

Undocumented Migrants: without papers but not without rights

Migrants are considered as **undocumented** or in **an irregular situation** when they are not allowed to enter, stay or work following the law of the country¹.

Thirty to forty million people in the world live and work in countries without such permission. Approximately 10.3 million live in the USA and between 7 and 8 million live in the European Union².

Undocumented migration is an extremely emotional subject nowadays and is often used to stir up racial and cultural tensions. Some politicians and journalists play up fears of terrorism regularly linking migrants with criminality and talk about “invasion”. This image is strengthened by the use of dramatic pictures of desperate people willing to risk everything to work abroad. Consequently, the words “illegal migrant” carry a connotation of criminality where the migrant is to blame for doing what human beings have always done: crossing borders or oceans in search of a better life. Yet “illegal migration” is an expression used on a daily basis and reference to illegal migration is pervasive in the media. For instance, in the USA, despite numerous calls from groups such as the National Association of Hispanic Journalists, the words “illegal”, when describing a migrant, is still more than five times more common than the more neutral and accurate “undocumented”. In 309 stories collected over a period of two months, there were 381 uses of the word “illegal” compared to 73 uses of the word “undocumented” when referring to irregular migrants³.

A little bit of history

The concept of “illegal migration” is relatively new. Until recently, global migration was not regulated and visas and registration authorities simply did not exist. Migration was not an offence and usually, employment was not prohibited. Indeed, migrants were instead labelled “spontaneous immigrants” and could often easily regularise their status once

in the new country. First used when immigration laws were passed in the 1920s⁴ to cope with European immigration into the USA, the concept of “illegal immigrant” was also applied during the 1930s, when unwanted Jewish migration to Palestine was declared “illegal immigration” by the British authorities. It was applied again, especially in Europe, during the 1960s and 1970s, though only occasionally, and the term “illegal immigration” only became mainstreamed from the mid 1980s onward. Therefore the concept of illegal or irregular migration is a phenomenon that has been politically and legally created recently and over a short time⁵.



Picture by John Perivolaris

From regular folk to irregular migrant

There is very little critical assessment of how migrants become “irregular”; however “blame is usually attributed to the migrants”⁶. Whilst the term “irregular migrant” is the correct definition for a human being in an irregular situation, it does not reflect the varied motivations and ways by which people find themselves in an irregular situation.

¹. Art.5 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

². As reported by International Organization for Migration (IOM) statistics.

³. To determine the tone and balance of network coverage of irregular migrants, MRC (Media Research Center) analysts evaluated every ABC, CBS, and NBC morning, evening, and magazine show news segment on the immigration debate from the outbreak of protest coverage on March 24, 2006 through May 31, 2006. Further figures are available on the MRC site.

⁴. In 1882 the Chinese Exclusion Act barred Chinese labourers from entering the United States. Although the continual call by big factory for new work-force, the sense that the country could no longer absorb large numbers of unskilled workers led to the approbation of the first laws creating a quota for immigrants in the 1920s. Ngai (2003) shows how the beginning of mass illegal immigration coincide with the entry into force of these laws, be cause “they created a new class of persons - illegal aliens - whose inclusion in the nation was at once a social reality and a legal impossibility”, Mae M. Ngai, Impossible Subjects: Illegal Aliens and the Making of Modern America.

⁵. Illegal immigration in Europe: patterns, causes and consequences, Franck Duvell, Oxford, 2006.

⁶. Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers - The Asia-Pacific Perspective, Robyn Iredale and Nicola Piper, UNESCO, 2003.

- Many irregular migrants are trafficked or smuggled in the countries on fake documentation provided by the traffickers themselves.
- A substantial proportion of all people with irregular migration status are refugees and irregular migration takes place because of “push factors” such as war (including civil war), authoritarian governments, economic destitution and repression in the country of origin.

Dirty, pretty things: life as an undocumented migrant

• Invisibility and silence

“Fear is the clandestine’s shadow. Fear of everything and everyone: of taking the bus, of working, of moving. One must take care not to be conspicuous, not to loiter in the shopping centres. Those who have nothing to buy, have no reason to loiter there ... Every action holds its own measure of risk.”⁸.

Irregular migrants (especially people who have been trafficked or smuggled) rarely appear in official statistics. Often stripped of identity documents and fearful of contact with the authorities, irregular migrants are difficult to identify or trace. Sometimes migrants themselves seek invisibility to escape official attention or threats to themselves or their families⁹. Sending money home (remittances) for instance, one of the main reasons for migrating¹⁰, can be a very risky affair for undocumented migrants because a money transfer often requires proof of identity. Therefore, undocumented migrants tend to use less reliable and more expensive means of money transfer. This means that they send less back home or at times, nothing at all. This is sadly ironic considering that many left their countries to help sustain their families.

