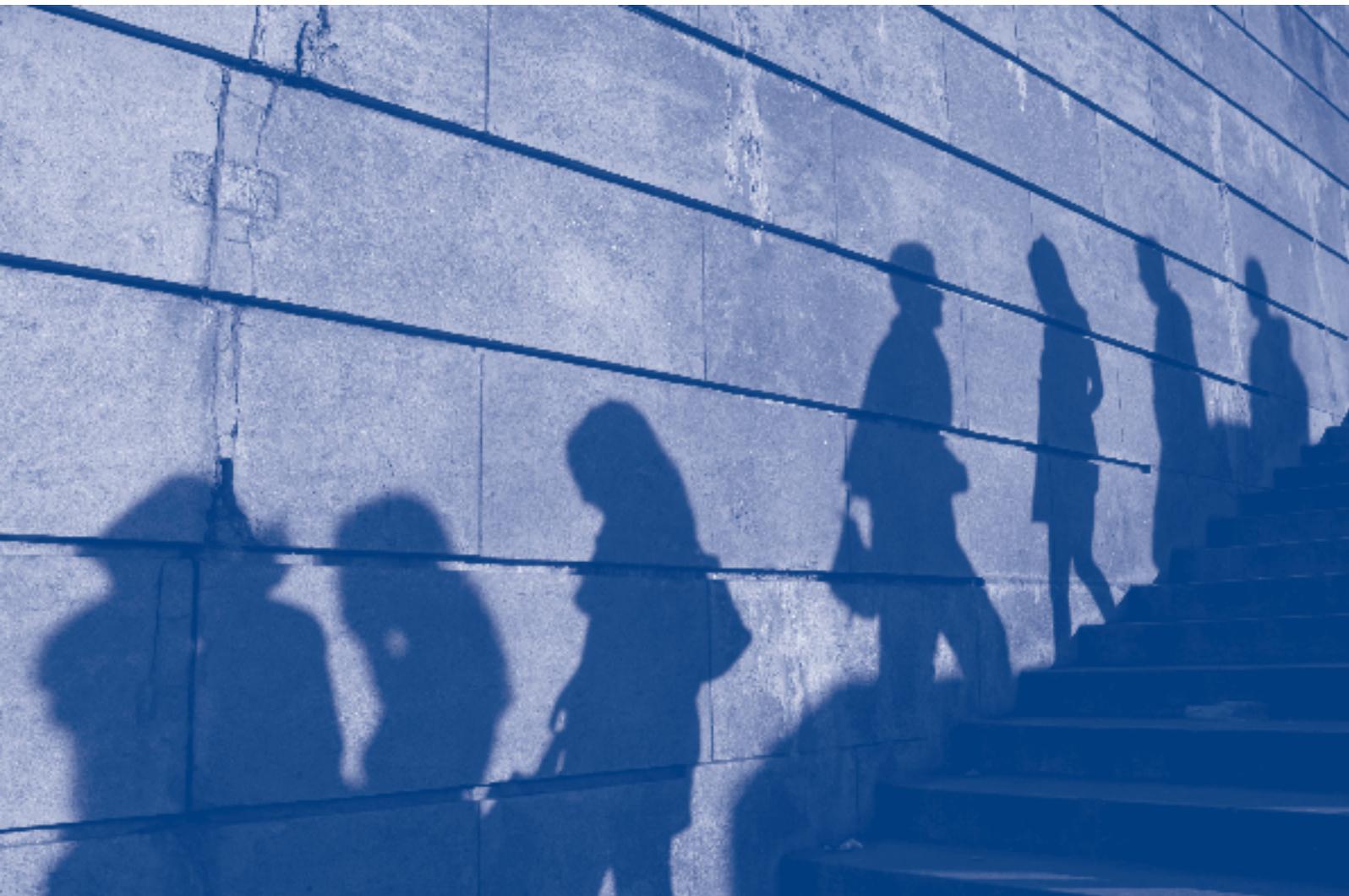


# Irregular Migrants:

the urgent need for a new approach



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# Aim and Methodology

## Publication Aim

The known presence of an estimated 725,000 irregular migrants in the UK presents politicians and civil society with a challenge which is currently not being met. But the work of independent researchers can tell us much about how irregular migrants arrive, what they do, and the critical issues which their presence introduces. Many workers, trade unionists and volunteers are already developing new services or adapting their work to meet the needs of irregular migrants, and need this information. It should also feed into the development of effective long-term policies to address the causes and effects of irregularity.

The aim of this short publication is to separate established fact from polemic and ideology, so shifting the terms of the emerging debate about irregular migrants onto a terrain that is properly informed by the available research. This report identifies some of the key questions that are being asked about irregular migrants, and uses research to provide answers where they are known, and an honest response where they are not.

## Methodology

This report was written by researchers from MigrationWork and by staff at the Migrants' Rights Network, as a collaborative review of available evidence on irregular migrants in the UK, and the impacts of government policy responses to their presence.

During the course of the drafting, the report team held three roundtable sessions with key people working with irregular migrants, involving non-governmental organisations, trade unions, academics, public sector workers and migrant activists. These sessions helped us to establish the 'key questions' about irregular migrants and regularisation that they felt needed to be addressed by the report. Participants' insights and experiences, shared in the roundtables and in individual interviews also carried out for this report, have been included where appropriate in the text. No comments have been attributed to individuals, although the full list of roundtable participants and interviewees is included at the beginning of this report.

In addition we have drawn on first-person accounts from some detailed case histories compiled by the organisation Praxis, which runs an undocumented migrants advice project in London. We include some of these case histories, because they allow some insight into how the research and policies discussed feel to those affected.

## Note on terminology

The term 'irregular migrants' describes people who are not complying with some aspect of immigration law and rules. Although often referred to as 'illegal migrants', many people prefer to use the terms "irregular", or "undocumented", migrants. This is because many irregular migrants commit administrative, rather than criminal, offences and so it is misleading to use the term "illegal" which has associations with criminality.

## SECTION A – WHO ARE THE IRREGULAR MIGRANTS IN THE UK?

### 1. “How do people become irregular migrants?”

Although irregular migrants are a varied and largely hidden group of people, research conducted by academics, think tanks and Government bodies gives us some indication of the ways that people become irregular. We tend to know more about people who have claimed asylum or have serious problems in their lives (illness, very exploitative work, eviction, relationship breakdown) because they are the ones who come into contact with government or charitable agencies.

The main ways in which a person can become an irregular migrant in the UK are<sup>1</sup>:

- Staying after permission has expired or applications to stay have all been refused. Refused asylum seekers fall into this group, but people granted protection may also become irregular as they are given time-limited leave to remain in the UK. If renewal is then refused but they remain in the UK they will become irregular. It also includes people who have come to the UK on, for example, a work, study or visitor visa who then continue to live in the UK after their visa has expired.
- Entering the country illegally, by means of “deception” which can cover anything from using forged documents to not telling the truth about the reasons for coming to the UK<sup>2</sup>.
- Being born: children born to irregular migrants will often have no rights to stay in the UK either, unless one of the parents is not irregular and is able or willing to “pass on” British citizenship or rights to stay.
- Not complying with the conditions attached to leave to remain or the purpose for which leave was granted. One of the most common of these is working in breach of visa restrictions, for example:
  - overseas students are allowed to work for 20 hours a week in term time; if they work more hours they would be in breach of their regulations and become irregular
  - a worker allowed to work may move from one employer or job to another without changing their records with the Home Office
  - This group also includes those who, for example, arrive on the basis of a marriage but can no longer stay with their partner because of violence

*“I have been placed in a very difficult situation where I am not allowed to leave the country even if I wanted to because I have no travel documents, I cannot claim any government support nor can I be allowed to work. I now sleep on the night bus and during the day I am on the (underground). At 5am I gain easy access at some stations and since it is a long line ....., after travelling 3 return journeys it is time to retire for the night in the night bus where after five return trips I know it is time for me to go to the underground. I am clean though – I use MacDonald’s to have a wash and I have a toothbrush that I got from the Red Cross. This is more than a life sentence because although I have made a fresh application my fate is uncertain”.*

#### **Praxis case history**

The available evidence indicates that the majority of irregular migrants begin by entering the UK through legal routes such as coming to work, visit family members or seek asylum, and become irregular later<sup>3</sup>. It is likely that the ‘illegal entrants’ who often appear in headlines and political speeches – referring to migrants who cross the UK border in

<sup>1</sup> Vollmer, B. (2008), *Undocumented Migration - Counting the Uncountable, Data and Trends across Europe* – UK Report, Oxford: CLANDESTINO project.

