice, only immigrants with a work contract in high-tech or other fields where specialized labour is needed and people coming on family reunification (rules that were further restricted as of July 1, 2002) are allowed immigration status. It is difficult to say whether this has resulted in an increase in the number of undocumented migrants. Nonetheless, it is probable that the undocumented are mostly those who arrive on a tourist visa to visit family and friends, rejected asylum seekers who have not been deported to their home country or have not left Denmark voluntarily and people entering Denmark clandestinely.

Social situation

As mentioned above, there are different groups of undocumented migrants. Rejected asylum seekers are delivered a deportation order from the police. In some cases the police do not leave the rejected asylum seeker time to prepare his/her departure, and wait outside the door for the rejected asylum seeker to get his/her belongings. If Danish authorities fear that the rejected asylum seeker will not leave voluntarily, the police are entitled to arrest and detain the person. Due to the fact that rejected asylum seekers are registered and widely controlled, they run a very high risk of being deported to their home country if caught by the Danish authorities.

Immigrants arriving in Denmark on a tourist visa are to a large extent integrated within a network of compatriots or within their family. In spite of the fact that their life to a great extent is still doomed to be clandestine, the social and moral support they receive makes it somewhat easier to survive.

Housing

Undocumented migrants who are in some kind of network that is established through a common ethnic or religious group, family, compatriots or others have more possibilities of getting help with housing than undocumented migrants who do not have this network.

⁵ This text is primarily based on experiences collected through the work of the *Komitéen Flygtninge Under Jorden* and through testimonies from rejected asylum seekers and people helping undocumented migrants.

When getting help from the network they pay little or no rent, because they often do not have access to any income or earn very little money. If a high rent is required, several people can be forced to live together in order to be able to pay the rent.

It is difficult to say if there is a geographical difference in where most undocumented migrants live. On the one hand, it is easier to lead an anonymous life in the capital, Copenhagen, but on the other hand, there have been cases of whole communities in the countryside supporting undocumented migrants, out of solidarity.

It is possible to presume that undocumented migrants that have some kind of network are also protected against exploitation to some extent. The fact that undocumented migrants are not protected by law makes them more vulnerable in that respect. The varieties of exploitation are numerous. They are forced to pay high rents for ridiculously small rooms or apartments. They are in some cases used for labour in sweatshops. Sexual exploitation as payment for rent also occurs.

Health care

In principle doctors have an ethical obligation to treat any person in urgent need of medical treatment. With this obligation also follows professional secrecy, meaning that they are not entitled to report to the police if they treat an undocumented migrant in their clinic. In practice some doctors have reported undocumented migrants that have tried to get medical care by using fake social security documents.

Some doctors and dentists are willing to treat undocumented migrants without registering the treatment in a medical file. Some ask payment for this service while others do not. National legislation does not state that undocumented migrants have the right of access to health care.

Education and vocational training

Adult undocumented migrants can have access to vocational training offered by some NGOs and compatriot networks. Humanitarian organisations usually do not register the students. Some also offer other activities such as computer training and English lessons. However, these organisations or networks do not give official examinations and thus it is not possible for adult undocumented migrants to get diplomas or formal training in Denmark.

Children are in somewhat the same position as their parents. Some school principals choose to let the children attend classes at their school in spite of the fact that they are not registered, because they find it essential for their well-being and survival to get to know other children and to have a structured daily life, and for them to get a basic education.

Economic situation

Public assistance (institutions of the welfare state)

Undocumented migrants cannot receive financial assistance from public authorities. They do not have access to unemployment benefits, social security or any other service from the Danish welfare state. They are therefore totally dependent on finding work in the informal economy or rely on help from others in order to survive.

Private aid (individuals or organisations)

Undocumented migrants largely depend on private donations and help. The people that help are mostly family and friends from their network or from their families in their country of origin. It is more common to receive financial assistance from individual compatriots rather than organisations. NGOs usually focus on helping by protect-

ing the rights of the undocumented migrant. If the undocumented migrant is lucky enough to get a job, s/he often sends money back home to his/her family.

Work

The key to Danish society is a social security number. Undocumented migrants do not have such a number. That means that they are doomed to work illegally or without a salary. Since it is a criminal offence to employ an undocumented migrant, both the employer and employee may refrain from getting involved in such a relation. Making this working relation criminal results in undocumented migrants not being protected from exploitation and not being covered by any work insurance in the case of a work accident. Several incidences have been reported where undocumented migrants have been locked up as slaves for years.

Conclusion

These days right wing Denmark wishes to send a message to the world that refugees and especially their families are not welcome on Danish soil. The latest restrictions of July 2002 in the Aliens Law have resulted in a decreasing number of asylum applicants and a decrease in the number of family members who have received permission to join their relatives in Denmark. Danes who have a foreign spouse are often forced to move to Sweden because the spouse is denied residency in Denmark. This is the official picture. It is impossible to know what consequences this hostile atmosphere and further restrictions have for undocumented migrants that are not protected by any law. It is also difficult to conclude anything on the numbers of undocumented migrants that will be forced to live a criminalized life with no possibility of getting their case tried in court and no possibility of leading a normal life. These people have a reason for wanting to come to Denmark either because of poverty, traumatic experiences, or because they want to be near their relatives. Are these motives criminal?

Socio-Economic Conditions of Undocumented Migrants in Austria

Christoph Riedl, DIAKONIE Evangelischer Flüchtlingsdienst (2.3.4)

Austrian asylum and aliens law is currently in the process of being reshaped. On 1 January 2003 an aliens law amendment with far-reaching effects was implemented and a total transformation of asylum law is expected.

Austria's government is still very eager to stress that Austria is not a country where immigration is of significant importance. According to the new foreigners' law, migration to Austria is only possible for the following categories of people: so-called "Schlüsselarbeitskräfte" (labour force with skills that are in high demand, but seldom found in sufficient numbers in Austria); family members of foreigners residing in Austria; and seasonal workers. Immigration in order to work in Austria has been eliminated altogether.

On the other hand, obligatory German courses have been installed. After the migrant has attended 100 lessons there is a test: the consequences of not passing this test can go as far as deportation.

Herewith a law has been created that seems to restrict migration to Austria, but at the same time opens all doors for underprivileged seasonal workers, for whom even fewer social rights, and not even German courses, will be available.

Beginning with the assumption, which mirrors the situation most realistically, that migration flows won't be regulated in the way that politicians would like them to be, we will have to be aware of the fact that in the near future there will be much more illegal entry into the country, and a further increase in the number of asylum applications (if no legal channel for migration remains, this has always showed an increase in the number of asylum applications).

Social Situation

In Austria the situation of undocumented migrants is closely linked to the situation of asylum seekers, as well as individuals whose asylum applications have been rejected.

This results from the fact that an overwhelming number of migrants are forced to enter Austria via the asylum method. According to the law, family reunification is the only legal way of migration for people without key skills that are in need and who are not merely seasonal workers.

Asylum procedures take a very long time in Austria: two years are the average duration, rather than the exception. Because of this long procedure, asylum seekers remain in the country for a long time. These people are legitimate in Austria, but this does not mean they have a legal status.

After the end of the asylum procedure, which may take many years, many of these migrants have little choice other than staying in Austria, because returning to their countries of origin offers a perspective that is even worse than trying to get by in Austria under miserable conditions.

Housing

Because of a lack of affordable alternatives, undocumented migrants are often forced to live in apartments that are unsanitary, old, and are in a miserable condition. Support for immigrants who cannot afford the rent is only given in cases where the foreigners' police finds out that deportation of these individuals is impossible.

To remain in Austria without the foreigners' agency knowing about it is nearly impossible. There is a highly efficient system of local registration, in which every foreigner is checked upon for verification. Should someone live at an address and be registered, but has no residence permit, this person will immediately be checked by the aliens police.

Although one may attempt to live with friends without being registered, there is a high chance that this individual's presence will be known to the aliens police. People of colour are often subject to police inspections and in each single police inspection the individual's registration is checked.

Rejected asylum seekers may spend a short period of time in refugee facilities maintained by Austrian NGOs. Due to the fact that the state accommodates only less than one third of asylum seekers, refugee facilities run by non-profit organizations are permanently over-crowded. Clients have to leave these facilities after a short period of time, as space for the continuously arriving clients has to be secured.

There is no other accommodation opportunity for undocumented migrants.

Health Care

During asylum procedures as little as one third of asylum-seekers have access to health care. For the remaining two thirds, for asylum seekers, and for 100 percent of undocumented migrants, there is no public social and medical support.

However, there are a few NGO initiatives that try to target these needs. In Vienna a mobile clinic is run by the non-profit organization Caritas in co-operation with the city administration. People who do not have insurance can receive free health care at this mobile clinic. There is also a monastery hospital that offers health care free of charge, to the extent to that it is feasible with the available resources.

Several NGOs have put together lists of addresses of medical doctors who treat patients free of charge. However, this cannot be said to be a perfect solution. Dental care, for an example, is problematic because of the high material costs, which are definitely expensive for dentists who provide dental care for uninsured patients. Treatments are thus restricted to efforts to stop pain, and teeth that under other circumstances could be maintained are removed.

In cases of serious diseases and where it is necessary to be treated in a hospital, patients frequently receive bills afterwards that are so expensive that they will never be able to pay them, even if they would work for high salaries.

Should such an undocumented migrant become “legal”, s/he is therefore often highly indebted for the remainder of his/her life.

Education and Vocational Training

Too few German courses are available for undocumented migrants and asylum seekers during the asylum procedure.

Due to Austrian law which stipulates that school attendance is obligatory, children have the opportunity to go to school for nine years. However, children in the Traiskirchen reception center are not allowed to attend school.

Economic Situation

Work

In order to be able to work legally, foreigners need a work permit. However, only people legally residing in Austria can get such a permit. Moreover the granting of a work permit is restricted by means of a strict quota system. Thus for undocumented migrants it is nearly impossible to get a work permit.

Only in exceptional cases do asylum seekers succeed in getting a work permit, and unfortunately a prerequisite for being allowed to work in Austria is having a residence permit. At the end of asylum procedure it sometimes happens that the permission of residence in Austria has finished, but the work permit remains in force. In this situation an undocumented migrant may legally work in Austria while at the same time reside in the country illegally.

Public Assistance (Institutions of the Welfare State)

The system of social support in Austria is rather complicated as it is regulated in each of Austria's nine states (local governments) through their own laws.

Currently there is a trend according to which asylum seekers, and therefore also undocumented migrants, tend to generally be excluded from public assistance. There is also the other situation in which people are entitled to receiving public assistance only after many months of waiting. Until a decision has been made as to whether the person will receive public support at all, there is no support. Even if the decision is positive, the migrant may be entitled to support that is too low to fulfil the most basic needs.

Payment of social support is carried out by the public administration of districts, in co-operation with municipalities. This means that undocumented migrants are largely left to themselves.

Private Aid (Individuals or Organisations)

There are no NGOs that have specialized in providing help only to undocumented migrants. However there are very few undocumented migrants who have not applied for asylum (whether they successfully received asylum or not), at any point of time.

These individuals receive help from NGOs, mainly church-organizations (such as Diakonie and Caritas) that are also capable of providing financial support.

As there are so many requests for financial and other aid and because of the fact that the whole system is overburdened, clients can only be supported with smaller sums, which are not sufficient to help them get by.

General Environment in Austria Concerning Undocumented Migrants

There is a relatively strong xenophobic climate in Austria, and this perception of migrants is favoured rather than fought by the media. Again and again politicians have consciously used xenophobic messages in election campaigns.

In the general public nearly no distinction is made between undocumented migrants, migrants, asylum seekers, rejected asylum seekers who are not allowed to be sent back to their countries (Article 3 and Article 8 ECHR), refugees recognized by the Geneva convention or criminal tourists.

A regularization process for Austria is not even thought about. There is no discussion about this topic.

There is only one commission, installed at the Ministry for Interior Affairs, which suggests that individual cases of residence permits be granted for humanitarian reasons.

However this system is not adequate to help in cases that are really humanitarian. Furthermore not even undocumented migrants who have spent many years in the country can get a residence permit, unless they are capable of assuring their own expenses while staying in Austria.

Conclusion (2.4)

There are many different ways of becoming undocumented and leading daily life as an undocumented migrant. The one thing all undocumented migrants in Europe have in common is the lack of official authorization to legally reside in the country where they are. When analyzing the socio-economic situation of undocumented migrants in Sweden and Denmark (as well as in Austria, to a lesser extent), it is important to bear in mind the high level of regulation that characterizes the social security systems in these countries. It is very difficult for undocumented migrants to survive without a personal identification number, and most social and economic services are consequently denied to them.

Legislation in Sweden, Denmark and Austria contains nearly no clauses that stipulate that undocumented migrants can have access to basic social services. In the area of health care, only Swedish legislation has an article that may be interpreted to grant emergency care to undocumented migrants. However, the definition of what constitutes emergency care is left to the health care provider, who may not consider the necessary treatment to be urgent. In respect to the educational system, all children (including undocumented minors) are required to go to school for nine years in Austria. This is not the case in Sweden and Denmark, where legislation does not stipulate that undocumented minors must attend school, but in practice teachers and principals may disregard their undocumented status and allow them to enroll. Undocumented migrants face a high degree of

social exclusion and marginalization in other areas. Housing and work are two examples of basic needs that are very difficult for undocumented migrants to meet due to a high degree of exploitation and poor conditions.

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

Hindrances to Solidarity: Problematic Elements

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

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

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

Sweden (3.1)

There is no article in Swedish legislation that stipulates that providing assistance to undocumented migrants incurs penalization, unless it is for financial gain. The way the law is formulated is meant to penalize smugglers, traffickers and others who earn money off of undocumented migrants. There have never been cases in which the law has been interpreted to penalize NGOs or other humanitarian associations for providing assistance to undocumented migrants. The police do search houses, schools and other places for undocumented migrants, but may be more tolerant if an NGO is involved, and staff can always choose to remain silent and not cooperate.

Swedish legislation also does not have a provision that would require staff at hospitals, government institutions, schools, and other public buildings to denounce an undocumented migrant. Although there is often a lack of understanding amongst personnel as to what is legal and illegal concerning undocumented migrants, a general climate of tolerance and professional ethics predominates.

Denmark (3.2)

Unlike legislation in Sweden, Danish legislation contains an article that penalizes assistance to undocumented migrants. In the Danish Penal Code, Paragraphs 125 and 125a indicate that helping someone to flee (if the individual is trying to avoid a crime or punishment) is liable for up to four years of imprisonment. The Danish Aliens Act also contains articles that penalize assistance to undocumented migrants.