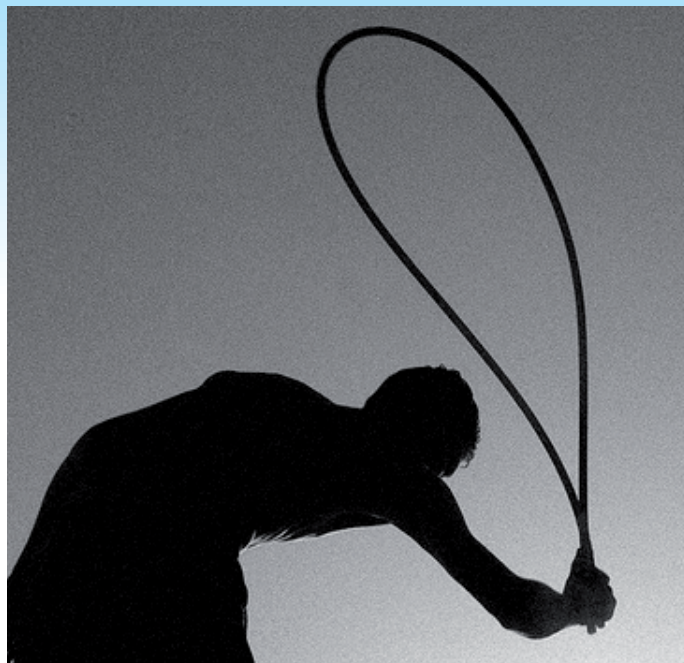
• Exploitation

One of the greatest challenges faced by undocumented migrants, is the risk of exploitation and abuse by

- employers who often force migrants to work long hours in dangerous and/or unhealthy conditions, dismiss them without due notice, refuse to pay them or pay them less than what was agreed etc.;
- traffickers and irregular migration networks that often exploit or deceive them: lured with promises of work and a better life, migrants instead find themselves often in life threatening situations and many die before their arrival: since 1988¹¹ 11,098 migrants have died at the borders of Europe.
- members of their own communities who often take advantage of other migrants’ vulnerability: “Adama slept in a park along with dozens of other Africans. Finally, a man from Sierra Leone offered to give Adama his work permit. In return, Adama would pay him 100 euros each month. «And I said yes, because I didn’t come here to do nothing». Thousands of immigrants in Spain are in similar situations; they are exploited by other immigrants who have papers”¹².

- It can also happen for merely administrative reasons: e.g. the visa has not been renewed on time or a claim for asylum has been turned down while many see their legal status run out just because of changes in the law⁷.
- Some people become irregular as they seek to live with loved ones, such as a spouse or other family members already in the host country or to keep relationships with people in the host country they might have met during a planned temporary stay. Others are children of undocumented migrants and can therefore become irregular themselves.

Picture by John Perivoliaris



⁷. For instance, when the “Ley de extranjería” (The Law for Foreigners) was voted in Spain in 1991, new visa and permit requirements created a situation where a number of migrants working and living in Spain became irregular overnight. Contextually, the Spanish government launched a regularization program mainly addressed to these migrants. Nevertheless, because of its lack of publicity and coordination, there were only 44,000 applicants to this program and of these applicants only 23,000 were able to fulfill the program requirements. Immigration, law, and marginalization in a global economy: Notes from Spain, Law and society review, 1998.

⁸. The Universal Embassy: A Place Open to the World, Tristan Wibault, 2003.

⁹. Living in the Shadows, a primer on the human rights of migrants, Amnesty International, 2006.

¹⁰. According to International Organization for Migration (IOM) data.

¹¹. As of October 2007, according to data from Fortress Europe, Observatory of the victims of illegal migration.