<sup>2</sup> See for instance: *R v Secretary of the State for the Home Department es p Kuteesa [1997] Imm AR 194.*

<sup>3</sup> Düvell, F. (2006), *Irregular Migration: a Global, Historical and Economic Perspective*, In Düvell, F. (ed.) *Illegal immigration in Europe: Beyond control?* Houndmills: Palgrave/MacMillan.

secret – are a minority of irregular migrants<sup>4</sup>. No-one knows how many people manage to cross the UK borders illegally, but we do know that entering the UK illegally is very dangerous and can be fatal. Common causes of death while entering the UK are suffocation in lorries, drowning in the English Channel, or freezing to death as stowaways on airplanes<sup>5</sup>. Those who do it are likely to be the most desperate, and typically include the majority of people seeking asylum.

Some irregular migrants in the UK may have followed former immigration routes that have now been closed down because of changes in national policy. Chinese people, including ethnic Chinese from Vietnam, were once generally granted refugee status in the UK. Although the numbers of Chinese asylum seekers remain relatively high, now that China is seen as a friendly power, very few are granted asylum. In 2007, Chinese nationals were among the top five nationalities to seek asylum, making 2,100 applications for asylum<sup>6</sup>. 1860 asylum applications were also refused in 2007, indicating that the success rate for Chinese asylum seekers is low.

Ukrainians used to be able to come to the UK to work in specific occupations under the Seasonal Agricultural Worker Scheme, but now cannot because it is restricted to Romanians and Bulgarians. Young people from across the Commonwealth were able to come to the UK on the Working Holidaymakers Scheme, and many taught in schools. That route has now been closed down and replaced with a scheme that only covers people from Australia, Canada, Japan and New Zealand. People who used to come to the UK on schemes for unskilled workers now may only arrive to “study” for NVQs attached to a work placement that sometimes tips into irregular working as a way of supplementing low pay<sup>7</sup>.

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<sup>4</sup> Vollmer, B. and Duvell, F. (2009) *Research Briefing* United Kingdom, Clandestino Project, COMPAS: Oxford.

<sup>5</sup> Düvell, F. and Vollmer, B. (2009), *Research Results*, Oxford: Centre of Migration, Policy and Society.; PICUM/ Clandestino Event 27 March, 2009

<sup>6</sup> Home Office, Asylum Statistics UK 2007 <http://www.homeoffice.gov.uk/rds/pdfs08/hosb1108.pdf>

<sup>7</sup> Examples provided by roundtable participants and checked in Immigration Rules and Immigration Directorate Instructions.

## 2. “Why do they come to the UK?”

As most irregular migrants enter the UK legally, there is no reason to believe that they have come to the UK for different reasons to any other migrants:

- because it offers safety

*“I met a man whom I wanted to marry but my father would not allow for the marriage. I come from an institution where marriages are arranged and defying a marriage arrangement may be punishable by death. I then decided that I would escape being a victim of honour killing”*

**Praxis case history**

- because it offers work

*“I came into this country in 1999. I have been working as a carer ..... I live ..... with my daughter. I came here on a visitor's visa which has expired long time ago”*

**Praxis case history**

- because family members are here

*“I arrived in the UK in 2002 as a visitor. Initially I had come for my aunt's wedding (she later became ill and applied to stay but has heard nothing)”*

**Praxis case history**

- or just “because the UK is there”<sup>8</sup>

*“The father of my children was no more, his senior wives started giving me problems until another very old woman whom I call my friend took me in with my children. .... One day someone known to my friend came looking for someone who would help look after his children in England. I accepted and he organised everything including the passport for me. .... I initially stayed with this man in Manchester and there were no children to look after but he had brought me here for sexual exploitation.”*

**Praxis case history**

Behind these individual stories there are bigger ones. For example, there are many irregular migrants from Senegal in Europe, and the last 20 years has seen the destruction of traditional ways of life like fishing by systems introduced by the developed countries. Even the middle classes can be impoverished by globalization. Entrepreneurs may find themselves forced out of Senegal by corruption and human rights abuses.

*People have no choice but to leave Senegal: a new saying by young people is “Barcelona or die”. Wealth is transferred from poor to rich countries and migrants follow it.*

**Roundtable participant**

As with other migrants, their reasons for coming and staying may change over time<sup>9</sup>. This can happen for many reasons. Some people find they have accidentally overrun their permission to be here or, as a result of the complicated immigration rules, no longer meet the criteria to renew their stay in the UK. Some migrants may find that the immigration route that they arrived under has closed down or changed its terms. The ongoing overhaul of the immigration system to introduce the Points-Based System for work and study in the UK will mean that many of the migrants currently in the UK under the work permit scheme or other working visas may cease to qualify for renewal when their current

<sup>8</sup> Bloch, A. et al. (2007). *Scoping Study Report*. Paul Hamlyn Foundation Social Justice Programme. Research into Young Undocumented migrants.

<sup>9</sup> Vollmer, B. and Duvell, F. (2009) *Research Briefing United Kingdom*, Clandestino Project, COMPAS: Oxford.

leave to remain in the UK comes to an end. If they do not leave the country at this point then they will become irregular migrants.

Some migrants may willingly stay without permission, for example because they fear conflict in their country of origin, or to keep sending money to families there. Some migrants in paid employment in the UK become irregular if they lose their job but remain here. Recession may mean this happens more often. Irregular migrants don't conform to any stereotypes and their individual circumstances affect what they do.

Once people become irregular in the UK, it is usually very difficult for them to resolve their status and be re-issued with the papers they need. Until recently they might sort out their situation by leaving the country and applying for a fresh visa allowing them to return and continue their stay. But since March 2008 this possible solution has been closed by the Government, with new regulations banning people who breach immigration rules from returning to the UK for between one and ten years<sup>10</sup>.

Some people who become irregular cannot return to their country of origin even if they want to because of unsafe conditions, lack of documentation needed to travel, or refusal of their country of origin to accept them.

*“People are picked up in restaurant raids but then sent back to the restaurants because they cannot be returned as they do not have the documents, or their country will not accept them. They are told they must not work, or are returned to relatives because there is no room for them in detention centres.”*

**Roundtable Participant**

Others have British children now (because the other parent is British or settled here) or are too ill to travel. A minority find themselves homeless and destitute in the UK, reliant on support sometimes provided by local charities or churches. Some people become stuck, and cannot resolve their situation even if they want to.

*“People arrive with leave to remain, get ill and unable to work or study, then get diagnosed with HIV, then get bad legal advice, and then work because they fear removal and want to build up funds in case it happens: they have no alternative...”*

**Roundtable participant**

<sup>10</sup> Statement of Changes in Immigration Rules HC321, 6 February 2008, [www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2008/hc321.pdf?view=Binary](http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2008/hc321.pdf?view=Binary)

### 3. “How many irregular migrants are there in the UK, and how does this compare to other countries?”

No-one knows for sure how many irregular migrants there are in the UK because many irregular migrants do not appear in official statistics. In addition, there is no current system to comprehensively record data from people leaving the UK, only for those arriving. Various attempts have been made to estimate the number of irregular migrants, using a range of methods which remain subject to debate. Figures offered at different times vary from 123,300 to a million. The lower estimates tend to come from more rigorous research projects.

A report commissioned by the Home Office, and using widely-accepted methodology, produced a central estimate of 430,000 for 2001, representing 0.7% of the UK population in that year<sup>11</sup>. This figure does not include any UK-born children of irregular migrants. Asylum figures for the early 2000s indicate that there were around 286,000 refused asylum seekers in the UK at this time, which would account for around two-thirds of this overall figure<sup>12</sup>.

A report released in 2008 by the London School of Economics (LSE) updated the same methodology but added in an estimate of UK-born children of irregular migrants. This study gives a central estimate of 725,000 irregular migrants and their UK-born children at the end of 2007<sup>13</sup>. Leaving out the UK-born children to allow direct comparison with the earlier Home Office study, this indicates a total of about 660,000 irregular migrants UK-wide. On this basis, irregular migrant households made up around 1.2% of UK population at the end of 2007. The recent LSE research estimates that there were 518,000 irregular migrants in London at the end of 2007, about two thirds of the UK total<sup>14</sup>.

It is difficult to accurately break down the total figure according to the type of irregularity, due to the lack of reliable evidence. However the LSE team did estimate that the number of refused asylum seekers was likely to have increased by around 219,000 since 2001. This indicates that at least a third of the 725,000 irregular migrants in the UK are refused asylum seekers, and that there may be up to 505,000 refused asylum seekers in the UK at the end of 2007 – two-thirds of the total<sup>15</sup>. The report estimates that at least 50,000 irregular migrants in the UK have overstayed a visa or entered irregularly. 66,000 people are estimated to have been born in the UK to irregular migrant parent/s. The estimate of 725,000 people does not include migrants who were legally in the country but working in breach of their immigration status conditions at that time.