Paragraphs 43 and 59 of the Aliens Act

In the Danish Aliens (Consolidation) Act No. 608 of 17 July 2002 of the Danish Ministry of Refugee, Immigration and Integration Affairs, the following articles indicate the penalty provisions for providing assistance to undocumented migrants:

Article 43. (4)

Any person who has assisted an alien in unlawfully entering or staying in Denmark, and any person who has employed an alien not issued with a work permit, shall refund the expenses incurred by the State in connection with that alien's stay and departure.

Article 59. (5)

Any person who intentionally assists an alien in unlawful entry or stay in Denmark is liable to a fine or imprisonment for up to 2 years. The same punishment applies to anyone who for the sake of material advantage assists an alien in entering Denmark for the purpose of entering from here into another country that will refuse entry to the alien or will return him to Denmark. Further, the same punishment applies to anyone who for the sake of material advantage assists an alien in entering another country that will refuse entry to the alien or will return him to Denmark.

Penalty for Helping Rejected Asylum Seekers

In 2000, Lutheran pastor Lief Bork Hansen was convicted on two occasions for sheltering 29 rejected asylum seekers from Eastern Slavonia. Rev. Hansen provided accommodation for some in his own home and sent others to other houses, after their applications for political asylum were rejected. He was given a 20-day suspended prison sentence for his first conviction, and was convicted a second time on April 11, 2000, for collecting funds and distributing them to the asylum seekers in hiding. He was fined 2,500 Dkr (€337) for the second conviction. The Public Prosecutor's Office filed an appeal with the High Court, and on October 30, 2000, the Eastern High Court decided to increase the fine from 2,500 Dkr (€337) to 7,500 Dkr (€1,010) and to extend his 20-day suspended prison sentence by one year, until May 2002 (Cruz 2000). After the High Court issued its decision, the Minister for Church Affairs, Margrethe Vestager, announced that Rev. Hansen could keep his post as pastor within the church. In an interview with Ecumenical News International that was held in August 2000, Rev. Hansen explained his reasons for providing accommodation to the undocumented migrants and his determination to continue with this assistance:

An unjust law cannot be a valid law. For me there are things more important than the law; one is to help your neighbor and fellow human being if you see that that person is in need. First I have to attend my job as a priest, and then to my job as a civil servant. And as a priest I have a special obligation to help people in need. If I do not fulfill that obligation, nobody, including myself, can take my sermons in church every Sunday seriously. Then the life of the church will be nothing but empty rituals. You can pay a fine and you can serve a sentence. But if you betray your Christian obligations, you are stuck with that for the rest of your life. In our modern life, we have become experts in separating things and splitting our lives up into different parts with different rules. But it is coherence that gives depth to your life and puts your moral values to the test (Larsen 2000).

More recently and in a separate development, on April 23, 2003, Bertel Haarder, the Minister for Refugees, Immigration, and Integration, announced that people who hide rejected asylum seekers would in future be exposed to harsher penalties. Mr. Haarder asked the Minister of Justice, Lene Espersen, to examine how to amend the law to make it more stringent for those who help rejected asylum seekers to go into hiding, and has asked both the Aliens Directorate and the head of the State Police to revive Paragraph 43 of the Aliens Law, which stipulates that people who help rejected asylum seekers to hide from the authorities have to pay damages to the state for the extra expenses incurred, for example from a longer processing time and extended police efforts to investigate the case (Cruz 2003). Although this proposal has not been officially accepted, it is indeed worrying and a reflection of the general atmosphere in Denmark concerning assistance to undocumented migrants.

Austria (3.3)

Articles 107 and 107a of the Aliens Act

Austrian legislation clarifies the consequences of unauthorized residence as well as aiding and abetting unauthorized residence for reward. The following measures are specified in the Federal Law concerning the Entry, Residence and Settlement of Aliens (1997 Aliens Act):

Article 107.

(1) Any person who:

1. Fails to depart promptly following the imposition of a residence ban or deportation order, or
2. Without permission returns to the federal territory in contravention of a residence ban, or
3. Resides in the federal territory as an alien who is subject to the passport requirement but does not possess a valid travel document, or
4. Unlawfully resides in the federal territory (Article 31) shall be guilty of an administrative infraction and be liable to payment of a fine of up to €726 or to a term of imprisonment of up to 14 days in the cases referred to in subparagraphs 1 and 2 above, and to a fine of up to €726 in all other cases.

Article 107a.

(1) Any person who willfully procures or otherwise facilitates the unauthorized residence of an alien in the federal territory in return for a pecuniary advantage shall be guilty of an administrative infraction and be liable to payment of a fine of up to €3,600.

The term “pecuniary advantage” in Article 107a signifies that assistance to undocumented migrants for financial gain can be penalized. Although there have been no court cases in which NGOs or humanitarian organizations have been penalized under Article 107a, the fact that this law exists does create an environment in which those who provide assistance to undocumented migrants could possibly be penalized, if the law was ever interpreted as such.

Discourse on the European Level (3.4)

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

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

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

Each Member State shall adopt appropriate sanctions on:

1. 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;
2. any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens (EC 2000/C253/03).

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

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

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

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

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

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

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

Recent Developments

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

Conclusion (3.5)

It is very worrying that solidarity towards undocumented migrants has been criminalized and penalized in Denmark. Austrian law also contains clauses that penalize assistance, but there have been no cases in which an individual or an organization has been charged for providing assistance to (an) undocumented migrant(s). We presently witness that as migration policies are developed on the national and European levels, every repressive measure is replaced by even more repressive measures, in the aim of stopping migrants from coming to Europe. As migration controls do not effectively work at the borders, a growing tendency is to try to carry

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

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

Nonetheless, organizations in Sweden, Denmark and Austria extend their solidarity in various ways towards undocumented migrants, in spite of legislation that may contain clauses concerning penalization of assistance. This will be further elaborated in the following chapter.

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Providing Assistance To Undocumented Migrants: The Reality

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

Basic Social Rights (4.1)

The basic social rights of food, health care, housing, work, education, and legal advice are often very difficult for undocumented migrants to properly fulfill, due to their irregular situation. Organizations may offer these services themselves or refer migrants to other organizations that provide them.

Food (4.1.1)

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

A number of organizations in Sweden, Denmark and Austria address undocumented migrants' basic need for food by relying on small financial contributions from members in their network or from churches. These donations may not always be regular but they help an undocumented migrant to get by. Some organizations are able to raise this money and attend to other basic needs (such as housing or health care) through a large support network:

“When someone is here illegally and has exhausted the legal means, you have to be in Sweden for a new (asylum) application to be considered, so that means that you've got to stay and any group helping these people has to find accommodation, fix food and see that they get medical care, etc., and work on the legal aspects of the case. In that situation you can perhaps have a core group of a dozen people and then they have about ten times that many people in the network who provide money on a regular basis to cover these costs. They divide up the work in that group too so that these people are responsible for housing, these are responsible for education, etc.” (*Counselor in Sweden*)

Organizations may also invite an undocumented migrant to share a meal, or refer them to a soup kitchen, where possible. Not all cities have soup kitchens or places where undocumented migrants can receive a warm meal. Nonetheless, providing food to those in need is one of the key areas of work of *Caritas*. In the past, *Caritas Sverige* maintained a service where people could get food, and also distributed food packets. As the organization is no longer providing that service, undocumented migrants may turn to local parishes for food aid. In

Austria, *Caritas* has maintained these services, as is the example of the *Caritas* office in Graz:

Caritas Diözese Graz-Seckau (Graz, Austria)

Caritas Diözese Graz-Seckau runs a food service in Graz which is open to Austrians as well as foreigners, including undocumented migrants. It is open on a daily basis and serves lunch and dinner. Food packets are also available, and *Caritas Diözese Graz-Seckau* does not establish a maximum amount of time that an individual can receive food packets or go to the food service.

One interviewee emphasized that although organizations do provide assistance in this area, it is important to remember that these efforts are filling a gap where governmental programs should intervene:

“It’s not professional care (food and pocket money). It’s just a place to live, providing food, and that’s it. That’s better than living on the street, but you have to be careful not to lower the standards, because they (the government) could tell you ‘The NGOs do that work anyway, and it’s working well.’ We just say that we are helping under protest, that this is the job of the state. We will provide assistance until they do their job.” (*Activist in Austria*)

Health (4.1.2)

Legislation in Denmark and Austria has no special provision concerning access to health care for undocumented migrants. In Sweden, the law stipulates that people residing in the country can have access to emergency health care. But problems arise when the notion of “emergency” must be defined. The health care provider must make this decision, which leads to much subjectivity. Organizations in all three countries thus intervene in a variety of ways to ensure that this basic need does not go unfulfilled. Some rely on informal networks of health care practitioners and may also act as an intermediary if an undocumented migrant encounters problems in trying to use the state health care system. A select number of organizations have in-house health care services which are available to undocumented migrants.

Using Informal Networks

Many of the organizations interviewed have a network of private health care practitioners that they can contact that will provide health care to undocumented migrants for free or for a small fee. These doctors and nurses play a very important role in ensuring that undocumented migrants are not prevented from receiving basic health care. The ability to refer an undocumented migrant to a trusted health care practitioner is essential, especially in societies where the lack of an identification number can be detrimental. This is particularly the case for Sweden and Denmark, where many organizations emphasized that survival as an undocumented migrant is very difficult:

“I know that some rejected asylum seekers have been actually living in Denmark for years. It’s a very limited number of people. It requires that you have family here, a network, because there are very few things you can do if you don’t have a residence permit. You can’t go to see a doctor, you can’t send the kids to school, you can’t work. It’s very difficult. So, people just tend to leave the country very quickly. Some of them, and very few, have actually stayed in Denmark for a longer period. But it really requires that you have family here, who are ok, so they really can support you. You have a few doctors who would help you, but you never go to a hospital. That would be a problem.” (*Legal advisor in Denmark*)

“It is extremely difficult to be an undocumented migrant in Scandinavia. It is not like in the rest of Europe because it is a much more regulated society, if I may say so. You cannot practically exist without having a social security number. That’s the thing. And also there are no private schools, and for the health sector

everything is provided by the government, so to be an undocumented migrant means that there is no way for proper health care or education for the children or for themselves.” (*Counselor in Sweden*)

The degree to which the doctors and nurses in an informal network offer health care varies, and largely depends on the individual and on his/her relation with the organization, but may also depend on other factors, such as the supposed outcome of an appeal process for an individual whose asylum case was rejected. This may be enough reason for a health care practitioner to charge no fee, as an interviewee in Denmark pointed out:

“In Denmark you can’t go to a hospital, you can’t go to a doctor, you can’t go anywhere without this (ID) number. But in practice, we know quite a lot of doctors and dentists who believe that if we contact them and say ‘We have a person here who needs help’ and we have the case so we think that the (rejected) asylum seeker should have status in Denmark, then they help. From time to time it has been necessary for us to go to a hospital with mentally ill people and they’ve been treated. It’s been no problem!” (*Activist in Denmark*)

Intervening in Accessing the State Health Care System

As mentioned above, undocumented migrants do not officially have access to the state health care system in Denmark and Austria, and encounter difficulties in the interpretation of emergency care in Sweden. While they theoretically cannot receive health care within the state system, on a practical level this may sometimes be different. In none of these countries do medical personnel have a “duty to denounce” an undocumented migrant to the authorities. There was a recent case of a doctor working at a hospital in Denmark who called the police when he realized that many rejected asylum seekers were using a fake identification number to get health care, but he was punished by his own organization and reprimanded by journalists. Nonetheless, medical personnel cannot refuse to cooperate with the police. Thus, although an undocumented migrant may not fear being denounced by medical personnel, s/he may be afraid to use public medical facilities due to the possibility of being arrested. An interviewee in Sweden said that this factor, as well as the complications that arise when an undocumented migrant receives a bill for health care, create obstacles in using the state health care system:

“Sometimes people have been able to get access to district nurse care, for example, without being charged for it, if you can go along with somebody who knows the district nurse, etc. But once they’re in hiding it’s only emergency health care which they would be forced to receive, and many of them are dead scared that if they go to a hospital they would be reported straight away. But they (medical personnel) don’t have an obligation to report to the authorities...only if the police ask at hospital – ‘Do you have that person there right now?’ – then they must give that information. But the police cannot phone up and say – ‘Do you think you might have any undocumented migrants?’ – and ask them about that and ask them to give the names...that’s not possible. But there is the problem with the billing. So as soon as it appears that this person perhaps has been in the asylum system before, the hospital will contact the migration board to check if they’re willing to pay for these costs or not. This inquiry in relation to costs can lead to the migration board alerting the police. So in that way there’s an indirect threat.” (*Counselor in Sweden*)

Although lack of legal status is an obstacle to receiving health care at hospitals, this in itself does not necessarily prevent an undocumented migrant from receiving care. Indeed, economic barriers are also very important in determining access to health care. Some organizations said that the inability to pay a hospital bill may deter an undocumented migrant from getting care. Those that do end up getting care have the additional worry of paying the bill:

“Everybody can go to a hospital in Denmark and be treated, if you want to pay for it. Then you don’t need any papers. But refugees don’t have the money.” (*Activist in Denmark*)

“Most of the time if an undocumented migrant goes to a hospital and they can’t afford it, afterwards they get the bill and can’t pay it. So it goes back and forth because they cannot pay it and the hospital knows it and it’s just a game, because they can’t pay it.” (*Social worker in Austria*)

When the undocumented migrant gets into a situation of not being able to pay a hospital bill, organizations often intervene and act as intermediaries. Sometimes they ask for a cancellation or reduction of the fees and if the hospital does not agree to these proposals, they may foot the bill themselves. When the *Association for Human Rights and Democracy in Africa* in Vienna is not able to succeed in such cases, then they take the case to government officials as well as to the media (but do not disclose the identity of the individual). These actions have had positive results in the past.

Health Care Offered by Organizations

Some organizations run special health care clinics or services that are used by undocumented migrants, who represent a small part or the majority of the patients. *Aids Hilfe Wien* offers testing, counseling and treatment to people who are infected with HIV or who have AIDS. The organization offers anonymous care, and undocumented migrants may thus also receive treatment for HIV and AIDS, as well as social and psychological guidance and support.

