

Towards an EU-wide regularisation scheme

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The Council of Europe estimated in late 2007 that there are as many as 5.5 million irregular migrants residing in the EU. From both a human rights and a good governance perspective, this situation is crying out for change.

The EU immigration framework is presently based on the idea that there are two types of irregular migrants: persecuted refugees (legal) and economic immigrants (illegal). This presumption informs a policy that aggravates stigmatisation and criminalisation of refugees and migrants alike. In reality, both 'types' of migrant usually originate from countries characterised by chronic poverty, violent conflict, political instability and socio-economic deprivation which generate both refugee-producing conditions as well as other modes of (*de facto*) forced migration to places of greater political and economic stability.

In this way, the actual differences between the 'push' factors of persecution as anticipated by the 1951 Convention and the 'push' factors of the daily struggle with a life lacking in economic opportunity are often minor.

There are of course significant economic and demographic interests at stake for Europe in the immigration debate but what is needed, above all, is a human rights approach to policy reform. The security-oriented approach to countering irregular

migration cannot and does not succeed in halting undocumented entry into the EU, because those who risk their life to travel to Europe do so not on a whim but in order to satisfy basic human needs such as physical security and the opportunity to secure a livelihood that will support themselves and their dependents. These are needs that will be pursued one way or another, regardless of obstacles, dangers and institutional discouragement.

The existing legal framework, however, proscribes the stay of migrants who are not considered – by domestic asylum procedures – to be in need of international protection. This will not deter the more determined migrants but will rather force them to the margins of society, giving rise to a range of human rights challenges linked with social exclusion.

An argument for regularisation

At present, rather than permitting the flow from migrant supply to employment demand, migration policies have tended towards greater restriction of migration movement. Undocumented migrants who are without work face considerable risk and difficulty in relocating to

another area or country with greater employment prospects. These people often live in substandard and precarious circumstances but stay put if at all possible because this poses the least threat of arrest and expulsion.

Whereas in normal migration flows the worker would follow the work, the Dublin II Regulation¹ and other EU rules operate precisely to limit this movement. There is much ongoing debate about easing the Dublin II provisions, largely in the context of how best to alleviate the pressures they place on states located on the eastern and southern frontiers of the EU. However, Dublin II rules prohibiting freedom of movement create social problems everywhere – not just in frontier states – because people are, to a considerable extent, 'stuck' wherever it is they first arrive, and end up doing anything they can to make ends meet. In such conditions, they become vulnerable to abuse and exploitation.

Policy improvements to administer labour migration while avoiding an outcome of internal EU immobility would benefit countries of first arrival, countries that require migrant labour and migrants themselves.

Without regularisation, there is no possibility for administrative controls or registration of social support needs; without an administrative 'identity' and social rights, there can

Spanish coastguard intercepts a traditional fishing boat laden with migrants off the island of Tenerife in the Canaries. These boats can carry up to 150 people and take three weeks to reach the Canaries from ports in West Africa.



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be no inclusion in the host society. It may be extremely difficult for migrants in this situation to find spaces to interact normally with the host society; eventually, they may become uninterested in doing so. A human rights approach could see regularisation as a way of affording migrants an important stake in the society in which they live and work.

At present, the asylum 'channel' is often the only procedure available to irregular migrants wishing to regularise their stay in the host country, yet many migrants will be unable to sustain a claim under the 1951 Refugee Convention. Those who come irregularly to Europe from developing countries will have made a substantial investment in their migration relative to their resources and are therefore unlikely to be

dissuaded from staying and finding work on account of a negative asylum result. It is clear, therefore, that major immigration policy reform is needed in order to adapt itself to the changing dynamics of mobility and migration.

Simple expulsion from Europe as a strategy for responding to irregular migration has proven not only ineffective and costly but also highly contentious from a human rights point of view. Seeking to maintain the crude distinction between (lawful) Convention refugees and (unlawful) irregular migrants is no longer administratively practical, nor does it reflect reality. A holistic re-appraisal of EU migration policy must recognise that European migration will continue so long as the 'push' and 'pull' conditions caused by global economic inequalities are

present and that important principles of justice are served by providing migrants an identity and a role within a society that requires their labour.

A reformulation of immigration policy that proceeds towards regularisation could go a long way in delivering on the human rights principles that the EU embodies, and would bring migration policy ever closer to the principles of freedom, security and justice on which the Union is based.

Discussions in Brussels concerning possible modalities for a common regularisation strategy regarding long-staying migrants have persisted in fits and starts for years, in a context of political unease and institutional ambivalence. It is clear that real leadership and vision at the Brussels level are required to push forward a comprehensive strategy to address the human rights situation of Europe's undocumented migrants; a response that is committed to achieving a more just and compassionate society through a fairer access to status regularisation in Europe.

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1. See <http://europa.eu/scadplus/leg/en/lvb/l33153.htm> and ECRE report <http://tiny.cc/ECREDublinII>



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