There is no evidence that the number of irregular migrants in the UK is disproportionately high. Research from some other European countries such as Germany and Austria indicates a percentage of irregular migrants roughly equal to the UK figure, although it's likely that the reasons for being irregular vary according to national contexts<sup>16</sup>. Total estimates for irregular migrant numbers within the whole European Union (EU) vary between 2.8 and 8 million, or between 0.6% and 1.6% of the total EU population of just under 500 million<sup>17</sup>. Some of the variation in estimates may reflect different definitions of

<sup>11</sup> Woodbridge, J. (2005) *Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001*, Home Office Online Report

<sup>12</sup> Gordon, I, Scanlon, K, Travers, T and Whitehead, C. (2009) *Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK Interim Report from LSE London*

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Ibid. The figure of 505,000 refused asylum seekers would assume that no refused asylum seekers have left the UK or had their case resolved by the Case Resolution Directorate.

<sup>16</sup> Duvell, F. *Irregular Migration in Northern Europe: Overview and Comparison*, Centre on Migration, Policy and Society, Oxford. Clandestino Project Conference, London, 27/3/2009,

<sup>17</sup> The various reports of the EU CLANDESTINO project give details of irregular migrant estimates for the European Union – [www.clandestino.eliamep.gr/](http://www.clandestino.eliamep.gr/)

“irregular migrant” between countries, for example whether the category covers refused asylum seekers or people who are “semi-irregular”, such as those legally resident but working in breach of their immigration conditions. Taking the most recent UK estimate from the LSE, the likely UK resident irregular migrant population is close to the estimated EU average of 1.1%<sup>18</sup>.

Within Europe, there is variation between countries as to the causes and conditions of irregular migrants living there. Some patterns across the European Union have been identified by researchers. Countries like Spain and Italy are sometimes called “transition countries” because have more irregular migrants who may then move on into other parts of Europe<sup>19</sup>. The UK is less likely to be a route, as opposed to a destination, for irregular migration.

It is important to put the presence of irregular migrants living in the UK within a wider context. States are increasingly interconnected at a global level, reliant on international flows of information and people. There are roughly 20 to 30 million unauthorized migrants worldwide, comprising around 10 to 15 per cent of the world's immigrant stock<sup>20</sup>. The 2007 estimate for the UK is under half the proportion of irregular migrants in the United States of America, where 3.8% of the total population are estimated to be irregular migrants.

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<sup>18</sup> Duvell, F. Irregular Migration in Northern Europe: Overview and Comparison, Centre on Migration, Policy and Society, Oxford, Clandestino Project Conference, London, 27/3/2009,

<sup>19</sup> Kraler, A. (2009). *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration*. IMISCOE Working Paper. N.24. ICMPD Austria

<sup>20</sup> United Nations' Trends in Total Migrant Stock: The 2005 Revision, <http://esa.un.org/migration>

#### 4. “Is irregularity the same as criminality?”

It has become increasingly likely that irregular migrants will be defined as criminals because the UK government has made more breaches of immigration rules criminal offences<sup>21</sup>. The governments of some other countries, such as Austria, define breaches of immigration law as administrative offences<sup>22</sup>.

*“The law keeps moving, everything is criminalized. Look at the new Bill: students, who bring £10bn into the economy annually, are to be penalized for non-compliance and each is to be a separate criminal offence, but this includes things like switching courses without UKBA endorsement”*

**Roundtable participant**

Even in the UK, the lines can be blurred. Asylum seekers may arrive in the UK on false papers, be convicted of an offence in relation to this and even serve a prison sentence, but then be granted refugee status and leave to remain in the UK: the criminal record remains even though the leave has been regularised<sup>23</sup>. Sometimes the offender may not even know that an immigration offence has been committed. The deregulation of employment, and the use of agencies in particular, can blur the line between legal and illegal work<sup>24</sup>, or between work and volunteering.

*“People often do not know: for example one organisation has a lot of very good volunteers and they get asked to speak at conferences and are offered a fee (and these may be official events) and they accept and then they have worked illegally”*

**Roundtable participant**

Irregular migrants may find themselves in situations where they cannot decide or control what happens. Using false papers to work or open a bank account increases the precariousness of such a situation<sup>25</sup>. Obtaining these papers may mean contact with other types of criminals and trigger or force other types of criminal activity<sup>26</sup>. Some irregular migrants may commit criminal offences to survive.

*“Although I knew that I had no right to work I still had to make a living so I got a job as a carer in a nursing home. I worked informally here and I paid my NI and tax and also did an NVQ in primary care but did not finish the course because the new employers insisted that I produce papers which I did not have. I then moved where I was hoping to live with friends but ....I ended up in the streets. I have once been convicted of shoplifting ....”*

**Praxis case history**

Irregular migrants may also be the victims of crime, including the crimes of trafficking and exploitation. People who have been trafficked, (tricked or forced into coming to the UK

<sup>21</sup> Vollmer, B. (2008), *Undocumented Migration - Counting the Uncountable, Data and Trends across Europe – UK Report*, Oxford: CLANDESTINO project; Engbersen, G., van San, M., Leerkes, A. (2006), *A room with a view – Irregular migrants in the legal capital of the world*, *Ethnography*, 7 (2): 209-242.

<sup>22</sup> Kraler, A., Reichel, D. Hollomey, C. (2008) *Counting the Uncountable. Data and Trends across Europe – Austria Report*. Clandestino Project.

<sup>23</sup> S2 Asylum and Immigration (Treatment of Claimants) Act 2004 introduced the offence of not having or producing a passport or similar during an asylum application and Sections 25 and 26 of the identity Cards Act 2006 make possession of false documents with intent to gain (which includes working without authorisation) an offence.

<sup>24</sup> Anderson, B. and Rogaly, B. (2005), *Forced Labour and Migration to the UK*, Study prepared by COMPAS with the Trade Union Congress.

<sup>25</sup> Vasta, E. (2008) *The Paper Market: ‘borrowing’ and ‘renting’ of identity documents*, Working Paper No. 61, COMPAS: Oxford

<sup>26</sup> The Guardian 10th April 2009 *Use of student visas would skirt security services focus*. <http://www.guardian.co.uk/world/2009/apr/10/student-visas-pakistan-terrorism>

and then used for forced labour or prostitution) are victims of serious crimes, and form a small and distinct group within irregular migrants (not all trafficked people are irregular migrants). The April 2009 anti-trafficking measures<sup>27</sup> embody an approach of treating irregular migrants as “victims first”, including allowing a 45 day period of reflection plus and the possibility of a residence permit to allow the victims to become witnesses. Some police forces have discussed extending this approach to other situations, but irregular migrants remain fearful of reporting crimes because this may lead to action against them<sup>28</sup>.

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<sup>27</sup> UKBA press release 1<sup>st</sup> April 2009 *New measures to boost United Kingdom fight against human trafficking* <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/boosttougfightaginsthumantraffic>

<sup>28</sup> See, for example, the *Good Practice Guidance on working with Migrant Sex Workers* issued by the UK Network of Sex Work Projects for some examples of this

## 5. “How are irregular migrants employed in the UK?”

Available research and anecdotal evidence indicate that irregular migrants are employed in many different types of jobs, from highly-paid professional positions to low-paid employment or work within the informal economy. People in all types of jobs may be at risk of becoming irregular if they fail to ensure that their immigration status continues to permit them to work in a particular position.

*“Our organisation was contacted by someone working as a high-level academic researcher who realised they had failed to get right stamp in their passport to renew their work permit three years ago. They had become irregular accidentally”.*

**Roundtable participant**

*“There were always irregular migrants at the top but it was ignored: US citizens come here for holidays but are actually working for big companies at senior levels. Film companies do the same with technicians too”.*

**Roundtable Participant**

Research carried out by Queen Mary University and Oxford University’s COMPAS research institute has focused on the employment of irregular migrants in low-paid work who are likely to be the majority of irregular workers<sup>29</sup>. Low wages are often associated with high levels of exploitation. Irregular migrants within this sector tend to work both in the informal and the formal low-paid sectors, in hospitality, care, cleaning offices, coffee shops, parking lots, luxury hotels, laundry shops and restaurants, some of which are ethnic enterprises. Irregular migrants thus are an important part of the two million vulnerable workers who are employed in the informal economy that represents about 12.3% of the UK’s GDP<sup>30</sup>.