Until recently, rejected asylum seekers in Denmark who remained in the *Red Cross* centers after receiving a negative decision could still benefit from health care administered within the centers. This may change, though, if a governmental proposal is adopted that will make procedures concerning removal from the centers and deportation much stricter. In Vienna, many organizations refer their clients to the *Krankenhaus Barmherzige Brüder Wien* charity hospital that provides health care to people who do not have health insurance. This hospital provides basic health care at reduced rates, as well as dental care, which is usually very difficult for undocumented migrants to obtain because it is so costly. In Graz and in Stockholm, undocumented migrants can benefit from health care offered at clinics run by the following organizations:

Marien-Ambulanz (Graz, Austria)

The *Marienambulanz* was opened in April 1999 by *Caritas Graz* and *Omega* with the aim of providing primary health care to people without insurance as well as homeless people. The clinic is open from Monday-Friday, 12:00-2:00 p.m. Undocumented migrants represent a large part of the target group. From April 1999 to November 2001, 1,340 patients from 59 countries visited the clinic. In 2001, a doctor and nurse began going once a week to places in Graz to provide health care in a mobile unit. The *Marienambulanz* clinic is officially authorized by the Styria Chamber of Doctors.

Asylkommittén i Stockholm and Médecins du Monde Sweden (Stockholm, Sweden)

In 1995, the *Asylkommittén* opened a clinic with *Médecins du Monde Sweden* to support hidden refugees (mainly rejected asylum seekers) in the Stockholm area. The clinic is run by a volunteer team of 12 doctors and nurses and is open once a week on Wednesday evenings. The clinic receives donations of medicine and is financed by the *Stiftelsen Humanitas*. Common diagnoses include tuberculosis, malaligned fractures, gynecological problems and psychosomatic conditions caused by traumatic experiences in the country of origin.

Mental Health Care Treatment

Another area of health care that is very important for undocumented migrants is mental health. Many undocumented migrants arrive in Europe after suffering severe personal traumas in their home countries, or witnessing mistreatment against family members. The difficult and dangerous conditions in which many undocumented

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

Nonetheless, mental health treatment for undocumented migrants is often quite difficult to manage. Factors such as language (therapy must be in a language that the individual can easily communicate in, or interpretation must be foreseen) as well as the precarious status of the individual make it complicated for undocumented migrants to receive psychotherapy, as an interviewee in Austria underlines:

“It is a problem because you have no security for the people that they can stay (in the country). It is really hard work to make psychotherapy in this context. It is only in some cases if people get asylum, if it is really a stabilised situation, then you can do work like this, not in other cases. But we do not make a difference between undocumented and documented immigrants; undocumented migrants can also take part in the psychotherapy program.” (*Legal advisor in Austria*)

Despite these difficulties, *Zebra - Zentrum zur sozialmedizinischen, rechtlichen und kulturellen Betreuung von Ausländern und Ausländerinnen in Österreich* and *Omega Health Care Center Graz - Organization for Victims of Violence and Human Rights Violations* in Graz do not exclude undocumented migrants from psychotherapy they offer to asylum seekers, refugees and migrants.

Housing (4.1.3)

Housing is a basic social right which is often very difficult to fulfill. Undocumented migrants generally face enormous difficulties in finding available, decent, and reasonably priced housing. They are often forced to accept sub-standard housing and must comply with the whims of landlords who take advantage of their vulnerability and can evict them at any given time, as an interviewee in Sweden highlights:

“It is very difficult to find housing in Stockholm, not just for an undocumented migrant but for everyone. At this moment, there is a deficit of 70,000 accommodations. Many of them live crowded together and there can also be an entire family in one accommodation. Here, an illegal person can't rent something. It has to be undeclared, and not many people want to rent to an illegal person, and if they want to rent then it's to swindle money in many cases. Because they (the landlord) can charge the person and say 'Well, bye, go now' and 'If you don't leave, I'll call the police' so then the illegal person has to leave. This happens every day.” (*Immigration and refugee consultant in Sweden*)

There are not many options for undocumented migrants in the area of housing, but organizations do try to help them to find accommodation within their networks and on the private market and also make referrals to emergency shelters.

Finding Housing via Networking and in the Private Sector

When organizations are faced with the need to find housing for an undocumented migrant, they may be able to find a solution via individuals in their networks. These people are often willing to help out by providing accommodation within their own homes. Reliance on such networks is very helpful in resolving urgent situations of accommodation:

“There are many networks and they are made up of people of good will. When there is a problem, we talk about it and someone can say ‘Well, listen, I could probably take this person (in my home) for three months.’ There is always a way of finding a place for them, either at friends’ places or within networks. They will be safe there and the police can’t get them. It’s solidarity and discretionary work as well.”
(*Pastor in Sweden*)

“We have many people, especially Swedish people, who do accommodate and give help to people who apply for asylum but are rejected and decide to stay illegally in this country. These people are taken care of and accommodation is provided to them mainly by Swedish people.” (*Counselor in Sweden*)

Organizations may also try to help an undocumented migrant find an apartment in the private sector and may negotiate the contract with the landlord on behalf of the undocumented migrant. Volunteers at *Ingen människa är illegal* in Stockholm have intervened in such matters, or when all else failed, have also taken undocumented migrants into their own accommodation. Depending on their financial resources, some organizations rent flats to use them as emergency or longer-term accommodation for their target group, which may include undocumented migrants. *Caritas Sverige* in Stockholm offers emergency accommodation in private apartments for women and children in need (who may be undocumented migrants). Another organization in Vienna also has a similar program, but which is specifically targeted towards African undocumented migrants:

Association for Human Rights and Democracy in Africa (AHDA) (Vienna, Austria)

AHDA is a non-governmental organization that was established in 1998. The organization’s main focus is to document and protect human rights, specifically of the African community in Austria. ADHA realizes that many African refugees in Austria are undocumented, and often have problems in finding housing. To meet this basic need, the organization runs an emergency housing program where a total of 40 people can get accommodation in two large apartments (20 in each apartment) that are rented by the organization. Undocumented African migrants in need of shelter can get short-term accommodation within this program.

If an organization doesn’t have the means to provide housing itself, it may support initiatives in other creative ways. *SOS Mitmensch* in Vienna has close links to *Ute Bock – Wohn-Und Integrations-Projekt*, a non-profit organization that manages 27 flats in Vienna where rejected asylum seekers can get accommodation. A total of 110 people receive housing within this organization’s program. As *Ute Bock – Wohn-Und Integrations-Projekt* does not have a proper office, *SOS Mitmensch* provides office space within its own office, and also allows undocumented migrants (nearly 250 people) to receive mail at its office.

Referrals to Shelters

Finding housing within a network or in the private sector is not always possible, and some organizations thus try to find a place for a client to stay at a housing shelter. Housing shelters are not abundant, however, and not all accept undocumented migrants. When undocumented women ask *Terrafem* in Stockholm for help in finding emergency accommodation, the organization may be able to find a place at a women’s shelter for a couple of nights, as it has good contacts with some shelters. But the lack of legal status means that undocumented women don’t officially have the right to stay in a shelter. Another interviewee in Sweden explained that while it may be possible to find short-term accommodation for undocumented migrants in shelters, it is illegal to provide long-term accommodation in shelters:

“On a long-term basis, it’s not legally possible in this country. You can’t rent shelters and allow people staying without legal documents. If we had a plan to open a center, then we could provide temporary accommodation until we find a long-term solution.” (*Counselor in Sweden*)

Some organizations also run their own shelters, which are mainly intended for asylum seekers, but which may also accommodate rejected asylum seekers. *Caritas Graz* has several shelters for asylum seekers with a total of 480 beds. Even after receiving a negative answer concerning their application for asylum, rejected asylum seekers may still continue to receive accommodation in the *Caritas* shelters, as well as in the *Red Cross* shelters in Copenhagen.

Work (4.1.4)

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

Finding Work in the Informal Economy

Organizations in Sweden, Denmark and Austria hold very specific positions concerning employment of undocumented migrants. Some do not distinguish between documented and undocumented migrants, and realize that if an undocumented migrant is asking for help it is usually to ensure his/her survival in the particular country. The organization thus tries to find work for the individual in the informal economy. On the other hand, some organizations are markedly opposed to looking for work in the informal economy, due to the possible repercussions this could have for the organization (providing assistance in illegal employment) as well as their unwillingness to participate in a system in which exploitation is very common. An interviewee at an organization that works with victims of trafficking gave an example of exploitation as a reason why the organization will not try to look for work in the informal economy:

“If I take one of the women who ended up here and who was trafficked to Sweden: she works from 5:00 a.m. until 1:00 a.m. and gets 30 crowns (€3) an hour. For every 30 crowns (€3) she earns per hour, she has to pay 10 crowns (€1) to the woman who brought her here and another 10 crowns (€1) to the middleman. Effectively, she has 10 crowns (€1) an hour. After 16 hours of work, she has 160 crowns (€18) and then she has to pay for her food, and the place where she is staying, she shares the room with another woman who takes these 10 crowns (€1) that I mentioned before, she has to pay rent, and she left her daughter back at home so she has to send money to her grandmother. This is where utter poverty led her to do these kinds of things. It is a chain of exploitation ... and she is in an extremely honorable situation not being abused! We have seen such appalling cases in this country.” (*Counselor in Sweden*)

Position Taken by Trade Unions

Trade unions in general in Sweden, Denmark and Austria are not entirely supportive of undocumented workers. For many union members, undocumented workers represent a threat, as their presence at the workplace and the working conditions they accept are not according to the collective agreements. The response by unions has not been very positive, and many times has been to alienate them from trade unions, as interviewees in Sweden point out:

“For a Swedish trade union to incorporate an undocumented migrant in a trade union is like Alice in Wonderland. They can't imagine it; they absolutely can't imagine it.” (*Immigration and refugee consultant in Sweden*)

“Trade unions in Sweden may work with migrants but not undocumented migrants. They are much more protectionist in that sense and it goes against their principles.” (*Counselor in Sweden*)

Another negative aspect of trade unions’ policies concerning undocumented labor has been to crack down on employers who exploit undocumented migrants, which usually has the effect of immediate deportation of the undocumented worker. Such a disheartening example was given by the ÖGB - *Österreichischer Gewerkschaftsbund*, the Austrian confederation of trade unions in Vienna, which said that due to high unemployment rates in certain sectors (e.g. construction) and in an attempt to criminalize such employers, trade union members report illegal employment due to so-called “solidarity” towards Austrian workers.

Not all trade unions’ policies towards undocumented workers are negative, however. In light of the upcoming enlargement of the European Union, a confederation of trade unions in Denmark has launched a campaign to raise awareness amongst undocumented workers who will soon be EU members:

LO - Danish Confederation of Trade Unions (Copenhagen, Denmark)

LO is a confederation of 21 trade unions in Denmark and represents approximately 1.4 million skilled and unskilled workers in both the private and public sectors. An undocumented worker may become member of the trade union (but would have to be able to afford the costly membership fees, which range from €27 to €40 per month). Many of the current undocumented workers in Denmark are from countries that will join the European Union in 2004. LO’s awareness-raising campaign is to distribute brochures in Danish and different Eastern European languages to accession country workers to make them aware of Danish working conditions and salaries. “It’s to raise the level of insight on the Danish labor market, to see how things are properly functioning. Because if they’re told that the salary in Denmark is 25 crowns (€3) an hour, well, perhaps they think ‘That’s OK, because in Poland it’s 20 crowns (€2.50) an hour’ so if that’s the case, then you have to raise the level of awareness of the working conditions in Denmark.”

Education (4.1.5)

Organizations interviewed that carry out work in the area of education for undocumented migrants focus on facilitating access of children and adolescents in primary and secondary schools. Some also offer free language courses for adults.

Enrolment of Undocumented Children and Adolescents

In Sweden and Denmark, legislation does not stipulate that undocumented children can attend school. Many undocumented children in these countries do not attend school, because their parents may be too afraid to enrol them, or because the school may reject them due to their undocumented status:

“The climate here is not like in Spain or Italy or France, where you can send your kids to school even if you don’t have your permit to stay.” (*Counselor in Sweden*)

Many schools require the child to have a social security number, and thus rejected asylum seekers may have easier access than undocumented migrants who have never been in the asylum system. However, enrolment of undocumented children is more of an exception than the rule, and is usually done on a case by case basis. An interviewee in Sweden points out that enrolment largely depends on individual schools:

“Children cannot legally go to school when they are in hiding, but in reality because of the people in the network and in other networks who are perhaps known locally, or when the teachers themselves become

involved in the fate of the child, they just turn a blind eye to the fact that the child still goes to school. That happens in some cases, but in others it doesn't so those children are seriously deprived of quality of life, and some people are so frightened that they just stay indoors and don't go outside. Children in families that go into hiding don't have the right to continue school. However, in reality it does take place through the flexibility of the school system." (Legal advisor in Sweden)

In Denmark, the *Red Cross* centers have educational facilities for asylum seekers, and children of asylum seekers may thus attend school on the premises. Until recently (and this may change with a new governmental proposal to be stricter concerning removal from the centers and deportation), some rejected asylum seekers were able to remain in the *Red Cross* centers and those children could continue to attend school. This was not a uniform practice, though, and there have been cases of children who were in the *Red Cross* centers who could not attend school.

In Austria, legislation stipulates that children must be in the educational system for nine years (until the age of 15). Although this law does not specifically state that undocumented children must also go to school, in practice there is usually no difference between documented and undocumented children enrolling in school. Problems arise at the secondary level, when adolescents have to have good knowledge of German and have to do practical training. A number of organizations in Austria said that enrolment of undocumented adolescents in secondary school also depends on the school principal, and is taken on a case by case basis. Enrolment may also be more problematic for certain target groups. The *Association for Human Rights and Democracy in Africa (AHDA)* in Vienna said that it is usually very difficult for African undocumented children to enrol at school, even primary school:

"We have come across some cases where they (the school authorities) say 'We cannot take him because he is illegal.' We try to somehow intervene, but for the parents, the children stay home or they put them in a private kindergarten. In the state institutions it's very difficult. This happens very often. For African people it is very, very difficult looking for schools. It might be easy for people who come from Eastern Europe, you know, white people. But for Africans it is still very, very difficult." (*Pastor in Austria*)

Courses for Adults

Some organizations try to offer courses for adults to learn the host country language and to acquire certain skills. The *Association for Human Rights and Democracy in Africa (AHDA)* in Vienna invites African undocumented migrants to enrol in German and computer classes that are run by the organization. Another organization in Vienna also offers language courses for undocumented adults:

Deserteurs- und Flüchtlingsberatung (Vienna, Austria)

The Deserters and Refugee Counseling non-profit organization, which had been active for many years in providing counselling to Austrian conscientious objectors, started providing counselling in 1991 to Serbian and Croatian conscientious objectors fleeing military service in ex-Yugoslavia. The organization helped them to apply for political asylum and presently works with all nationalities to help rejected asylum seekers write appeals. The organization has a staff of 8 part-time workers, and also has information sessions on legal questions and other counselling run by volunteers on Wednesday evenings. The *Deserteurs- und Flüchtlingsberatung* offers free German courses to undocumented migrants that are taught by university students studying how to teach German as a foreign language. The organisation also holds courses in cooking, theatre and soccer which are open to undocumented migrants.