• Rightlessness

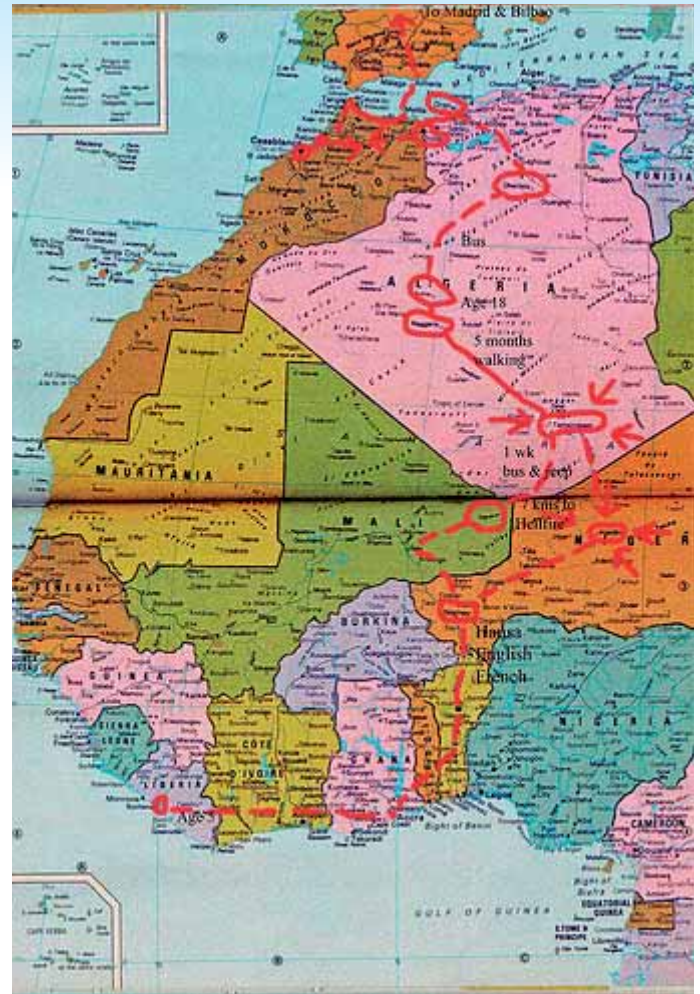
"Clandestinity dissolves every life project¹³". The life of undocumented migrants is usually a life without rights, with reduced or no access to public health systems, proper housing, education and financial systems. They are the "civic dead"¹⁴. Yet all migrants (regardless of their status) have rights: not only those established through the UN Migrant Workers Convention but also as every human being, they are entitled to have their basic human rights respected as elaborated in the Universal Declaration of Human Rights¹⁵. The reality though, is that most governments fear that ensuring basic Human Rights for undocumented migrants would create a "pull effect" and encourage further irregular migration.

New policies and perspectives: does making laws stricter reduce irregular migration?

"Making migration rules stricter creates more clandestinity. It is not flexible migration policies that create illegal migration but too strict migration policies. When borders are open, people come and go. When borders are closed, people tend to stabilize.", Catherine Vihtol de Wenden, Research Director at the French National Centre for Scientific (CNRS).

Most destination countries seem convinced that they are able to control migration while studies undertaken across the world show this is not the case¹⁶ and it is becoming more and more evident that restrictive migration laws tend to generate "illegality". Indeed, how can a country stop migratory flows in an era of globalisation where borders must be business-friendly and remain open to international trade or tourism? Or, when business continues to lobby governments to facilitate migration to access cheaper labour markets? Separating migration from the world we live in is at the crux of the misunderstanding around migration. This misunderstanding is reflected in international law, in the "fundamental contradiction for which only emigration is recognized as a fundamental right

(article 13-2 of the Universal Declaration of Human Rights¹⁷) while immigration is regarded as a matter of national sovereignty¹⁸". States must rethink the issue based on a more comprehensive framework of mobility. If we want to see change, "the immediate challenge is indeed to persuade states to address irregular migration in a human rights framework"¹⁹ and to take into account the realities of our globalized world to start reducing human misery at home and abroad.



Picture by John Perivolaris

¹². Moving Young - State of World Population 2006: Youth Supplement, United Nations Population Fund (UNFPA).

¹³. Tristan Wibault, id.

¹⁴. The situation of undocumented migrants in Europe, Nele Verbruggen - PICUM, 2002.

¹⁵. Exhaustive list of the rights that apply to undocumented in Undocumented migrants have rights, PICUM, 2007.

¹⁶. "There seems to be a consensus among experts on the fact that tougher measures on migration control do not reach their proclaimed goal (Cornelius et al. 2004)", Migration without borders. An investigation into the free movement of people, Antoine Pécoud and Paul de Guchteneire, Global Commission on International Migration, (GCIM), 2005.

¹⁷. "Everyone has the right to leave any country, including his own, and to return to his country", Universal Declaration of Human Rights.

¹⁸. Migration without borders. An investigation into the free movement of people, (GCIM), 2005.

¹⁹. http://www.hreoc.gov.au/about_the_commission/speeches_president/2006/20061024_migrants.html .