The available data on London – the home of an estimated two-thirds of the UK’s irregular migrant population<sup>31</sup> – indicates that a number of irregular workers are employed in low-paid positions in the capital. One in five documented workers in London (the most recent available data) earned less than the “London living wage” in 2005<sup>32</sup>, and it is likely that many or most irregular migrants also fall into this group<sup>33</sup>, with some of them paid considerably less<sup>34</sup>.

*“I am currently employed at a car wash depot where I clean cars .My employer knows that I am not allowed to work in this country. As such he pays me below the minimum wage as directed in this country and I have no way of complaining as long as I can get some money to make me survive”*

**Praxis case history**

Low paid migrants, including irregular migrants, often develop strategies to survive which may involve working long hours, taking on more than one job or minimising expenditure,

<sup>29</sup> McKay, S. (ed.) (2009), *Refugees, Recent Migrants and Employment*, London: Routledge; Evans Y, Herbert J, Datta K, May J, McIlwaine C and Wills J (2005), *Making the City Work: Low Paid Employment in London* Queen Mary University of London.

<sup>30</sup> Community Links (2009) *The Informal Economy*, Social Change Series

<sup>31</sup> Gordon, I, Scanlon, K, Travers, T and Whitehead, C. (2009) *Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK* Interim Report from LSE London

<sup>32</sup> Calculations of the ‘London Living Wage’ are made by the Greater London Authority, taking into account the higher living costs of London to calculate an alternative minimum wage for London residents. For more information see: [http://www.london.gov.uk/mayor/economic\\_unit/docs/current-issues-note-22.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/current-issues-note-22.pdf)

<sup>33</sup> Datta, K. et al. (2006 b). *Work and survival strategies among low-paid migrants in London*. Department of Geography, Queen Mary ,University of London.

<sup>34</sup> Kofman, E, Lukes, S, D’Angelo, A and Montana, N (2009) *The equality implications of being a migrant in Britain* Social Policy Research Centre, Middlesex University

for example on food, rent and utilities<sup>35</sup>. They may also seek social support from community-based networks and/or faith communities.

*"I have been able to keep myself busy, despite the fact that I am not allowed to work I used to volunteer at (name of organization removed) and that is the only organisation which gave me a sense of belonging in this country. I have been and still attend church services where church members do not know about my health status but are very sympathetic of my situation in that I have the necessary ability but because of immigration control I cannot work or develop myself".*

**Praxis case history**

Immigration rules can change the power-relationship between employer and employee. Employers have more power over most migrant workers than other workers, as the majority of migrant workers rely on their employers for their continuing stay in the UK. Employers can make their workers irregular, by breaking the rules themselves, or make the person irregular by sacking them. When the employment of irregular migrants is deliberate and conscious, the balance of power and knowledge is tipped even further.

*"They tell you they have got a work permit for you, then send you to work somewhere else, so you become irregular that way."*

**Roundtable participant**

Some irregular migrants undertake work in the UK which is poorly paid or not paid at all. This may take the form of forced labour, backed by violence, threats of violence or threats against families, or linked to "agents" who arrange travel and documentation for a significant fee to be repaid later<sup>36</sup>. Kalayaan, an organization which supports domestic workers in the UK, reports incidents in which private employers have subjected irregular migrant workers to serious physical and/or emotional abuse<sup>37</sup>. The Equality and Human Rights Commission reports incidents in which irregular migrants have been exploited by family or 'friends', who have offered them accommodation and food in return for excessive domestic work or sexual favours<sup>38</sup>.

<sup>35</sup> Datta, K. et al. (2006 b). *Work and survival strategies among low-paid migrants in London*. Department of Geography, Queen Mary ,University of London.

<sup>36</sup> See, for example, Skrivánková, K (2006) *Trafficking for Forced Labour* Anti-Slavery international London

<sup>37</sup> Kalayaan and Oxfam (2008) *The New Bonded Labour?* The impact of proposed changes to the UK immigration system on migrant domestic workers.

<sup>38</sup> Gupta, R (2007) *Enslaved: The New British Slavery*, Portobello

## SECTION B: WHY DOESN'T ENFORCEMENT WORK?

### 1. "Can the government stop irregular migration by toughening border controls?"

The current UK government 'managed migration' strategy prioritises the tightening of border controls, restricting the opportunities for people from outside the European Economic Area (EEA) to enter the UK<sup>39</sup>. It has been more difficult for people to seek asylum in the UK, reflected in the overall decline in numbers of asylum applicants since 2002<sup>40</sup>. It has similarly become more difficult for people to enter the UK to work, particularly for employment in 'low-skilled' manual or occupations. The UK government's decision to indefinitely suspend Tier 3 (for low-skilled temporary labour) of the Points-Based System for immigration has meant that opportunities to enter the UK for low-skilled work are likely to continue to be extremely limited. This strategy may reduce the chances of non-EEA nationals entering the UK under particular immigration categories, but because most irregular migrants arrive in the UK legally, increasing border controls cannot end irregular migration.

In fact, as the Government has tightened border controls over the last decade<sup>41</sup>, estimated numbers of irregular migrants in the UK have risen roughly 50% from 430,000 in 2001 to 660,000 (on an equivalent basis) at the end of 2007. Rising numbers of irregular migrants in the last decade, in tandem with tougher border controls and immigration policies, have not surprised researchers, who indicate that this is likely to be for a number of reasons. Heavier border controls and higher fees for visas and residence permits also make it harder for people to comply, so more "fall out" of the system. And many, driven to migrate by overwhelming need (for example to escape danger or support their family), will try to do so whether it is legal or not<sup>42</sup>.

Tougher border controls mean that once migrants become irregular here, they are less likely to return to countries of origin as their chances of returning to the UK legally are slim. Limiting patterns of 'circular migration' may thereby contribute to an increase in numbers of irregular migrants present in the country<sup>43</sup>. Other countries have found the same: the numbers of irregular migrants rose in tandem with increasing border controls. In the USA for example, alongside high investment in border control since the Clinton era, irregular migrant numbers have risen from around 5 million in 1996 to an estimated 12 million in 2008<sup>44</sup>. Indications from the UK and other countries are that strengthening border controls is a limited tool for dealing with irregular migration.

Contrary to claims that increasing border control results in a reduction in numbers of irregular migrants, some researchers point out that irregular migration is a product of a government failure to meet the immigration needs of the country by providing adequate opportunities to travel legally to that country or to stay legally once migrants have settled. Many academic and policy reports suggest that irregular migration should be addressed

<sup>39</sup> See the government white paper '*Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*', February 2002 <http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf> and '*Controlling our Borders: Making migration work for Britain, Five-year strategy for asylum and immigration*'. February 2005.

<sup>40</sup> RDS Home Office (2008) Control of Immigration Statistics 2007

<sup>41</sup> Home Office (2005), Press Notice (028/05), Controlling our borders: Making migration work for Britain, the Government's five year strategy for asylum and immigration, 7 February 2005.

<sup>42</sup> Vollmer, B. (2008), *Undocumented Migration - Counting the Uncountable, Data and Trends across Europe - UK Report*, Oxford: CLANDESTINO project.

<sup>43</sup> Papademetriou, D G. (2005a) *The "Regularisation" option in managing more effectively: A comparative perspective*. MPI Policy Brief No. 4, 2005

<sup>44</sup> General Accounting Office US 135: 29. Testimony Immigration: Implementation of Legalisation Programme. Submission on immigration to Immigration and Refugee Affairs Committee on the Judiciary US Senate.

by opening up possibilities for migration, particularly labour migration, rather than closing them down<sup>45</sup>.

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<sup>45</sup> Broeders, D. And Engbersen, G. (2007), The Fight Against Illegal Migration: Identification Policies and Immigrants' Counterstrategies, *The American Behavioral Scientist*, 50 (12): 1592 - 1610; Düvell, F. (2006), Irregular Migration: a Global, Historical and Economic Perspective, In Düvell, F. (ed.) *Illegal immigration in Europe: Beyond control?* Houndmills: Palgrave/MacMillan; Papademetriou, Demetrios G. (2005a) *The "Regularisation" option in managing more effectively: A comparative perspective*. MPI Policy Brief No. 4, 2005

## 2. “OK, so irregular migrants are in the country, can’t we just deport them all?”

The Home Office immigration enforcement strategy ‘Enforcing the Rules’ (2007) and 2008/2009 business plan ‘Enforcing the Deal’ (2008) prioritise the removal or deportation of irregular migrants who do not leave the UK voluntarily<sup>46</sup>. For those irregular migrants who aren’t a ‘removal priority’, the current strategy aims to make life in the UK so uncomfortable that they choose to leave.