Legal Assistance (4.1.6)

Many organizations interviewed provide legal assistance to undocumented migrants. A few give legal counseling and general guidance within the context of voluntary return programs to the country of origin. Nonetheless, in the absence of regularization campaigns and clauses in legislation that would allow an undocumented migrant to apply for legal residence based on certain criteria, organizations in Sweden, Denmark and Austria mainly provide legal assistance by making an appeal for rejected asylum seekers. Asylum appeals thus constitute the main type of legal assistance provided by organizations to undocumented migrants in these countries.

Appealing a Negative Asylum Decision

The assistance that organizations provide to rejected asylum seekers may be a decisive factor in overturning a negative asylum decision, as an interviewee in Sweden underlines:

“We’ve really helped a lot of people to regularize their situation. And that’s been the motivating force for people to continue. We’ve seen that it really did make a difference meeting these people, getting to know them, listening to their stories, checking out details, things that haven’t been said and why they weren’t said, documenting women’s accounts of rape or other forms of torture. The same applies to men who have not felt the right kind of environment during the initial procedure, to start talking about the treatment that they have been subjected to.” (*Legal advisor in Sweden*)

To make an appeal in an asylum case, organizations may rely on different means. Some have lawyers, legal advisors or other staff members who can give legal advice and make appeals. The *Danish Refugee Council* in Copenhagen has staff members that provide counseling for rejected asylum seekers. *Caritas Sverige* in Stockholm offers social advice, legal assistance and writes appeals. A small part of the work of the *Sociala Missionen* in Stockholm is to provide legal assistance to rejected asylum seekers. Staff at *Terrafem* in Stockholm have intervened in asylum cases by writing letters to the Migration Board concerning an appeal. In Vienna, *Diakonie - Evangelischer Flüchtlingsdienst Österreich* has a special department for legal counseling and the *Association for Human Rights and Democracy in Africa* writes appeals. *Caritas Flüchtlings- und Migrantenberatung* in Graz offers legal assistance.

A number of organizations that do not have staff that can provide legal assistance may work closely with lawyers who make appeals on behalf of their clients. *Back on Stage (Youth Initiative)* in Vienna does legal work in collaboration with a lawyer from *Caritas* and *Die Bunten* works with lawyers that know the organization very well. *Diakoni För Afrikaner Franska Reformerta Kyrkan* in Stockholm works with a lawyer’s office that is supported by churches.

Several organizations in Sweden and Denmark work with networks of lawyers and/or volunteers who are trained to provide legal assistance and write appeals. Volunteers at *Ingen människa är illegal* in Stockholm are active in the appeals procedure by acting as a contact between the lawyer and the undocumented migrant. They try to facilitate the lawyers’ work by gathering information and trying to get the whole story concerning the undocumented migrant’s case. In 1986, the *Asylkommittén i Stockholm* in Sweden began a network of individuals who provide legal assistance on a voluntary basis or make donations to help rejected asylum seekers. This network includes nearly 300 volunteers in the Stockholm area. *FARR - Swedish Network of Asylum and Refugee Support Groups* is well known in Sweden for its network of supporters throughout the country. The network has approximately 700 individual members in the national organization and many more who volunteer on an occasional basis. *FARR* has 75 refugee lawyers in its network in differ-

ent parts of Sweden. The organization's website has information for those who wish to help asylum seekers. An interviewee explains that even though it is not easy to know what kind of role one can play as a layperson, the legal assistance given by volunteers is an important part of the organization's work:

"We have quite a number of people who have learned a lot about the law, who are really excellent, lay people maybe, teachers, or... of a different background, but they've learned this specific area of law and in a situation where someone's in hiding in Sweden you can always make a new application but you don't get free legal aid for that. So that's one area where NGOs can sometimes assist, by doing it for free. We have a number of our local groups with that kind of expertise. Not everyone who's a member can do that but there are some people who are capable of doing that, who know the ropes."
(*Legal advisor in Sweden*)

In Denmark, the voluntary organization *Initiativet "Flygtninge I Fare"* ("Refugees in Danger" Initiative) provides various types of assistance to rejected asylum seekers, including collecting evidence to support their cases and bringing attention to human rights violations of asylum seekers in Denmark. When making appeals for rejected asylum seekers or making an application for residence based upon humanitarian reasons, volunteers point out mistakes that are made by authorities in examining an asylum application, such as using interpreters with limited knowledge of the asylum seeker's language or losing information or documents. Cases in which authorities hid or mismanaged information are included on the organization's website. The website also contains information about human rights conditions in various countries of origin. The *Initiativet "Flygtninge I Fare"* has a support group called "Pamela's Friends", made up of approximately 120 people that exchange information via an email group and provide legal assistance and moral support. Some also give financial contributions. The group also supports rejected asylum seekers by making complaints and appeals to international councils and to the European Court. The support group started in 2001 when the organization asked its contacts for support in writing to the minister for a particular case, and has continued ever since. Another organization in Denmark provides legal assistance and relies entirely on volunteers:

Komitéen Flygtninge Under Jorden (Copenhagen, Denmark)

The *Komitéen Flygtninge Under Jorden* (Refugees Underground Committee) is a non-profit organization that was granted legal status in 1987. At that time, some interpreters had become aware of the situation of an undocumented migrant in Copenhagen whose asylum claim was rejected. They provided accommodation and started collecting money from friends to provide him food. The organization was formed from this volunteer initiative, to provide legal assistance to rejected asylum seekers. Eight volunteers are active in the central organizing committee, and approximately 200-250 people make donations every month (some others also make donations once a year). To make an appeal, volunteers try to gather new information from the country of origin, find a new lawyer (if necessary), and obtain a medical report that might also indicate any psychological problems. Once the *Komitéen Flygtninge Under Jorden* takes on a rejected asylum seeker, it may use money from donations to pay for food, medicine and other basic necessities, but its main focus is legal assistance. The name "Refugees Underground Committee" was specifically chosen to be known to rejected asylum seekers, but also to send message to Danish society: "We have had that name from the start, and we like it. It sends the right message to the refugees that we're dealing with people who are living underground. Nearly nobody else is doing that. If you're underground or if you're thinking about going underground, you know by the name that it might be a good idea to talk to us. The other part of that name is that we don't care what the Danish population thinks what we're doing. The rightwing hates us, because it's not a neutral name. We are saying that people are living underground in Denmark."

In addition to providing legal assistance to rejected asylum seekers, some organizations also accompany clients to the asylum interview. A few organizations in Austria do this because they feel that the presence of an Austrian helps to ensure fairness during the interview. The *Deserteurs- und Flüchtlingsberatung* in Vienna writes appeals and provides accompaniment to the interviews. *Zebra - Zentrum zur sozialmedizinischen, rechtlichen und kulturellen Betreuung von Ausländern und Ausländerinnen in Österreich* in Graz works with different groups of volunteers, and members of one group are available to accompany clients to the asylum office. *Zebra* also gives legal assistance to undocumented migrants who have received a deportation order. They can make an appeal for certain cases to the Ministry of Internal Affairs for a residence permit based on humanitarian grounds. Another organization in Austria writes appeals and provides accompaniment:

Asyl in Not (Vienna, Austria)

Asyl in Not (Asylum in Emergency) began under a different name in 1985 as a support committee for politically persecuted foreigners. It was founded by a group of Iranian refugees and Austrian artists and aimed at providing social assistance and German language courses mainly to refugees from Iran. In the beginning of the 1990s, undocumented migrants of other nationalities started to come to the organization for assistance, and in 1995 the name was changed to *Asyl in Not*. The organization presently has five employees (some full-time and some part-time) and represents clients in the asylum procedure by writing appeals, helping clients prepare for an interview in the 2nd instance (one of the steps in the appeal procedure) and accompanying them to the asylum office or to the asylum senate (which examines appeals in the 2nd instance).

Return Programs

In the course of providing counseling concerning the legal situation, organizations may discuss the option of return to the country of origin if the client has no other realistic possibilities. Returning to the country of origin is usually always seen as a last resort and carefully considered by the individual. An interviewee explained the process that an organization may undertake in approaching the issue of return:

“We look at the overall situation and try to find out why they are here. If there are no human rights violations, no political persecution, then we try to encourage them to return. But if we suspect other reasons for protection (it could be women who have been victims of trafficking), then we try to look at all the legal possibilities for them to regularize their situation. If nothing is possible, we offer them the alternative: we can support them for a return program, but then the decision has to be made by the individuals themselves. We will not force the decision. But we give an alternative choice, and if they want to stay here, especially people who came here to find a job, well, the only thing we can offer them is to give some health care but nothing else. We have no other opportunity to offer them and we can’t encourage people to stay irregularly because it is not possible to stay here. It is extremely destructive for the individual, the children and the families.” (*Counselor in Sweden*)

Caritas Diözese Graz-Seckau and *Caritas Sverige* both run return programs to countries of origin. The *Caritas* program in Graz is open to undocumented migrants of all nationalities but mostly people from Armenia, Turkey and Kosovo have participated. In 2002, 70 people went home and received reintegration money to settle back into their home countries.

Special Groups of Concern (4.2)

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

Women (4.2.1)

Women and Migration⁶

Beshid Najafi, AGISRA

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

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

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

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

⁶ The section on “Women and Migration” was contributed by AGISRA - Arbeitsgemeinschaft gegen internationale sexuelle und rassistische Ausbeutung, an organization based in Cologne, Germany and founded in 1993. AGISRA fights against international sexual and racist exploitation and provides advice to undocumented women.

Meeting the Needs of Undocumented Women

Organizations working with undocumented women in Sweden, Denmark and Austria provide different types of assistance, depending on the situation and the needs of the women they come in contact with. Assistance includes social and legal guidance, trying to find accommodation, and language and general skills training. One organization in Graz offers courses and cultural activities for migrant women:

Danaida - Education and Social Center for Foreign Women (Graz, Austria)

The non-profit organization *Danaida* was started in 1991 as a contact point for foreign women in Graz. Many of the women who came to the organization at that time were from ex-Yugoslavia, but currently there are 30 nationalities represented amongst the women, who are documented as well as undocumented. *Danaida* offers a variety of services to foreign women, mainly in language training and education. Women can take German classes, enroll in literacy programs and also complete basic education courses. The fees are minimal and can also be waived. The organization also offers childcare for children whose mothers take part in the classes. *Danaida* has other types of classes and activities, such as: international cooking classes, which are held once a month and focus on the cuisine of a particular country; computer courses; and practical skills courses such as learning to ride a bike. The organization also holds workshops on different legal issues that affect foreign women to raise awareness amongst organizations in Graz that come into contact with foreign women.

Assistance to Victims of Trafficking and Prostitutes

Victims of trafficking and undocumented women who work in prostitution have very particular needs. The aim of assistance provided in this area is to try to help women who wish to leave this work by providing psychological guidance, attending to material needs of food and shelter, and offering protection in a safe place if the women denounce their traffickers. Until recently, *Pro-Centret* in Copenhagen did some social work with undocumented prostitutes and was also an information and research center on prostitution. The organization is presently a national research center on prostitution. Current projects focus on male and youth prostitution (both Danish and foreign prostitutes) as well as prostitution customers. *Pro-Centret* emphasizes that social cohesion policies should not only be aimed at victims of trafficking, but also at migrant prostitutes, who are also in very vulnerable situations and need social support. Many times the debate on trafficking paints the picture of undocumented prostitutes as victims of trafficking, but does not consider that some have not been trafficked but are still in a weak position.

Providing Support to Battered Women

Undocumented women who suffer emotional or physical abuse from their partner represent another particularly vulnerable group. These women often suffer from domestic abuse and their undocumented status aggravates their situation even more. An organization in Stockholm works with foreign women who are battered to give them various types of support:

Terrafem (Stockholm, Sweden)

Terrafem is a non-profit organization that provides legal, social and psychological support to foreign women in Sweden who suffer from domestic violence, many of whom are undocumented. The organization operates Sweden's only national help line for immigrant women, which offers free support in 27 languages. *Terrafem* has branches in Stockholm, Malmö and Gothenburg and is a member of ROKS, The National Organisation for Women's Shelters and Young Women's Shelters in Sweden. The organization offers emergency shelter and counseling for foreign women who often do not have family or a social network they can rely on. *Terrafem* supports women who have been brought to Sweden, abused by their husband and risk deportation, and also aims to be a meeting place for women who have been sold in Sweden as sex slaves and prostitutes. The organization offers education, counseling and information about male violence against immigrant women of all ages.

Unaccompanied Minors (4.2.2)

Unaccompanied minors are in Sweden, Denmark and Austria for various reasons. Political strife and war in their countries of origin may cause some minors to flee and seek a safer existence in Europe. Economic hardship forces many to leave and look for a better way of life elsewhere. Despite their reasons for going to Europe, minors above all need special protection.

Going Through the Asylum System

Most unaccompanied minors that come to Sweden, Denmark and Austria are counseled into asking for asylum. While there may be some unaccompanied minors who do not apply for asylum and try to survive on their own, they are usually very few. As there is usually no other alternative to staying legally in the country, and since undocumented minors that are not in the asylum system do not receive special protection, most apply for political asylum, as an interviewee in Denmark points out:

“The only way (for an unaccompanied minor) to get permission to stay in Denmark is through the asylum system. The first thing you do when you arrive in Denmark is to get personal number. Otherwise the system doesn’t work. You have to have a number. So immediately, I would say, a couple of hours after you arrive here, you get a number.” *(Program coordinator in Denmark)*

Unaccompanied minors are not spared the many problems inherent in the asylum system, such as long delays before an answer is given concerning the application. The delays can be detrimental to an unaccompanied minor’s application, since many apply when they are still minors, but by the time the decision is granted, they have reached the legal age of adulthood. While the acceptance rate may be relatively high for minors under 15, those who are 16 or 17 do not necessarily always receive asylum, and those who turn 18 before a decision is taken concerning their application may be deported if the asylum claim is rejected. An interviewee in Austria explains about the rate of acceptance:

“There are different figures concerning unaccompanied minors in Austria, but in the last year (2002) there were about 2,500 who came to Austria and applied for asylum. But of course a huge number just go through Austria to another country. Even so there are about 1,000 or 1,500 who want to stay in Austria. But there are not enough resources to give them adequate protection, and if you look for the figures concerning asylum procedures, we maybe find 15 positive decisions in one year. The rest are rejected but by then they are usually adults. If they are minors, they are usually 16 or 17, and then when the process is finished they’re adults.” *(Project worker in Austria)*

Those who do receive a positive answer may not necessarily receive political asylum, but permission to stay based on humanitarian reasons. Not only does this represent a misuse of the asylum system, but it also can lead to problems for the minor at a later stage concerning family reunification:

“99% of the minors that come to Denmark or other European countries will get permission to stay based upon humanitarian grounds, but not asylum. There is a lack of knowledge amongst authorities about specific child forms of persecution. The problem is that they are putting people in categories they don’t belong to. There are also minors who are clear refugees and have good grounds to apply for refugee status and they will never get it. But even when they receive humanitarian status, they have the same protection in Denmark as a refugee, except that if you don’t have refugee status, there is no right to family reunification. This is crucial.” *(Program coordinator in Denmark)*

Recognizing the need to have more coherent and comprehensive protection of minors in the asylum sys-

tem throughout Europe, a joint project was launched by *Save the Children* and *UNHCR*. *Save the Children Denmark* is the lead agency coordinating the project.

Separated Children in Europe Program (Copenhagen, Denmark)

There has been a steady rise of children who arrive in Europe without a parent or caregiver and receive inadequate as well as potentially very damaging treatment upon and after arrival. The Separated Children in Europe Program was established in 1997 to improve the situation of separated children through research, policy analysis and advocacy at the national and regional levels. The program differentiates between “unaccompanied” children, who are absolutely alone, and “separated” children, who may be followed by a caregiver or who may be accompanied (by a trafficker or smuggler). 28 countries are included in the program: 17 in Western Europe, 8 in Central Europe and the 3 Baltic states. *UNHCR*’s responsibility is to ensure international protection of refugee children and of those seeking asylum, and *Save the Children* is concerned to see the full realization of the rights of all children. The program has various achievements, including: the development of statements of good practice, a set of principles which gives a common standard for work across all countries; the establishment of a pan European network comprising one NGO member from each country and one *UNHCR* contact person responsible for each country; national assessments on the policies and practices concerning separated children seeking asylum; advocacy on the national and EU level; and training seminars.

Promoting “Safe Havens” for Unaccompanied Minors

Unaccompanied minors arriving in Sweden, Denmark and Austria need immediate protection, and the immediate response by authorities is often to try to reunite them with their parents, as an interviewee in Sweden explains:

“The basic approach with unaccompanied minors is trying to locate where their parents are. Once they do that they try to send the kids back to where their parents are, even if the parents are in a refugee camp or settled in another country and they see that as being in the best interests of the child. But if that isn’t possible, they would give them permission to stay. Sometimes it can be temporary.” (*Legal advisor in Sweden*)

In Austria, *Asylkoordination Österreich* began a research project in 1998 to find out approximately how many unaccompanied minors were in Austria. The project was discussed in the media and a human rights campaign was started. One of the campaign’s successes was to prohibit unaccompanied minors awaiting deportation from being locked in detention cells. Today it is rare for minors awaiting deportation to be detained. The campaign also demanded special “Clearingstelle”, a safe place where unaccompanied minors can receive protection for three months upon their arrival in Austria. One of these “safe havens” was started at the *Integrationshaus* in Vienna. In Graz, the *Franciscohaus* is a “Clearingstelle” that is run by three organizations: *Zebra* provides psychotherapy and group therapy; *Caritas* does social pedagogy (e.g. living together in the center); and *Omega* gives medical checkups and offers free German courses and other educational activities for the youth. The youth that stay in the shelter include genuine asylum seekers fearing persecution in their home countries, street children and victims of trafficking. They may stay in the center for the three-month phase while the authorities determine if they can move to another shelter or remain there.

Advocating for Legalization of Status

In recent years in Austria, public attention was brought towards the situation of youth who became undocumented when their parents, unaware of their legal obligations, did not apply for a residence permit for their children. This was the case of children who were invited to Austria to join their families (e.g. children of migrant guest workers) as well as those who were born in Austria but did not apply for a residence permit, as the following example illustrates:

“One of the cases was a youth who was born in Austria. He never was anywhere else than Austria. But he was registered in his mother’s passport, and his mother gave back this passport to get Austrian citizenship. So his information got lost. He is not registered in the home country, and he is not registered in Austria. He has a birth certificate, but still it is not possible to give him a passport and citizenship. We just can use the media to make pressure, but we tried first to have an appointment with the mayor of Vienna, to talk to him. We tried, but in the normal procedure, there is no possibility, because they say ‘Before you get citizenship, you have to bring some document that says you have renounced your former citizenship.’ But he can’t, because he doesn’t have any document. He cannot even prove that he is from Serbia.” (*Project worker in Austria*)

An organization in Vienna has been very active in advocating on behalf of these undocumented youth:

Back on Stage (Youth Initiative) (Vienna, Austria)

Back on Stage is part of “Mobile Jugendarbeit Wien” (Mobile Social Workers for Youth in Vienna), which was started in 1992. *Back on Stage* has units in four different districts in Vienna and does a combination of street work and group work. The organization has cross-cultural and multi-professional teams that work against social exclusion by supporting adolescents and encouraging them to insist upon their rights in society. About 80-90% of the target group are migrant youth, many of whom have Austrian citizenship. However, in 1999, social workers in the organization started seeing a recurring problem of youth whose parents were in Austria legally but they were undocumented (due to the situation described above). Nearly 400 youth were in this situation, and thus the organization launched a campaign called “Youth Without Papers” in which they demanded the right for these youth to legally stay and work in Austria. The cases were discussed on a case by case basis with the ministry, and quite a number of the youth were first given humanitarian residence permits which allowed them to later apply for legal residence.

Undocumented Migrants in Detention (4.2.3)

All countries in the European Union have policies supporting the existence of detention centers for undocumented migrants. If an undocumented migrant is arrested due to lack of documentation, then s/he is placed in a detention center. The amount of time that an undocumented migrant can legally remain in detention centers varies per country, but for Sweden, Denmark and Austria, there is no maximum amount of time an undocumented migrant can remain in detention. Consequently, detainees may remain in the centers from weeks to months.

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

Visiting and Denouncing Conditions in Detention Centers

Although it is not always easy to obtain permission to visit detainees, staff and/or volunteers of a number of organizations try to visit undocumented migrants in the centers. The visits are undoubtedly important for detainees and are a means to have contact with the outside world. They also allow a first-hand view of the conditions in the detention centers, which some organizations denounce:

“We go to prisons to visit the Africans in the prisons. We are trying to help these people, so we visit them. We send them clothes, money, and try to take steps to get them out. Those maltreated in prisons, we try to intervene. We have been asked in the past not to come to prison anymore, because we have complained against the situations in the prisons.” (*Pastor in Austria*)

In Stockholm, a chaplain from the *Church of Sweden* is allowed to visit the detention center there. In Copenhagen, only the *Danish Refugee Council* is allowed to make visits to the centers. *Komitéen Flygtninge Under Jorden* in Copenhagen has been active with other organizations in campaigning against the policy of detention of undocumented migrants in Denmark.

In Vienna, a restrictive policy concerning organizations that are allowed to make visits recently went into effect. Until recently, the *Schubhaftsozialdienst* (Social Service of the detention center) facilitated contact amongst detainees and NGOs such as *Deserteurs- und Flüchtlingsberatung*, *Association for Human Rights and Democracy in Africa*, *Diakonie - Evangelischer Flüchtlingsdienst Österreich*, *Asyl in Not*, *Die Bunten*. The social service center could contact these NGOs and give them information about their cases, so that the NGOs could write appeals and make visits to the undocumented migrants in the detention center. However, in March 2002, a new law was passed that only authorizes one organization, *Menschenrechte Österreich*, to be present in the detention center. As a result, NGOs can no longer visit detainees (except upon written request of a detainee), and it will be very difficult to observe and denounce conditions in the centers.

This new law does not affect the detention center in Graz, however, and one organization has been active in arranging visits as well as campaigning against the centers:

Zebra - Zentrum zur sozialmedizinischen, rechtlichen und kulturellen Betreuung von Ausländern und Ausländerinnen in Österreich (Graz, Austria)

Zebra (Center for Socio-Medical, Legal and Cultural Support of Foreigners in Austria) was founded in 1986 as a rehabilitation center for victims of torture, and to offer legal advice for undocumented migrants in detention centers. The current areas of work are legal advice, social and medical counseling, and psychotherapy. *Zebra* has 27 staff members (many of whom work part-time), and several groups of volunteers. One group makes regular visits to people in detention centers, in cooperation with *Caritas*. *Zebra* has also been active in campaigning against detention centers for undocumented migrants.

Structural Work (4.3)

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

Networking (4.3.1)

The many issues that undocumented migrants face in daily life lead them to look for assistance in different areas. Most organizations do not have the resources (nor the aim) to provide assistance in all areas of basic social rights and to work on the structural level to improve conditions for undocumented migrants. Hence the importance of networking with other organizations. Networking may be the very common practice of referring

an undocumented migrant elsewhere to receive direct assistance, or working together on policy issues, by participating in meetings or working groups, working together on campaigns, making joint statements, etc.

Referrals

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

Thematic Work

Numerous organizations network on the local, regional and national levels on thematic issues relevant to undocumented migrants. Some work together on the issue of asylum, such as the organizations belonging to the *Asylkoordination Österreich* in Vienna. For *Caritas Sverige*, it is fundamental to have formal and close cooperation on asylum issues with an advisory board consisting of lawyers, trade unions, and Swedish branches of NGOs including *Save the Children*, *Amnesty International* and the *Red Cross*. In addition to working with other NGOs on asylum issues, *FARR* in Sweden has also been involved in anti-racism networks, to bring together migrants' groups and other associations in the field of anti-discrimination work. *FARR* has worked with this network on a proposal to set up an anti-racism center, which would be NGO dominated. *Initiativet "Flygtninge i Fare"* and *Komitéen Flygtninge Under Jorden* have made joint statements with other organizations on specific human rights issues.

Networking can also be done to encourage discussion and information exchange amongst different organizations. *Ingen människa är illegal* in Stockholm has informal contacts with other organizations in the area, and *Back on Stage (Youth Initiative)* in Vienna has held discussions in city parks with different organizations working with foreigners. *Diakoni För Afrikaner*, *Franska Reformerta Kyrkan* in Stockholm works with African pastors at other churches in Stockholm and participates in the African Christian Council, where they discuss issues faced by Africans in Stockholm and in Sweden. Several organizations in Graz closely network and do joint projects on health care as well as on unaccompanied minors (described in previous sections). *Danaida* and *Zebra* have worked with the *Frauengesundheitszentrum* in Graz, which has done training sessions for these organizations on women's health issues and health education for migrants. *Danaida* participates in the Tekla network of independent women's organizations in Graz. *Zebra* networks on the local level concerning the concept of integration for the town.

A number of organizations network on the international level with other countries in Europe. *LO - Danish Confederation of Trade Unions* in Copenhagen has contact with different LO confederations in Northern European countries. *ÖGB - Österreichischer Gewerkschaftsbund* in Vienna has worked closely with German and Luxembourg trade unions in the past to penalize Austrian employers who hired undocumented workers in Germany and Luxembourg. *PRO-Centret* in Copenhagen participates in European networks on issues concerning prostitution and trafficking. *Aids Hilfe Wien* works with community-based organizations in Vienna on health care issues, and also participates in a European network on human mobility, which brings together migrants' groups and other associations to focus on health and mobility. *Association for Human Rights and Democracy in Africa* works with organizations locally in Vienna such as *Amnesty International* and *Die Bunten*, and also participates in a European network on immigrants' experience of racism and discrimination.

Awareness Raising (4.3.2)

In addition to raising awareness amongst undocumented migrants of their basic social rights, many organizations recognize the importance of fostering public support for undocumented migrants and work in various ways to raise awareness. Some of the methods used include special training sessions, collective actions and addressing specific actors, such as the media and politicians. Some organizations hold special campaigns to increase awareness amongst undocumented migrants themselves.

Providing Information to Undocumented Migrants

To better inform undocumented migrants of the services that they offer, some organizations do awareness-raising campaigns. *Aids Hilfe Wien* recognizes that some migrants may feel uncomfortable about attending informational sessions at the organization's headquarters in Vienna (due to the stigma often associated with AIDS), and thus holds awareness campaigns on health issues for migrants at language schools. In addition, *Aids Hilfe Wien* runs an annual project during the summer in which specially trained cultural mediators who speak German, English, Turkish, Serbo-Croatian and Hungarian have informal "chat" sessions in the city parks where they can discuss prevention and other health issues with migrants. During a campaign that *Diakonie* and several other organizations made in Vienna a couple of years ago to make undocumented migrants aware of the services offered by the organizations, it came to light that many had health problems due to lack of medical treatment. Although the organizations could not always find an adequate solution to the health care problems, the campaign was beneficial in bringing many undocumented migrants into contact with organizations that could provide support and counselling. *SOS Mitmensch* runs a special project in Vienna that makes information available to undocumented migrants by providing free Internet access so that undocumented migrants can keep in contact with their country of origin.