Research indicates that this enforcement strategy carries significant economic and social costs. In 2005 the National Audit Office (NAO) estimated that forcibly removing a refused asylum seeker costs, on average, £11,000<sup>47</sup>. In 2008 a more detailed estimate based exclusively on asylum seekers found that it would now only cost £11,000 for the “cheapest” case (a single man in a fast track process in a detention centre) Direct costs to remove a family can exceed £28,000<sup>48</sup>. On the 2007 estimate of 725,000 irregular migrants in the UK including families, this implies a cost of well over £8 billion to remove all irregular migrants. It would also take a long time, about 30 years at current deportation rates<sup>49</sup>.

The NAO judged in 2005 that the Home Office did not then have the capacity to return the failed asylum seekers who had already been identified as irregular<sup>50</sup>. In 2006, the then Home Secretary announced that “the immigration enforcement budget would be doubled to £280m a year by 2010<sup>51</sup>”, a fraction of the £8 billion estimated to be necessary to identify and remove those irregular migrants who continue to remain in the UK undetected.

Government immigration statistics indicate the failure of the enforcement drive to find and remove irregular migrants living in the UK. In 2007 just under 28,000 people – fewer than 4% of the total estimated 725,000 irregular migrants – were removed or voluntarily left the UK following enforcement action within the country (as distinct from being turned away at ports of entry)<sup>52</sup>. Moreover this figure does not take into account the fact that, during 2007, more people will have become irregular as a result of falling outside the system. Overall, in-country enforcement measures barely make a dent in the number of irregular migrants living in the UK.

Research indicates that, in addition to economic costs, tougher in-country enforcement processes levy significant social costs, likely to become increasingly apparent in the medium and long term. ‘Enforcing the Deal’ outlines the Home Office’s intention to

<sup>46</sup> Home Office (2007), *Enforcing the rules: A strategy to ensure and enforce compliance with our immigration laws*

[www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementstrategy/enforcementstrategy.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementstrategy/enforcementstrategy.pdf?view=Binary) and Home Office (2008) *Enforcing the Deal: Our Plans for Enforcing the Immigration Laws in the United Kingdom’s Communities*.

[www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementbusinessplan08\\_09/enforcementbusinessplan08\\_09.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementbusinessplan08_09/enforcementbusinessplan08_09.pdf?view=Binary)

<sup>47</sup> National Audit Office (2005), *Returning failed asylum seekers: a report by the Comptroller and Auditor General July 2005*.

<sup>48</sup> Accenture (2008) *Final Report: Costing Work stream – NAO Asylum Study*, NAO

<sup>49</sup> This is a simple calculation we have done, based on current UKBA figures of less than 30,000 people a year deported, removed or voluntarily returned from inside the UK (a further 30,000 returned from ports and airports) in 2007, and the basic figure of over 600,000 irregular migrants in the UK from the best recent estimate.

<sup>50</sup> National Audit Office (2005), *Returning failed asylum seekers: a report by the Controller and Auditor General July 2005*.

<sup>51</sup> The Guardian 25<sup>th</sup> July 2006 Reid tight-lipped on cost of biometric visas  
<http://www.guardian.co.uk/politics/2006/jul/25/immigrationpolicy.immigration>

<sup>52</sup> RDS Home Office (2008) *Control of Immigration Statistics 2007*

increase the role for public authorities and private companies in<sup>53</sup>. The strategy envisages the UKBA establishing ‘Immigration Crime Partnerships’ to enable data-sharing and collaboration with a range of public and private bodies – including police constabularies, workplace enforcement agencies, local authorities, business enforcement agencies, the Driver and Vehicle Licensing Authority, Primary Care Trusts and financial service, telecoms and utility companies. Such partnerships introduce new responsibilities for these public and private bodies, including monitoring and reporting contact with irregular migrants to the UKBA.

The new Points-Based System for immigration has additionally introduced duties for employers, education-providers and other ‘licensed sponsors’ of migrants applying to come to the UK to work or study. Under the new system, all ‘licensed sponsors’ must cooperate with the UKBA requirements if they wish to bring migrants to the UK for work or study. These requirements include keeping records on their sponsored migrants and ensuring compliance and cooperation with the immigration rules. Sponsors are required to report any behaviour that they find suspicious to the UKBA, including, for example, a foreign student failing to attend the first day of the academic year at their sponsor university<sup>54</sup>. Failure to comply with these requirements effectively could result in the sponsor receiving a fine and being struck off the list of registered sponsors.

New Home Office biometric identity cards for foreign nationals aim to support current in-country enforcement measures<sup>55</sup>. The cards were introduced for people within selected immigration categories in November 2008, and the government aims that, by 2015, 90% of foreign nationals in the UK will hold an ID card<sup>56</sup>. The introduction of cards is linked to the development of a national biometric database and the use of a new “e-borders” system to toughen entry controls and monitor passenger exits.

The in-country enforcement strategy overall places new responsibilities for checking and reporting immigration status onto a wide range of different public and private bodies in the UK. Early indications from research are that this approach may generate public mistrust of foreign (and ‘foreign-looking’) people in the UK, with serious consequences. Documented outcomes of the in-country strategy thus far include:

- Discouraging the take up of health services by anyone who cannot produce documents, so impacting particularly on the vulnerable.<sup>57</sup>
- Increasing the incidence of racial discrimination and harassment because it is likely that ethnic minorities will feel singled out for checks<sup>58</sup>.
- Emphasising the differences between migrants and non-migrants, which damages community cohesion<sup>59</sup>.
- threatening equal access to employment for many people of different colour, national or ethnic origin<sup>60</sup>.

<sup>53</sup> Home Office (2008) Enforcing the Deal

<sup>54</sup> UKBA website – [www.ukba.homeoffice.gov.uk/studyingintheuk/adult-students/approved-education-provider/education-provider-duties/](http://www.ukba.homeoffice.gov.uk/studyingintheuk/adult-students/approved-education-provider/education-provider-duties/)

<sup>55</sup> Home Office (2008a), *Compulsory Identity Cards for foreign nationals UK Border Act 2007: Consultation on the ‘Code of Practice about the Sanctions for non-compliance with the Biometric registration Regulations*. London: Home Office.

<sup>56</sup> UKBA website – [www.ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals/](http://www.ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals/)

<sup>57</sup> Gould, M (2008) *Medecins sans Frontieres?* HSJ

<sup>58</sup> Datta, K et al. (2006a). *The Multicultural living? The Experience of New Migrants in London*. Queen Mary, University of London.

<sup>59</sup> Markova, E, and Black, R (2007) *Eastern European immigration and Community Cohesion*. York. Joseph Rowntree Foundation

<sup>60</sup> Migrants’ Rights Network (2008) *Papers Please: the impact of the civil penalty regime on the employment rights of migrants in the UK*, London

- Preventing the free movement of labour out of the UK as well as into it, which turns a potentially flexible workforce (like that presented by accession state migrants, who are now leaving the UK in large numbers as the economic situation changes<sup>61</sup>) into a possible burden
- Undermining trust in public services because of responsibilities to report information to the UK Border Agency, which could risk breaches in confidentiality.

*“One company singled out all the African workers, told them they were off to be trained and took them to a detention centre to check their papers”.*

**Roundtable Participant**

There are serious grounds for concern about the impact of in-country controls on irregular migrants themselves. Increasing surveillance measures or means of identifying individuals are unlikely in themselves to cause irregular migrants to leave the UK voluntarily. It is more likely that they will cause irregular migrants to reduce their contact with mainstream structures and systems. By moving further out of the public eye, the vulnerability of irregular migrants to exploitation, forced labour or criminal activity would be increased. Research into irregular migrants living in The Hague in the Netherlands noted the increase in general (or ‘subsistence’) crime among irregular migrants in response to toughened in-country enforcement controls<sup>62</sup>.

<sup>61</sup> Pollard\_N Latorre\_M\_and\_Sriskandarajah\_D\_(2008) *Floodgates or turnstiles? Post-EU enlargement migration flows to (and from) the UK* London: Institute for Public Policy Research, 2008

<sup>62</sup> Engbersen, G., van San, M., Leerkes, A. (2006). *A room with a view – Irregular migrants in the legal capital of the world*, *Ethnography*, 7 (2): 209-242.

### 3. “What is the impact of enforcement against employers of irregular migrants?”

The Immigration, Asylum and Nationality Act 2006 introduced new enforcement regulations that came into force in February 2009, increasing employers’ responsibility for checking the immigration status of their workers. In a guidance document for employers on the new regulations, the Home Office stated its aims as “*to take tough action against those employers who seek to profit from exploiting illegal labour*” and to “*work together with employers to ensure that illegal workers cannot obtain work in the UK*”<sup>63</sup>.