Raising Awareness Amongst Staff of Organizations and Institutions

Recognizing that staff members of organizations and institutions are not always fully aware of the needs and issues concerning undocumented migrants, some organizations target informational campaigns and training programs towards them. *Terrafem* in Stockholm does communication work with the police, medical doctors and government officials to sensitize them to women's issues, and has also done projects at schools. One of the organization's recent projects, the "Minibus project", went to secondary schools to talk about violence and discrimination against women. *Zebra* in Graz also visits schools, to inform students about the situation faced by migrants in Austria. The organization has special educational programs to sensitize health care workers to migrants' issues. These programs will be later extended to public administration workers as well as employees in private companies. Awareness-raising is also an important aspect of *Caritas Sverige's* work concerning migrants and refugees:

Caritas Sverige (Stockholm, Sweden)

Caritas Sverige has worked on the issue of migration for the past 20 years. Migration is a priority for the Catholic Church of Sweden, whose members come from many different countries, and *Caritas Sverige* has received much support from the Catholic church concerning its work on migrants, asylum seekers and refugees. *Caritas Sverige* has a training program for local staff as well as for the general public to raise awareness and increase knowledge about the situation of refugees and migrants, so that participants can be better informed and try to have some influence concerning policies. The organization combines information campaigns with development programs that underline how individuals can provide support or minimise the reasons why people leave unwillingly in forced migration.

Targeting Journalists, Policy Makers and the General Public

Many organizations direct their efforts at informing journalists and policy makers as well as the general public about conditions faced by undocumented migrants and refugees and migrants in general. In light of the recent revealing of a fake working permit scheme that involved many Latin American undocumented workers in Stockholm, the *Church of Sweden* demonstrated its support to the workers by providing guidance and accompaniment, and also by furthering their claims on national TV, radio, newspapers and magazines. The *Church of Sweden* also works on the parish level to put into practice the concept of “church of the people” and includes undocumented migrants as parishioners. When the Danish government made moves in recent years to deport various rejected asylum seekers from ex-Yugoslavia, the *Komitéen Flygtninge Under Jorden* in Copenhagen interviewed these undocumented migrants to ask about the reasons that forced them to seek asylum in Denmark. This information was used to make pamphlets that were distributed to policy makers and journalists. In 2002, *Pro-Centret* in Copenhagen did a representative survey on Danes’ opinions of prostitution, and found that 82% of males and 56% of females find prostitution an acceptable part of society, but would not want their own children to become prostitutes. *Pro-Centret* was very much opposed to this attitude of condoning prostitution “as long as it’s a poor woman who does it”, and has appeared on the media and discussed the issue of prostitution with politicians. One of the *Danish Refugee Council’s* priorities in recent years was to raise awareness amongst the general public and politicians on EU policies and issues concerning migrants and refugees.

Collective Actions

In creating public support, some organizations participate in campaigns and demonstrations to bring the issues to a wider public. Some organizations have done campaigns addressing foreigners’ rights, such as *Asyl in Not* in Vienna, which started a campaign on the right of foreigners to vote, and *Back on Stage* in Vienna, which worked on a campaign for youth over 16 to vote in elections. *SOS Mitmensch* did a campaign in support of asylum and against racial discrimination. Every year, the *Komitéen Flygtninge Under Jorden* participates in a demonstration on November 9th in Copenhagen in remembrance of “Kristallnacht”, the anti-Jewish pogroms organized by the Nazi regime in Germany (and present-day Austria) on November 9th, 1938. Anti-racism organizations, migrants’ groups and trade unions take part in the demonstration, which is held to combat racism. Another way to raise awareness (as well as raise funding) is to invite the general public to special activities, such as solidarity parties, which *Deserteurs- und Flüchtlingsberatung* in Vienna and *Ingen människa är illegal* in Stockholm have done in the past. One of the principles of the *Red Cross* in Denmark is to involve civil society in its work, and the organization highly values volunteer work. *Asylkoordination Österreich* had an innovative campaign in recent years concerning undocumented migrants in Austria:

Asylkoordination Österreich (Vienna, Austria)

Asylkoordination Österreich (Asylum Coordination Austria) is an umbrella organization that was founded in 1991, at a time when Jörg Haider’s right-wing and xenophobic party was garnering a great deal of support and Austria was undergoing major changes in asylum and immigration policy. Since the start, the organization has advocated for the rights of refugees and asylum seekers. Approximately 30 organizations are part of the network, including Austrian organizations that provide assistance to migrants and refugees as well as grassroots migrants’ groups. In recent years, *Asylkoordination Österreich* has participated in several awareness-raising projects, which have focused on child refugees and unaccompanied minors, and the “School without Racism” project in which the organization offers anti-racism workshops. In 1999, *Asylkoordination Österreich* held a joint awareness-raising campaign with *Deserteurs- und Flüchtlingsberatung* called “Vienna Illegalized”. The organizations arranged tours for journalists to various places of importance for undocumented migrants, such as parks and railway stations where people meet (railway stations also being the first point of entry for many), places where they can get accommodation if they don’t have a place to sleep and some legal advice centers. The campaign brought forth strong interest from journalists and reiterated that there are many ways that undocumented migrants can lose everything and all of their rights without ever having committed a crime.

Seminars and Conferences

A number of organizations raise awareness through seminars and conferences, which they hold to focus on particular issues affecting undocumented migrants. The *Association for Human Rights and Democracy in Africa* in Vienna organizes conferences to bring people from different governmental levels (European, national, district, etc.) together to focus on issues concerning Africans in Austria. *Omega* in Graz holds many conferences and public meetings, as well as a 1-day public forum for politicians and NGOs that is held twice a year. The most recent forum focused on various rights of unaccompanied minors and refugee children, such as the right to education, the right to have one's prior education recognized in Austria, the right to health care and the right to legal custody. *Omega* also organizes an international conference once a year on children's rights. One conference in the past dealt with the theme of trafficking in minors. *Diakoni För Afrikaner, Franska Reformerta Kyrkan* in Stockholm invites church workers and authorities to seminars for reflection on legal issues and general problems in the asylum system. The organization also collaborates with lawyers in this type of work.

Policy (4.3.3)

Many organizations view the need to influence and change policies and legislation that affect undocumented migrants. Working on the policy level may entail different types of approaches, including criticizing governmental policies and laws as well as participating in meetings with governmental officials. These methods have in common the desire to not just help undocumented migrants in meeting their basic needs in the host country, but also trying to work on a deeper level to actually influence decision-making on policies and laws that affect them.

Criticism of Policies and Laws

When new policies and laws are established, many organizations make formal statements that criticize certain measures. A recent Danish governmental policy concerning aid to rejected asylum seekers brought forth criticism from NGOs, including the *Komitéen Flygtninge Under Jorden* in Copenhagen. The policy was aimed at restricting access to aid benefits for rejected asylum seekers who refused to cooperate with the authorities concerning their nationality. Instead of receiving aid benefits (which also allowed them to purchase phone cards to contact relatives in the country of origin), the individuals would receive food packets and would also be required to report daily to the authorities. As this new policy was implemented around Christmas, the *Komitéen Flygtninge Under Jorden* as well as several church organizations collected donations to offer the individuals Christmas presents. The organization went with priests and volunteers to the *Red Cross* centers to distribute donations of 300 Danish Crowns (€40) per person. The action attracted media attention and was also beneficial in bringing to light some of the particular cases.

In addition to criticizing the recent action plan of the Danish government against trafficking for not focusing enough on migrant prostitutes, *PRO-Centret* in Copenhagen found that society and local authorities do not establish enough measures for social cohesion of prostitutes. *Save the Children Denmark* in Copenhagen has a project to analyze the disappearance of separated children from the asylum system. Around 30-40% of minors applying for asylum/permission to stay in Denmark disappear from asylum centers before a decision is made concerning their case. This occurs in many countries in Europe, and the project aims to show the inconsistencies of policy, as an interviewee in Denmark highlights:

“What we have been saying all the time is that if you have a Danish child disappearing from this country, you will turn the whole country up and down to try to find him or her. But in the case of those separated children, and we are talking about maybe 30 to 40 every year that disappear from this country, you do nothing, nothing at all.” (*Program coordinator in Denmark*)

The project will gather information from Denmark, Norway, Sweden and Finland, and will allow the organization to cross check asylum claims from separated children in these countries. Another organization in Denmark has been active in critiquing governmental policies:

Danish Refugee Council (Copenhagen, Denmark)

The *Danish Refugee Council* is a private, humanitarian organization that was established in 1956 to work for refugee protection. It is an umbrella organization with 30 member organizations. Humanitarian assistance overseas is one of its biggest departments in terms of staff as well as programs. The *Danish Refugee Council* provides advice and guidance to asylum seekers and rejected asylum seekers in Denmark. An important part of its work is to monitor new proposals and laws and make critiques. Danish law stipulates that any draft law that is proposed from a certain ministry must be sent to other ministries which could be affected by it and to NGOs working in the field. The *Danish Refugee Council* publishes written comments on draft laws and submits them to members of Parliament, as well as journalists.

Several organizations in Austria have also been critical of governmental policies. *Asylkoordination Österreich* in Vienna participated in a campaign in the end of the 1990s against the governmental policy of the “grey zone”: rejected asylum seekers that cannot be sent back to their countries remain in Austria without a residence permit and without access to many basic social services. An interviewee explains how such a policy can have serious consequences for the well-being of those it affects:

“It’s not black and white; it’s kind of nothing. You have no rights and you don’t have a proper residence permit. You just have protection from being deported, which is not even a document with your identity, it’s not a card or something, it’s just a sheet where they say you don’t have to be deported. It’s not even a protective status. We campaigned for people to get proper residence permits and the right to work and proper medical provisions. This campaign was held at the end of the 1990s but there still has been no success. Many organizations were involved in it. The policy of the “grey zone” wastes years of young people. They are just a bundle of frustration, and some may start to drink, or take drugs.” (*Project worker in Austria*)

The *Association for Human Rights and Democracy in Africa* in Vienna disagrees with the government’s voluntary return programs for undocumented migrants because the organization feels that such programs do not offer necessary skills or education to those who return. The organization has not collaborated in such programs because they do not offer special training programs that can increase an individual’s self-worth and usefulness in his/her home country, such as computer training or other practical skills. Acquiring practical or other skills could increase an individual’s chances of finding work in the home country, thus preventing immediate re-immigration to Austria. *Diakonie - Evangelischer Flüchtlingsdienst Österreich* in Vienna has been critical of the government’s asylum policy:

Diakonie - Evangelischer Flüchtlingsdienst Österreich (Vienna, Austria)

Diakonie is the Refugee Service of the Protestant Church in Austria. The organization has various areas of work, including counseling and legal assistance to asylum seekers and rejected asylum seekers. *Diakonie*’s advocacy work has been in several areas, including detention and housing of asylum seekers, as well as asylum. It has written position papers jointly with other NGOs that work on asylum to challenge the new elements of the asylum law, and has tried to advocate concerning this issue with politicians and MPs. *Diakonie* has also consistently advocated a regularization process in Austria, which until now has never been put into place.

Participation in Meetings with Governmental Officials

Another way that some organizations try to influence policy is to bring their expertise to meetings with governmental officials. *FARR - Swedish Network of Asylum and Refugee Support Groups* has correspondence with authorities and attends regular meetings with the ministry, the Migration Board and other NGOs concerning asylum issues. *FARR* monitors asylum practice and has been openly critical and has protested against governmental decisions in some cases. Another way the organization works is to give certain political parties information on developments so that they can raise the issues in Parliament with good background facts. *FARR* has also prepared dossiers on the way humanitarian grounds have become less generous in relation to basic principles of conventions on the rights of the child. *Sociala Missionen* in Stockholm has done work on undocumented children's rights, particularly the right to health care, by participating in discussions with other NGOs within the context of a governmental study on the issue. *Sociala Missionen* also participates in meetings that are held four times a year with the Migration Board and several other NGOs. *Danaida - Education and Social Center for Foreign Women* in Graz networks with other NGOs and political parties on women's and migrants' projects, and participates in meetings with NGOs and governmental officials to discuss issues concerning migrants. *Back on Stage (Youth Initiative)* in Vienna works with different political parties on the local and national levels to do awareness raising and also to solve problems relating to family reunification.

Information and Training (4.3.4)

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

Research and Publications

A number of organizations do research projects or issue publications that contain a discussion of issues relevant to undocumented migrants. The information that *PRO-Centret* in Copenhagen gathers from its research projects on male and youth prostitution as well as prostitution customers has been channeled to the Ministry of Social Affairs, and is available at the organization's information center. Monitoring, providing, receiving and exchanging information are the main tenets of *Asylkoordination Österreich's* work in Vienna. *Asylkoordination Österreich's* research projects on unaccompanied minors and elderly refugees and migrants have been very useful in gathering more knowledge about the particular situation faced by these two groups of undocumented migrants. The *Initiativet "Flygtninge I Fare"* in Copenhagen is presently undertaking a research project on the Danish asylum system, which is an analysis of the many problems inherent in the system. The organization's practical experience acquired in working with rejected asylum seekers serves as case studies of the many difficulties faced by asylum seekers in applying for protection in Denmark. The information gathered will be used to publish a book. As lead agency of the "Separated Children in Europe Program," *Save the Children Denmark* has developed a practical advocacy tool for NGOs to influence asylum and immigration policies concerning unaccompanied minors and to promote across the board procedures throughout Europe. The information packet distinguishes between decisions concerning asylum and migration that should be advocated on the national level, and those for which advocacy should be done on the European level. To divulge cases of injustice concerning rejected asylum seekers, *Asyl in Not* in Vienna publishes specific cases in various weekly magazines such as "Profil" and "Falter", in the "Standard" (the only existing liberal newspaper in Austria), in "Verbund" (a daily e-newspaper with a distribution list of nearly 15,000 email addresses) as well as to the organization's network members. *Zebra* in Graz publishes a newspaper six times a year on issues concerning asylum seekers and migrants. *Die Bunten* also publishes a newspaper on migration issues:

Die Bunte Zeitung (Vienna, Austria)

Die Bunte Zeitung (“The Colorful Newspaper”) is published by *Die Bunten*, a non-governmental organization that was started in Vienna in 1999. *Die Bunten* works for dignity, justice and democracy and tries to establish a network between different migrants’ organizations to ensure a more just and democratic society in Austria. *Die Bunte Zeitung* is the only newspaper in Austria that focuses exclusively on information concerning migration and immigrants themselves, with articles written by migrants from Latin America, Asia, Africa and Eastern Europe. 10,000 newspapers are published every two months and are sold for €2,20 by migrant and refugee street vendors. The salesperson receives €1 for every newspaper sold and thus selling the newspaper is a way for many to earn some money to be able to survive in Austria.

Training Courses

Some organizations offer training programs for individuals who work directly with undocumented migrants. *Terrafem* in Stockholm holds “Educational Saturdays” for volunteers (Swedes and foreign women) who work with battered women. The courses, which are held over 10 Saturdays, cover issues such as the role of gender in domestic abuse, how to manage a stressful situation, identifying the woman’s needs and reading about the law so that they can see what can be done in the particular situation. After completing the training courses, the volunteers are ready to receive calls from the organization’s hotline (a help line for battered foreign women). In addition to the advocacy tool described above in the “Separated Children in Europe Program”, *Save the Children Denmark* also offers a “training of trainers” 3-day course for governmental and NGO representatives. Participants work together to elaborate a national action plan that tackles the situation of separated children in the particular country of focus. They also commit to carrying out training activities at the national level for other officials and NGO workers, and thus the training is cascaded to as many people as possible. *Asylkoordination Österreich* in Vienna gives seminars on immigration and asylum law for those working with asylum seekers and rejected asylum seekers. The seminars provide information about how to work with the laws and also what can be done in specific cases (e.g. how to contest a deportation order). *FARR* in Sweden gives information to volunteers who work with asylum seekers and also produces publications:

FARR - Swedish Network of Asylum and Refugee Support Groups (Hedemora, Sweden)

FARR was founded in 1988 and presently has 765 individual members, 18 affiliated local asylum committees or refugee support groups and 18 other associated organizations. *FARR* has an original grassroots approach and works entirely with volunteers. It has groups throughout Sweden that assist asylum seekers in the asylum procedure in cooperation with legal counsel. *FARR* provides information for those who are in contact with asylum seekers, so that they can give them advice based upon the legal possibilities. It also publishes a quarterly newsletter in Swedish called “Artikel 14” that reviews current asylum and refugee issues in Sweden. *FARR* is a member of the European Information Network, which publishes the monthly Migration News Sheet.

Migrants’ Groups (4.4)

Restrictive immigration policies and laws in recent years in Sweden, Denmark and Austria have created situations in which many people become or remain undocumented. The reasons for living in these countries with an irregular status vary (see discussion in Chapter Two), but a common denominator is that being a foreigner and undocumented leads to mutual experiences of discrimination, exploitation and loss of identity. Undocumented migrants may find support within migrants’ groups.

Organizing in Sweden, Denmark and Austria (4.4.1)

While many undocumented migrants feel the need to meet other people in the same situation to be able to receive moral and material support and to lead a collective struggle for regularization and respect of their human rights, the chances of finding a group made up of only undocumented migrants in these countries is nearly impossible. An interviewee in Sweden highlights several factors that contribute to the lack of *undocumented* migrants' groups:

“Undocumented migrants are not organised in this country. First, it is not such a large group like in the rest of the European countries. Second, to be organised means also to be exposed and then they will be found out and expelled from the country. So no one will dare to organise them. I mean, the undocumented in this country, they are really undocumented and *clandestine*.” (*Counselor in Sweden*)

Though undocumented migrants may face many obstacles in organizing to vindicate claims linked to their status (e.g. regularization, work permits, etc.), they may find support and assistance by participating in migrants' groups that are formed along national or ethnic lines or that are linked to churches. They do take part in such groups, but can never be spokespeople or legal representatives, and specific concerns about their situation are usually not the focal point of such groups. Some cities have forums where migrants' groups can come together, such as the *Vienna Integration Forum*, which functions like a parliamentary system for migrants' groups, and the former *INDsam* in Copenhagen. Nonetheless, there is no representation of undocumented migrants' groups in such forums.

The relationship between migrants' groups and support organizations varies from one organization to another and depends on various factors. Some find it hard to work together on issues of a political nature (which always draw forth various standpoints) but may have close contacts on other issues. A couple of organizations indicated that their staff members of migrant origin facilitate contacts between the organization and migrants' groups.

Waging Collective Struggles (4.4.2)

Even though undocumented migrants in Sweden, Denmark and Austria have not been able to establish ongoing groups, some have come together to advocate certain rights. A recent struggle in Denmark involved some rejected asylum seekers who could not be sent back to Iraq. They held a hunger strike in a church in the city of Odense to draw attention to their situation and to demand a solution from authorities. At the end of 2002 in Sweden, a fake work permit scandal was unraveled and spurred the undocumented migrants involved to start up a support group:

ASILO - Asociación de Indocumentados Latinos Organizados (Stockholm, Sweden)

ASILO (ASYLUM - Association of Organized Undocumented Latinos) is made up of approximately 200 undocumented migrant workers mainly from Chile, Bolivia, Ecuador and Peru. These individuals were sold fake work permits, which are forgeries of documents normally handed out to asylum seekers. They were sold for 3,000 SEK (€330) to 12,000 SEK (€1,320) and enabled the individual to obtain a temporary identification number after which s/he became liable to taxation. The undocumented workers had thus been paying taxes to the Swedish government without having a residence permit, and had been connived into thinking that the whole process was legal. When the case became public and the undocumented workers were faced with the probability of being deported, many applied for political asylum so that they could legally come out of hiding and receive certain benefits (e.g. access to medical care and education for the children) while their application was being processed. *ASILO* members have tried to

demonstrate that they have worked and paid taxes and haven't been dependent on welfare benefits. Some *AS/LO* members went to Parliament to talk about the problem and have also been in newspapers. The group has also received support from the Church of Sweden since the beginning of the struggle.

Organizational Issues (4.5)

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

Influence of Legislation on Work (4.5.1)

The main aim of the *Book of Solidarity* is to show the various ways that people throughout Europe extend solidarity to undocumented migrants, and to identify elements that hinder this solidarity. One of these elements is restrictive legislation, which has been discussed in Chapter III. During interviews with organizations, one of the questions concerned the impact of restrictive legislation on daily work. While the question of which type of assistance is legal or illegal brought forth different responses, the main point that organizations underlined is that legislation is not a barrier to providing assistance.

Identifying Legal and Illegal Assistance

In all three countries, the majority of organizations interviewed said that it is not illegal to provide assistance to undocumented migrants, and gave examples of what they believe *is* illegal: smuggling a person into or outside of the country; employing an undocumented migrant; harbouring a terrorist or criminal; and providing assistance for financial gain. An answer given by an interviewee in Sweden underlines these common responses:

“At present, there is no law that prohibits that (providing assistance), unless you do some kind of illegal work, supporting or hiding some criminals, then it is a different thing. But advising and helping undocumented migrants is not penalised by the government. The government would somehow be happy to see organisations providing help, to find solutions.” (*Counselor in Sweden*)

While most organizations agreed on what type of assistance is legal or illegal, the issue of providing accommodation brought forth varying responses. One interviewee in Austria said that it is illegal but the law is not applied (and it is publicly known that some organizations may have undocumented migrants in accommodation which is usually provided to asylum seekers). An interviewee in Sweden pointed out that it is illegal if it is for financial gain, while an interviewee in Denmark said that there have been cases in the past of individuals who had to pay fines because they merely provided accommodation (but not necessarily for financial gain).

“You're not allowed to house them. This is an interesting point because I think it's an option in the law which is not administrated, because with this point you could do in all the refugee assistance organizations who are housing refugees, because everyone knows this. The one or the other undocumented are with them. And I think you may give advice to them but you are not allowed to support them. And of course you are not allowed to assist them in crossing the border.” (*Project worker in Austria*)

“It is not yet illegal to hide or to help people. If they are not criminal and if you don’t make money off of them, this is legal. If I have some people in my house and if I ask them rent, then it is illegal.” (*Activist in Sweden*)

“Many years ago, there was a lady in a town west of Copenhagen who had to pay 2,000 crowns (€270), for having a family hidden there. There was also a guy in Jutland, who had been hiding a family for more than a year. He wrote it in a Christmas letter for all his friends, but somebody put that letter in a newspaper. He was taken to court. The prosecutor wanted him to pay 1,000 crowns (€135), but he said to the judge that if he was convicted, he would like to have a bigger fine, because then he could go to the next court. If the amount is very small, you can’t do anything about it. So, I think it was 3,000 crowns (€404) and he took it to the higher level courts. He was convicted in exactly the same way. The normal situation would have been 500 to 1,000 crowns (€67 to €135). So it’s nothing!” (*Activist in Denmark*)

Despite the different understandings of what type of assistance may be considered legal or illegal, the general consensus amongst organizations is that legislative measures are not an impediment to providing assistance to undocumented migrants and do not have an effect on their daily work of helping those in need.

Relationship with Authorities (4.5.2)

Official institutions are often aware of, and even welcome, assistance provided by organizations to undocumented migrants. While the relationship with authorities varies from one organization to another, it was observed that many organizations have a common interest to establish dialogue with authorities. However, this is not always possible on all levels of government, nor with all governmental bodies, since political parties that govern on the local and regional levels may be different from the national level, and this may lead to different possibilities for dialogue.

Dialogue and Tolerance

Many organizations have contacts with authorities. This may be done to share expertise on specific issues faced by undocumented migrants and to improve public support. Both sides are very aware of their different positions and some organizations stated that even if they don’t necessarily have a good working relationship, it is important to try to maintain contact to work constructively:

“We don’t have a friendly relationship (with the authorities). We can’t avoid them and they can’t avoid us either. But at one point we are forced to meet to deal with the problem and see what can be done. Here in Sweden, we try to dialogue. This is a country where people are afraid of conflict, compared for instance to France where there are always demonstrations. Here, we’re afraid of conflict and it’s like ‘Quick, quick, let’s try to prevent it!’ We have to try to dialogue and make a compromise.” (*Pastor in Sweden*)

Quite a few organizations said that they maintain better contacts with police officers and other lower-level authorities than with upper-level government officials. Lower-level authorities are seen in some cases as those who implement measures that affect undocumented migrants, but are not necessarily responsible for making decisions and developing policies. Some interviewees said that their organizations, which are known to work exclusively with undocumented migrants, are tolerated by local police officers, who do not cause problems due to their target group:

“We don’t have meetings with the police, but they know where our office is and we don’t have any problems with them.” (*Activist in Denmark*)

“I know many policemen who work here. Some of them have been working here for years. They know me and I have talked with them. They don’t come to our clinic even though they must know where it is by now!” (*Activist in Sweden*)

“We have a counseling center and in one place we are working in a church, so it was clear that no policeman has to enter the church. Of course this is not a law, but a rule that should be respected.” (*Legal advisor in Austria*)

Confrontational Relations

Not all organizations are able to maintain dialogue with authorities and some indicated that they have very bad relations with the government. This may be due to their political stance on certain policies or governmental programs. A couple of organizations in Austria said that the fact that a main part of their work consists of making appeals for rejected asylum seekers leads authorities to negatively view their association. One interviewee also added that their refusal to take part in government-sponsored voluntary return programs (they argue that such programs do not offer skills or training, which would be useful for those returning to the country of origin) also adds to the government’s negative view of their association.

“The Austrian government does not want us at all, because we make appeals and we do not want repatriation. We are not for repatriation at all. We do not want to compromise, take a lot of money and so on.” (*Pastor in Austria*)

An interviewee in Sweden felt that after many years of trying to establish dialogue with government officials, the gap between those who make policies and those who are forced to work with them on the grassroots level was growing too wide, and efforts to discuss these issues were proving to be futile:

“In Sweden, we have so many conferences, meetings, always sitting. Nothing happens afterwards. Swedish politicians love to sit in meetings and talk, talk, talk! I am tired of that. They talk, it’s very nice, but what is the result of this? Who meets refugees in the very bad conditions of their human lives? I don’t believe in this (meeting with officials) anymore. I am losing my time.” (*Activist in Sweden*)

Nonetheless, the relations that organizations have with authorities are not always “love-hate”; some organizations are able to maintain dialogue while at the same time criticizing governmental policies. Two interviewees explained how their working relationship with authorities is characterized by criticism as well as appreciation:

“Our relation is complicated. Our policy is that we try to cooperate with them (the authorities) in single cases. And with some people and in some situations it is also successful and then in some cases or in structured questions we have great confrontations with them. So it’s both. It is cooperation and confrontation. I think it depends on which question.” (*Legal advisor in Austria*)

“When we started, in perhaps the first five or six years, antagonism was the operative word, but now we have grown and lasted and managed to meet the challenges of this kind of work in a way that has led to greater respect for the organization and its standpoint.” (*Legal advisor in Sweden*)

The amount of governmental funding that organizations receive also determines the nature of their relationship. It is sometimes difficult for organizations that receive a substantial part of their funding from the government to be critical of governmental policies. An interviewee in Denmark said that this ambiguity creates problems, even to the point where the notion of “non-governmental organization” may be challenged (if most of the funding comes from the government):

“We think that we have too much funding from the government. It’s very difficult to be too critical. We are trying to achieve a balance of being a real NGO. It’s an ongoing discussion. But I think that the trend now would be to be more and more independent from the authorities, to be more and more critical.” (*Legal advisor in Denmark*)

Those that receive a small part or no funding at all from the government are freer to be more critical, as an interviewee in Austria emphasized:

“Because we don’t get money from the state and others do, they cannot say things as directly as we can. We are doing jobs that require independence.” (*Activist in Austria*)

Target Group (4.5.3)

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

Categories of Undocumented Migrants Represented in Target Group

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

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

The main category of undocumented migrants represented amongst the target group of organizations interviewed is rejected asylum seekers. Many organizations, particularly in Sweden and Denmark, emphasized that it is extremely difficult to survive in those countries without an identification number, and the majority of undocumented migrants they work with are in or have been through the asylum system. One organization summed up what quite a few alluded to concerning the target group: some organizations are able to include rejected asylum seekers in services that are normally intended just for asylum seekers, but if they worked with other categories of undocumented migrants, this might be quite problematic:

“It would be dangerous to do some counseling for those people (those who haven’t been in the asylum procedure) outside of our normal structure. Then we would really have a lot of problems with the police, because it is not allowed to help these people.” (*Legal advisor in Austria*)

Although some organizations do work with clandestine migrants and overstayers, rejected asylum seekers represent by far the largest category of undocumented migrants that organizations in Sweden, Denmark and Austria provide assistance to.

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

Assistance Directed Towards Target Group

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

1. *Only undocumented migrants:*

A number of organizations direct their assistance only towards undocumented migrants. By focusing on this particular target group, these organizations can offer special services that undocumented migrants may often lack. Several clinics offer health care mainly for those without health insurance, who often are undocumented migrants. Many of the organizations that provide legal assistance to rejected asylum seekers work primarily with undocumented migrants, and have developed sound expertise in writing appeals and challenging asylum laws and procedure. One migrants' group made up solely of undocumented workers also falls under this category.