The regulations extended employers’ responsibilities beyond the point of workers’ recruitment, requiring them to check the documents of new migrant workers who don’t have the permanent right to work in the UK, at least every 12 months during their employment. The penalty for employing an irregular migrant was increased from the previous maximum of £5000 per irregular worker to £10,000. By generating local publicity about fined employers, the strategy aims to act as a deterrent for employers of irregular migrants.

One year after the introduction of the civil penalty regime, a relatively small number of employers had been penalised. Although over 1000 fines had reportedly been issued to employers by January 2009<sup>64</sup>, UKBA records show that, up to the end of January 2009, a total of just 233 employers had been successfully fined by the Home Office under the new regulations<sup>65</sup>. The list of named employers available on the Home Office website indicates that the majority of employers who have had fines imposed are owners of small, ethnic minority catering businesses, the majority of which have been fined for a maximum of three irregular migrant workers.

Even if raids against non-compliant employers were carried out on a more extensive basis, the evidence available from other countries suggests that this would not significantly reduce the employment of irregular migrants. In Germany the immigration authorities convict over 100,000 employers each year for the offence of employing irregular migrants, but report that this appears to have had no obvious effect in reducing numbers of irregular migrant workers<sup>66</sup>.

The wider cost to employers of the measures is likely to be substantial. In 2007 the Home Office estimated that it would cost employers £27 million to adjust their personnel systems to the new rules<sup>67</sup>, although it is not yet known what the actual cost to employers has been. Accounts from employer associations, including the British Hospitality Association and the Cleaning and Support Services Association, indicate that some employers have had difficulty understanding their new responsibilities, and that the Home Office has not provided adequate guidance to help them to do so effectively and responsibly<sup>68</sup>. It is particularly challenging for small and medium-size employers to meet the requirements. In theory, enforcement action could also target those individuals who

<sup>63</sup> Border and Immigration Agency (2008a) *Prevention of Illegal Working: Comprehensive Guidance for Employers on Preventing Illegal Working*. London: Home Office.  
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/comprehensiveguidancefeb08.pdf?view=Binary>

<sup>64</sup> UKBA press release, *Migrant workers face tougher test to work in the United Kingdom*, 22 February 2009  
<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/migrantworkerstoughertest>

<sup>65</sup> Figures supplied by the UKBA at  
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/listemployerspenalties/>

<sup>66</sup> Schierup, C, Hansen, P and Castles, S. (2006) *Migration, Citizenship and the European Welfare State*. Oxford University Press.

<sup>67</sup> Garcia, K (2007) *Dealing with illegal workers: how much responsibility should fall on employers?* Personnel Today

<sup>68</sup> Migrants’ Rights Network (2008) ‘*Papers Please*’ *The Impact of the Civil Penalty Regime on the Employment Rights of Migrants in the UK* London

engage migrant workers on a cash-in-hand basis, although it is hard to envisage how this would work in practice.

*“So many migrants work in people’s homes as cleaners, builders, nannies. Will the UKBA raid your home next and drag the cleaner out in front of the children?”*

**Roundtable Participant**

The government aim to reduce exploitation of irregular migrant workers seems unlikely to be met. Enforcement action in itself is not generally considered to be an effective way of countering exploitation. While employers are subject to large fines when they are caught, the migrant usually suffers an even greater penalty in being removed from the UK. This means that migrants who are subjected to substandard working conditions are not encouraged to report their employers to the authorities. The case of other migrant workers in the UK has indicated that it is only been when procedures are changed, and the victims of exploitation are offered at least medium-term security in the form of a work and residence permit, that they receive any real level of protection against the worst practices of bad employers. Some citizens of the eight Central and Eastern European states who were working irregularly in the UK prior to 2004 reported that accession to the European Union, and their resulting legal status, had led to an improvement in their working conditions<sup>69</sup>.

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<sup>69</sup> Anderson, B., Ruhs, M. Rogaly, B. (2006), *Fair enough? East European migrants in low-wage employment in the UK*, Centre on Migration, Policy and Society (COMPAS), Oxford: COMPAS,

## SECTION C – WHAT DO WE KNOW ABOUT REGULARISATION PROGRAMMES?

### 1. “What is regularisation?”

A “regularisation” is a government policy that offers the chance for some, or all, irregular migrants living in a country to apply for some kind of legal status in that country. It can be a one-off measure (often called an amnesty) or a permanent feature of the immigration rules. Introduction of regularisation measures are often introduced in tandem with a review of other policies on immigration, employment and social welfare and may be part of a whole package of new measures.

The British government has regularised over 45,000 people through one-off regularisation schemes between 1996 and 2008<sup>70</sup>. The UK currently has two long residence rules enabling foreign nationals who have lived here lawfully for 10 years, or have lived here partly or wholly unlawfully for 14 years, to apply for residence permits. But meeting their criteria is very difficult. Only 3,155 migrants gained status in the UK under long-residence rules in 2007, most applying under the 10 year rule<sup>71</sup>. The UK immigration system currently lacks a permanent regularisation mechanism which could resolve the position of the vast majority of the UK’s estimated 725,000 irregular migrants.

Proponents of regularisation programmes in the UK point out that, although regularisation programmes generally do not stop more irregular migrants from coming or staying, they do resolve many of the problems arising from the presence of irregular migrants here. The evidence is that this is generally a relatively cheap and effective way to do this<sup>72</sup>. It is a means of bringing irregular migrants into the legal framework, generating tax revenue, tackling the informal economy and ensuring that basic rights can be protected.

For these reasons, many governments across the world have regularised irregular migrants living in their countries, including the United States, United Kingdom, Spain, Italy and France. Though little publicised, regularisation policies have brought up to six million migrants into regular status across Europe<sup>73</sup>. Although the UK government has formally ruled out introducing a new regularisation measure, regularisation programmes are still seen by many states as a helpful step towards addressing the problems associated with increasing numbers of irregular migrants. In April 2009 President Barack Obama announced his intention to press ahead with planning a major regularisation programme in the USA<sup>74</sup>.

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<sup>70</sup> Ibid, ICMPD 2008

<sup>71</sup> Hansard 22<sup>nd</sup> October 2008 - <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm081022/text/81022w0026.htm>

<sup>72</sup> Kraler, A. (2009). *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration*. IMISCOE Working Paper. N.24. ICMPD Austria;; Parliamentary Assembly (2007)

<sup>73</sup> International Centre for Migration Policy Development (ICMPD), *REGINE: Regularisations in Europe; Study on practices in the area of staying third-country nationals in the Member States of the EU, Final Report*. Vienna, September 2008

<sup>74</sup> The Guardian, 9th April 2009, *Obama offers hope to America's 12m illegal immigrants*. <http://www.guardian.co.uk/world/2009/apr/09/obama-reforms-immigration>

## 2. “If we regularise migrants without permission to be here, won’t that cause a ‘pull factor’, attracting more irregular migrants to come to the UK?”

Separating out the effect of regularisation programmes from the impact of other immigration policies is extremely hard. But research carried out in 2008 by the independent International Centre for Migration Policy Development (ICMPD) looking at such programmes in European countries since 1996, has found no evidence that they “pulled” increased numbers of irregular migrants<sup>75</sup>.

Close examination of migration trends in those countries indicates that the strength of the national economy – and hence opportunities for employment there – influence migrants’ decisions about entering or staying in a country much more than the attraction of regularisation programmes. In 2007, on behalf of the Council of Europe, Conservative MP Peter Greenway reviewed the Spanish regularisation of almost 700,000 people in 2005<sup>76</sup>. He concluded that any “pull factor” attracting further migrants to Spain was offset by policy reforms which simultaneously gave more scope for regular labour migration and challenged illegal employment. In hindsight, he said, the amnesty had been “a success”. The Spanish experience indicates how regularisation will work best when combined with strong measures to fulfil the labour market’s need for migrant workers, and properly regulate employment conditions.

Both Italy and the US did experience an increase in irregular migration after regularisation programmes, but these illustrate the differences between patterns of irregular migration. Italy is not a country to which most migrants go to stay: it is often a transit point for those wanting to enter Europe. Many migrants arrive there intending to go somewhere else, and a regularisation programme within Italy would not necessarily affect that. Opinion among commentators has been divided as to the causes and effects of the various regularisation programmes initiated by the US Government, and few believe that regularisation has been a pull factor: the needs of employers and the lack of regulation of employment are much more significant factors.