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

Many organizations provide assistance to undocumented migrants as well as to asylum seekers and legal foreigners. They may come into contact with both groups in providing assistance in housing, legal assistance, etc. Quite a few organizations that work with asylum seekers also provide assistance to rejected asylum seekers. Some women's organizations interviewed work with foreign women in general, and include women who have legal residence permits as well as undocumented women. Migrants' groups that are based on nationality or ethnicity include both regularized and undocumented migrants.

Finality of Assistance (4.5.4)

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

Establishing Limits in Providing Assistance

Various factors determine if an organization establishes a limit for providing assistance, and if assistance will be provided to an individual who has poor chances of ever obtaining legal status. As the majority of organizations interviewed work with rejected asylum seekers, the assistance they provide is both material (food, clothing, accommodation, etc.) as well as legal (writing an appeal concerning a negative decision). Making decisions that involve who can receive assistance and for what time period often are often influenced by the individual's situation in the asylum procedure.

However, it should first be clarified that the issue of setting a time limit or not providing assistance is not even a consideration for several organizations. Some organizations that write appeals for rejected asylum seekers said that they always make an appeal, even if they think that the decision could be negative. Others emphasized that the gov-

emment already maintains selection criteria by simply not providing assistance to undocumented migrants, and as NGOs, their role is to fill in the gap and provide assistance to those in need:

“The job of taking care of the borders is the job of the state. This is not the job of human rights (organizations). If somebody has to do the job then the state will do it. This is not my interest; my interest is that the people who are in this country should have human standards of living.” (*Activist in Austria*)

“We decide based upon on our own reasons if somebody needs protection or not. We are not so sure that the state always makes these decisions correctly and we make our own picture of this, and if they need international protection than we will support them as long as we can.” (*Counselor in Austria*)

But many organizations are faced with ethical dilemmas concerning assistance. One of the reasons they may have to choose who to help is due to constraints of time and resources. Not all organizations have sufficient staff or material resources to provide help to everyone in need. Some give priority to those in situations that may require urgent care, such as pregnant women, families with children, and those who have no family members or compatriots (who might be able to provide assistance). Quite a few also rely on selection criteria that are linked to the individual's chances of obtaining a positive decision in his/her asylum application. Some interviewees (notably in Sweden and Denmark) emphasized that it is very difficult for undocumented migrants to survive underground, and thus they provide assistance only to individuals whose appeals have some chance of being accepted:

“We don't help people if we don't think that there is a case. We ask for all their papers, we read them and talk with the asylum seeker to find out if what's in the papers is the real situation. If we think that they could get asylum, if the case is real, then we try to do that. We try to get other information, if necessary, from the home country. If we don't think that there is any hope, then we don't take the case. If we don't think that they have any possibility of getting asylum, then the advice is to get home. Because living underground, at least in Denmark, is no good future.” (*Activist in Denmark*)

“I always say that there is no point in people hiding just for the sake of being in hiding. There has to be some activity involved there in getting information for a new application.” (*Legal advisor in Sweden*)

The issue of how long assistance can be provided is also part of the decision-making process concerning assistance. The various constraints described above also oblige some organizations to set a limit as to the amount of time an undocumented migrant can receive assistance. One interviewee explains how an organization may approach this difficult issue:

“If we see that after a while, if there is nothing that can be done for a person and if the person hasn't been very active, then we inform the person that they can't move forward in such conditions. Because there is always a reciprocal game between the person who needs help and the people around that person to help. And at moments like that, when we no longer feel real cooperation, and there isn't really ambition, then we leave it up to the person to decide.” (*Pastor in Sweden*)

Counseling for Other Options

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

“I don’t tell them to go underground, never, because it is their decision. I respect everyone. If they decide that they have no alternative, then we have to respect that.” (*Activist in Denmark*)

Counseling is a very intensive process to examine and weigh all possible options to determine what might be best for the particular individual. The majority of organizations that provide counseling to undocumented migrants go through this process and are very realistic about the difficulties of living as an undocumented migrant in these countries:

“I am not a lawyer, I am a social worker. I have been working with the law on migration for many years. I try to think about all kind of possibilities, asking them their background, if there have been some changes and so on. I just try to give ideas: ‘What about that, what about that, what about that?’ If there isn’t really any possibility, then I say that there are no possibilities. If they want to go on themselves, they can go on of course, they can try again. I let them know but I also deter them. I talk with them about how difficult it is but then it is always their own decision. I don’t see any possibility to change. Usually they themselves already have told us how difficult it is to live in that way. You have to think ‘Can you manage more, should you go back to your country or try to find a third country?’ Because that is also a possibility if there are some other countries that you can enter. I give the possibilities.” (*Social worker in Sweden*)

“What we try to do is to give a real picture about the situation in Austria. Because many people think that if they are here for two or three years they could get a possibility to work. We give them information about the foreign laws in Austria. Sometimes people also plan to ask for asylum even if they have no chance. We give them counseling and also say ‘If you decide to do this step it’s alright, but it’s your decision. You should know what your best chances are in Austria.’ And often people don’t understand. Some are here for seven, eight, nine years and there is no change in their situation and they hope that maybe if they are here for five or six years they could get their residence permit to stay here.” (*Legal advisor in Austria*)

One of the options that organizations often consider is voluntary return to the country of origin. This option is only considered if the individual would not be in danger upon return, and is often considered as a type of “last resort” option, when all alternatives have been considered and ruled out. Counseling in this area also includes providing information about what happens when undocumented migrants are deported, so that they may consider voluntary return to avoid forced return:

“What we are trying to do is to offer them some legal assistance and we try to inform them about the consequences of staying in a illegal situation because we don’t see any future in this country. We look into the cases to see if there is a possibility to regularise them but it is almost impossible, in most of the cases. And what we normally do is to offer them help to return to their home country.” (*Counselor in Sweden*)

“It is a discussion we have had very often, how far we should go in terms of talking about repatriation, talking about going home. But, what we often do when there is not a single chance to do something in Denmark for these people, then we say what would be the best option: is it better to wait to be escorted home, to return voluntarily or to look to another country. We give that kind of information. But also we explain about the deportation procedure in Denmark, what are the risks, whether it is better to return voluntarily or wait for the police to do it.” (*Legal advisor in Denmark*)

Balance Between Structural Work and Direct Assistance (4.5.5)

Discussions with organizations revealed one dilemma that most organizations have to cope with: the division of working time between structural work and direct assistance. These two types of work may also be understood as prevention versus crisis intervention (or alternatively, proactive versus reactive approaches to working). Many of the organizations interviewed do some type of policy work. The majority of organizations spend more than half of their working time on direct assistance, but try to consecrate some time to carrying out research, producing information, doing training sessions, etc. Some organizations that have a strong volunteer base said that their limited staff availability also contributes to prioritizing immediate assistance rather than structural work.

There are also organizations that try to achieve a balance between both types of work. This is not always easy to do in practice, but many organizations feel that it is important to carry out both, to be able to have a realistic view of the situation faced by migrants, so that they can better evaluate the type of response they will make on the structural level:

“We don’t know if we are able to manage but so far we have managed. We can influence better if we work with both the practical and the policy level, then we know what we are talking about. If we just work with policies, at the end of the day, you can speculate, but not necessarily based on reality on the ground. We try to combine our work with the local branches and the policy work. Ultimately, we try to be the voice of these voiceless. Our purpose and aim is the individuals.” (*Counselor in Sweden*)

“The focus of our local groups is individual asylum cases, whereas the board has to deal with the lessons learned from that kind of activity and to develop our own policy, do lobbying work, and enter into dialogue with other NGOs and the administration. Both are needed. If you just concentrate on the dialogue thing you lose contact with the real reality and the plight and if you just concentrate there you’ll never have the energy left over to say, ‘We’ve got to have these structural changes, we going to try and get that law changed or that policy changed or to raise issues in Parliament.’” (*Legal advisor in Sweden*)

Conclusion (4.6)

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

Migrants’ groups also provide assistance and offer an opportunity to meet and share experiences with others in similar situations. Although most migrants’ groups in Sweden, Denmark and Austria are made up mainly of documented migrants, some groups have formed when undocumented migrants have waged collective actions to demand the right to legal residence.

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

In discussions on various organizational issues that come into play when providing assistance to undocumented migrants, it should be noted that restrictive legislation does not prevent organizations from providing assistance.

Humanitarian concerns and ethical values prevail, and the general response given by most organizations is to offer support and assistance regardless of what is stipulated by legislation. Other organizational issues such as the target group of the organization, finality of assistance and balance between direct assistance and structural work brought up varied responses and approaches, depending on the organization's political vision concerning migration policy as well as their resources.

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Additional Reading Material

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Periodicals That Cover Undocumented Migrants in Europe

Migration Newsheet

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

European Race Bulletin

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

Reflections On Motivations For Providing Assistance

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

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

Motivations for Providing Assistance (5.1)

Help Providers' Motivations (5.1.1)

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

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

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

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

"Of course I am helping these people, they come from my country. In my country, you 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 that have been made vulnerable and we want to appeal to their own possibilities, giving them back their self-esteem.”

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

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

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

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

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

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

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

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

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

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Social work⁷ 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

⁷ Social work in this context refers to assistance provided within a wide range of professions, and by many different individuals. These may be employees or volunteers who provide assistance of a social work nature to (undocumented) migrants they come into contact with via their professional tasks or by chance in other activities (e.g. campaigning, neighborhood solidarity, etc.). These individuals do social work regardless of their educational background.

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

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

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

Globalisation, Ethics and Rights

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

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

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

One also needs to acknowledge that despite the fact that these people are undocumented, hence denied legal immigration status for a number of reasons, they may be well wanted by some parts and members of society. Most industrialised and indeed many developing countries show some demand for additional work force. The growth of global

cities, their service sectors, the supply of affordable food and housing all depend to some extent on globally mobile workers (Sassen 1994). This points to some inadequacy of the legal framework of citizenship (Hammar 1990) as well as to some inconsistencies within our societies. The requirements of one functional system (Luhmann 1997) collide with another, for example the labour market with the statutory sphere. The concept of nation states seems to lag behind world integration and globalization and features of the past come into conflict with new developments. But recent thinking about transnational organizations and global governance seeks to offer alternatives to the traditional concepts of nation states and thereby a future solution to the problem. However, in the meantime, the result is a society that causes discrepancies of all kinds; there are individuals who get caught up in these and who suffer from the imperfections of our societies.

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

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

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

The (Un-) Ethics of Immigration (Control)

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

2002, Chapter 10). As one can see, even in taken-for-granted policies like immigration control there are some strong arguments that challenge the justification of such measures, in that they also provide for some good reasons to accept and to assist migrants whatever their status may be.

Ethics, Which Ethics?

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

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

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

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

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

The Need for Professional Ethics for Social Work with Undocumented Migrants

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

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

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

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

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

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

migrant comes to for help to provide this and thus implement “the right to have rights.”

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

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

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

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

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Good Citizenship (5.1.3)

Didier Vanderyslycke, Steunpunt Mensen Zonder Papieren

Concept of Solidarity

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

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

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

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

Making Solidarity Work

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

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

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

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

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

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“Internationalising” the Social Security System (5.1.4)

Didier Vanderslycke, Steunpunt Mensen Zonder Papieren

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

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

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

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

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

This is also the basic premise of the International Convention on the Rights of all Migrant Workers and the Members of their Family, which was drawn up by the United Nations in 1990. Even though this Convention deals with more than only social and economical rights, it reflects the respect of its founders for the system of social

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

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

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

Conclusion (5.2)

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

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

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

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

Conclusions⁸

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

Margaret Mead

Various socio-economic factors must be taken into consideration when analyzing the environment in which organizations in Sweden, Denmark and Austria provide assistance to undocumented migrants. It is clear that there is a wide gap between international standards and national policies in these countries concerning the basic social rights of undocumented migrants. While advances have been made in some Member States of the European Union to guarantee access to health care and education for undocumented migrants, Sweden, Denmark and Austria have not developed protective measures for undocumented migrants in these areas. Legislation in all three countries contains no special provisions that allow undocumented migrants to receive basic health care (although undocumented migrants in Sweden may be entitled to emergency health care if the health care practitioner deems it necessary). In the area of education, undocumented minors may not officially enroll in primary or secondary schools in Sweden and Denmark (though this is permitted in Austria, since all minors – including undocumented minors – are required to attend school).

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

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

As long as root causes are not dealt with and legal channels for migration are not established, undocumented migration is a phenomenon that is unlikely to vanish or even to diminish in the coming years. In this light, it is advisable for policy makers to recognize the presence of undocumented migrants in Sweden, Denmark

⁸ This chapter is a preliminary and rather general conclusion of this volume. More elaborate conclusions and policy recommendations will follow the three-volume series.

and Austria and to respect their human rights. Although the European Charter of Fundamental Rights of the European Union states that solidarity is one of the indivisible, universal values on which the European Union is based, solidarity towards undocumented migrants is discouraged and even penalized.

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

Ethical Guidelines

Some Guidelines for Assisting Undocumented Migrants

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

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

General Principles

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

The Relation Between the Client and the Help Provider

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

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

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

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

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

Aims of Providing Assistance

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

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

Standard of Services

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

Prioritizing

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

Secrecy

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

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

Political and Social Action. Transparency

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

Legitimacy and Its Limits

24. In the EU member states, there is a relatively high degree of democracy. Under these circumstances, the legitimacy of disobeying laws is far more remote than under a clearly undemocratic regime. However, if a state excludes its inhabitants from essential means of survival, these residents have the right to disobey laws in order to survive. Their actions should be in proportion to this aim and should do as little harm to others as possible.
25. This does not legitimize the breaking of the law by those who assist undocumented migrants. However, they have to defend, situate and explain the behavior of their clients in this respect. If they are involved in a situation that is not strictly legal, it should be agreed upon with the client that his/her illegal action in which s/he is assisted is completely the client's responsibility. If a worker is in the situation that only a breach of the law could lead to the most efficient assistance for the client, this should always be discussed and agreed upon with a team. The consequences of this illegal action for other undocumented migrants, society at large, pub-

lic perception, etc., should be taken in consideration. In no case shall a worker in an organization individually decide on such a case.

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

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

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Church of Sweden

Diocese of Stockholm

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FARR - Swedish Network of Asylum and Refugee Support Groups

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j-m.williams@pi.se (Chairman)
URL: <http://hem.passagen.se/asylum/index.html>

Ingen människa är illegal

Stockholm
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Email: stockholm@ingenillegal.org
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Danish Refugee Council**Asylum Department**

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Komiteén Flygtninge Under Jorden

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