*“Regularisation, thoughtfully employed within a broader strategy of migration management initiatives, can not only prevent the population of unauthorised immigrants from building to unacceptable levels, but also play an important role in improving the effectiveness of other migration management policies.”*

**MPI WASHINGTON**<sup>77</sup>

The UK also provides evidence that regularisation programmes are not likely to be a pull factor. Schemes to resolve the cases of people stuck in the asylum system in 2004-05 (for families) and again since 2007 (for failed asylum seekers in general), offering regular status to around 60,000 so far, have brought no new surge of asylum applications.

Similarly, when eight eastern European (A8) countries joined the EU in 2004, many workers from A8 countries who were here without permission were regularised. The arrival of many thousands of A8 workers afterwards was because they were able to enter the UK anyway, and it did not visibly influence other migration flows. Significantly, workers from these countries have proved to be precisely the flexible labour force needed: as the UK economy entered a downturn, increasing numbers of people returned

<sup>75</sup> International Centre for Migration Policy Development (ICMPD), (2008) REGINE: *Regularisations in Europe; Study on practices in the area of staying third-country nationals in the Member States of the EU, Final Report*. Vienna

<sup>76</sup> Council of Europe (2007) *Regularisation Programmes for Irregular Migrants*

<sup>77</sup> Papademetriou, D G. (2005a) *The “Regularisation” option in managing more effectively: A comparative perspective*. MPI Policy Brief No. 4, 2005

to their country of origin. It is much less likely that this would have been possible had they become “stuck” in irregularity.<sup>78</sup>

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<sup>78</sup> Pollard\_N,\_Latorre\_M\_and\_Sriskandarajah\_D\_(2008) *Floodgates or turnstiles? Post-EU enlargement migration flows to (and from) the UK* London: Institute for Public Policy

### 3. “What would be the cost to the taxpayer and what would be the impact on public services (including housing, social services and healthcare) of giving irregular migrants legal status?”

#### Taxes and social security

Irregular migrants are currently barred from access to almost all social security benefits and services in the UK – this is called having ‘no recourse to public funds’. If regularised, there would inevitably be an increase in demand for state support. Economic costs and benefits of regularisation cannot be estimated accurately without considering the detail of a specific policy. But there are no grounds for claims that regularising irregular migrants would generate unsustainable costs to British taxpayers. It is more likely that any net increase in costs to public services or benefits would be largely offset, and possibly even outweighed, by increased revenue from income tax and National Insurance contributions which regularised migrants would generate.

The Institute for Public Policy Research estimated in 2006, for example, that regularising migrant workers in the UK could generate up to £1 billion in additional fiscal revenue. This calculation was based on the idea that a regularised migrant would earn as much as a recent immigrant, averaging £308 per week, and so generating £4791 in tax revenue. Using the previously accepted figure of 430,000 irregular migrants [for 2001] this would produce a total of over £1 billion annual revenue<sup>79</sup>. All these figures are speculative: there appear to be more irregular migrants than this calculation uses, but many of them, as former asylum seekers, may not be able to work and earn so much, and some may already be paying tax.

In fact, many irregular migrants already pay taxes and National Insurance contributions. Some use false identities to obtain National Insurance numbers, and some may use a friend’s number, but many acquired them perfectly legitimately because they were allowed to work initially, and the numbers do not stop being valid when the permission to work runs out. Irregular migrants, however, cannot get the benefits for which they are paying contributions via National Insurance, because these are all subject to eligibility tests. Paying taxes also gives them no rights, for example, to other benefits or services which are paid for out of the taxes.

*“I have been in the UK for the past nine years..... I am employed in a bus transport company. I got registered with an agency whom I paid to be one of their staff without paper..... This agency was then contracted to work with the transport company ... they needed to employ drivers .I registered with the supervisor and since they knew me from the agency, they just settled with the agency the introduction fees and I just started working permanently there.....I am paying taxes though I am not sure where that tax is going to because I am not registered. I am also a member of the union here at work.”*

#### Praxis case history

The concrete evidence we have of direct costs and benefits comes from Spain. After the regularization process there in 2005, the numbers of foreign workers registered to pay tax and Social Security contributions increased by about 50% (578,313 more people), which brought an increase of income to the state of over 185 million Euro. The administration of the regularization programme itself cost 12.7 million Euro<sup>80</sup> and 80% of those regularised

<sup>79</sup> IPPR. (2006). Irregular migrants in the UK. Fact File

<sup>80</sup> Detailed information from Kraler, A. and Baldwin-Edwards, M (eds) (2009) REGINE Regularisations in Europe Study on practices in the area of regularisation of illegally staying third country nationals in the Member States of the EU Country Studies (Spanish study by Joaquin Arango) ICMPD Austria 2009. Also quoted in Gomez, L (2009) La Amnistia Inevitable El Publico 4<sup>th</sup> May 2009

were still in legal work (and so contributing tax and social security payments) one year later.

Local authorities may be losing tax revenue from council tax contributions. Since irregular migrants may conceal their identity and presence, it is likely that many are not registered for council tax. Once regularised they would have to register, increasing councils' tax base.

### Public services

Keeping large numbers of people outside the system and cut off from public services itself creates significant hidden costs in a modern society. There is no accurate or reliable research into this. Anecdotal accounts indicate that irregular migrants may be entitled use the few free public services that are available to them but are afraid to do so for fear of being caught. Eligibility tests for benefits, public sector housing and hospital based health services exclude people with irregular status. It is likely that irregular migrants are using other, more universally available services such as schools: most providers take the view that it would be uneconomic and possibly counterproductive to ask about people's status<sup>81</sup>. There is certainly no evidence that irregular migrants use such services disproportionately, or that they would do so if regularised. Conversely, we do know that irregular migrants often help to provide public services, as carers, cleaners, drivers etc.

### Housing

All of the evidence (and there is not much) is that most irregular migrants tend to rent from private landlords (including living in accommodation provided by their employer or agency) or stay with friends or family<sup>82</sup>. This contributes to the over-representation of many migrant communities in reports about overcrowding and bad conditions, which are more prevalent in the lower end of the private sector<sup>83</sup>. The effects of irregularity on the housing market are thus to keep in business some landlords who would otherwise be unable to rent these homes at the rates charged and in the condition they are in. The costs of taking enforcement action against these landlords, who present a risk to the health and safety of the wider neighbourhood (through damp, inadequate drainage and sewage and fire risk) are significantly increased when the tenants are irregular migrants who may fear contact with the authorities. Bringing these migrants back into the system would enable more effective enforcement action, based on better tenant cooperation.

*"I rent the house where I am living from a private landlord whom I think suspected that I may be an illegal immigrant because he takes his time to attend to problems that occur as faults in the house. I have lived in this house for the past 6 years and I have a bank account because during the years that I first came into the country, it was not difficult to open an account. I have a car and some personal property that I have bought from my savings".*

### Praxis case history

### Social Services

Irregular migrants may already be eligible for care and support from social services if they are in vulnerable groups with specific needs<sup>84</sup>. Social services departments support migrants with disabilities including severe mental illness; women fleeing domestic violence; and destitute families with children who cannot return home. Evidence from

<sup>81</sup> Gordon, I, Scanlon, K, Travers, T and Whitehead, C. (2009) *Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK Interim Report* from LSE London

<sup>82</sup> Equality and Human Rights Commission briefing on Social Housing [www.equalityhumanrights.com/Documents/EHRC/Social\\_housing\\_background\\_briefing.doc](http://www.equalityhumanrights.com/Documents/EHRC/Social_housing_background_briefing.doc)

<sup>83</sup> See, for example, Robinson, D, Reeve, K, and Casey, R (2007) *The Housing Pathways of New Immigrants*, Hooseph Rowntree Foundation,

<sup>84</sup> Mainly under legislative powers and duties laid down by Children Act 1989 S17 and National Assistance Act 1948 S21

practitioners suggests that irregular status itself, and the strain it puts on migrant households, is a key factor underlying the current level of need for their services.

Where an irregular migrant has a child or is a vulnerable adult and becomes destitute, social services may take responsibility for their care, and do so in cooperation with UKBA. These services come from the general budgets and so costs directly affect the services available to other users. Most people so helped are women who have arrived regularly in the UK as wives, but whose marriage has now broken down as a result of domestic violence. They may apply for the Home Office to grant them specific permanent residence status for victims of domestic violence, but this can take months to be arranged. While they wait, the local authority bears the costs of supporting them. Other irregular migrants usually only come to the attention of social services when something goes wrong: illness, disability, family breakdown or loss of income.

There are severe economic costs of a system that fails to regularise people with no recourse to public funds. Numbers applying for help from local authorities are going up, which may indicate growing awareness of the options for women under threat, but also include people who have lost their jobs through greater enforcement activity or disabled former asylum seekers waiting for case resolution. During the financial year 2007/08, at least £33.4 million was spent by 48 local authorities supporting 3910 individuals and families who have no recourse to public funds (the numbers increased by 3.6% on the previous year). This is an increase of 8% on expenditure incurred in the financial year 2006/07<sup>85</sup>.

*“Destitution is the major player in all 37 of our children cases. Maybe six of them had other types of problems that might eventually lead to children being taken into care. Almost all of our parents are suitable parents, normally perfectly good but stuck in immigration trouble”*

**Islington No Recourse to Public Funds Team**

Another factor is the stress that irregularity may place on families. In the absence of any safety net, this may lead to violence or depression and so social services involvement. Social work with families and people with irregular status is difficult and time consuming. Liaison with the UKBA is often fraught, with social workers concerned that they must act in the best interests of the child but that the UKBA has removal targets to meet that are well served by vulnerable people who are easy to locate. Many of the families and sick, disabled or elderly people that social services have to support are impossible to return home: they may be too ill, the child may have a British parent, or the country of origin will not accept them. Once regularised, they would be able to work or claim benefits.

As noted above, irregular migrants have crucial roles to play in social care, and many of them keep residential homes going, look after the elderly and disabled and provide other services. The increasing numbers of people now employed directly by disabled and elderly people as carers, as individualised budgets take off, and will include many migrants. As people seek to maximise the use of budgets by driving down costs, irregular workers are likely to prove as attractive to them as they are to other employers.

### **Healthcare**

Irregular status can cut migrants off from engagement with health services in two main ways:

- Charging: since 2004, a Government drive against ‘health tourists’ they claimed were abusing the NHS has required hospitals to check and require migrants without regular status generally to pay for most hospital services. Proposals to extend this charging

<sup>85</sup> Price, J and Fellas, O (2008) *No Recourse to Public Funds: Financial Implications for Local Authorities* LB Islington 2008

to primary care have not been implemented but have received a great deal of publicity.

- Confidence: anxiety about removal from the UK, together with perceptions of the NHS as an arm of the UK state system, can be expected typically to deter irregular migrants (and many with regular status too) from using its services as readily as people who are free from immigration control.

UK immigration policy now requires the NHS to deny irregular migrants free hospital care for most medical conditions until they become an emergency. Current Home Office moves to use health records to catch and remove them may deepen their exclusion from NHS care. The likely result is not only more ill-health for them personally, but also higher long-run costs when the NHS treats them eventually for more advanced illnesses - and ultimately perhaps presents serious risks to public health, as drugs for diseases such as HIV are not normally available without charge to those with no recourse to public funds in the UK.

*Many people from India, Pakistan, Afghanistan and Iraq know that they are not very welcome at West Middlesex University Hospital trust, says income generation manager Andy Finlay. The trust is one of three operating an immigration and nationality directorate pilot scheme, which gives an instant verdict on those whose eligibility for the NHS is uncertain.*

**Health Service Journal 2008**<sup>86</sup>

These checks do not just have a negative impact on community relations and trust in the service. Although primary care and emergency services are not yet subject to charges for irregular migrants, the perception that health services have a link to the UKBA has certainly led to some potential users not presenting early enough and then suffering severe health consequences.

*"People go for treatment late and that costs: we had a case of a man who is now dying who could have been treated earlier but collapsed several times and was taken to A&E and eventually got treated but will now die".*

**Roundtable participant**

There are wider problems. The public health ethos that underpins the NHS looks to prevention, which depends on involvement and trust. The exclusion of some irregular migrants undermines this and may increase the risk that preventable disease will spread. While treatment for some communicable diseases such as TB remains free, the process of checking and charging discourages sick people from getting help at an early stage<sup>87</sup>.

*"It is assumed that migrants will not and do not want to integrate and so they will not, for example, have sex with British people but they do! So discouraging them or refusing them treatment for STDs puts everyone's health at risk."*

**Roundtable participant**

London is now seeing the growth of an illegal private health care sector catering to irregular migrants who have become frightened to approach the NHS. Sometimes this is as simple as a regular migrant getting medication for an irregular friend with diabetes or high blood pressure<sup>88</sup>, but the completely unregulated "private" services pose a greater risk to the health of their users and those in contact with them. They are, of course, not

<sup>86</sup> Gould, M (2008) *Medecins sans Frontieres?* HSJ March 17<sup>th</sup> 2008

<sup>87</sup> Hargreaves S, Friedland JS, Holmes A, Saxena S. *The identification and charging over overseas visitors at NHS services in Newham: a consultation. Final Report.* London: Newham Primary Care Trust; 2006.

<sup>88</sup> *Medecins du Monde (2007) Project London Improving access to healthcare for the community's most vulnerable 2007*

part of national public health initiatives or measures, such as those designed to deal with pandemics.

### **Community safety, criminal justice and probation services**

People who feel targeted by immigration enforcement, often feel isolated and disarmed and so become too fearful to engage with neighbourhoods or communities. The presence of people who do not want to be noticed can also lead to unexpected dangers.

*In November 2007, a packhouse in Warwickshire burned down. Most employees were migrant workers. The previous owner had been forced to employ them directly when the GLA removed licences from seven gangmasters providing labour to pack vegetables for major supermarkets. The current owner had taken over when that firm collapsed, and had not completed the sprinkler installation. Responding to accounts that some migrants slept in the building, firefighters entered the building and four were killed when it collapsed.*

**From Daily Mail report**<sup>89</sup>

Domestic violence, and honour based crimes are particularly difficult to tackle in communities that contain irregular migrants. The victim him/herself may be forced into irregularity. Migrants who have arrived on the basis of a marriage or civil partnership are usually granted two years' temporary leave in the UK, during which it is expected that they will be accommodated and supported by their partner. If violence or the threat of it forces the migrant to leave, s/he will be in breach of her immigration conditions, and will certainly not be able to access benefits unless the UKBA accepts the evidence of the violence and allows him/her to stay under a specific immigration concession. The presence of irregular migrants in the family increases the pressures on others not to involve the police in all cases, even those involving, for example, child protection issues.

Criminal investigations are also hampered by irregularity. A witness may not mention the existence or presence of an irregular family member, or, conversely, may throw a relative out because s/he is a witness, but do not want the police to find irregulars there.

If the police come across anyone in the course of their work who they suspect may be irregular, they are expected to inform the UKBA. Even quite minor offences may thus result in a person being held for some time. If they are then charged and convicted, deportation is not automatic unless the sentence is twelve months or more or there have been a series of offences. Meanwhile, however, the migrant is irregular, is not allowed to work and cannot claim benefits. And in some cases the irregularity is the criminal offence: the numbers of people acquiring a criminal record for immigration offences is rising significantly. In many cases they face trial, are convicted and then prove to be impossible to remove.

*“One man became so desperate at the delays in his asylum claim he used false papers to try to leave the country and return home and was caught. He spent 4 months in prison and is now still here with no status but with a criminal record.”*

### **Praxis case history**

The role of the probation service is to reduce the propensity to reoffend. Involvement with irregular migrants poses insuperable dilemmas for probation officers, especially when dealing with those who cannot be returned home.

<sup>89</sup> Daily Mail 5<sup>th</sup> November 2007 *Fire chief in agony over dead son but warehouse death toll could rise*  
<http://www.dailymail.co.uk/news/article-491606/Fire-chief-agony-dead-son-warehouse-death-toll-rise.html>

*“He was working illegally and desperate, and has a pending asylum claim so cannot be removed. He still has no documents so how does he survive without working illegally or stealing? Or how to reduce the propensity to offend of a destitute woman who steals to feed her children”.*

#### **Praxis case history**

#### **Official data sources and planning**

Very little research has been undertaken which quantifies the extent to which irregular migrants are included within official data sets, and by its very nature this kind of research is difficult to undertake<sup>90</sup>. One of the arguments sometimes used in favour of regularisation is that this population group would then be included in official datasets which would produce more accurate data for all users requiring information on demographic change and socio-economic characteristics of the population. This would also prevent area based funding shortfalls where per capita allocation is used and irregular migrants are under-enumerated. To quantify this approach in some way, if 100,000 irregular migrants, that were not included in official population estimates even after adjustments for underenumeration, were regularised and then included, this would make a difference of nearly 55 million pounds a year just in formula grant alone to local authorities in England, assuming the current settlement levels<sup>91</sup>.

It is impossible to detect the extent to which irregular migrants may be included in these datasets, but it is possible to discuss data collection methods and show how they relate to this group of people, and also to discuss the implications of inclusion/exclusion. We have conducted a detailed analysis of this which can be found on our website at [www.migrationwork.org.uk](http://www.migrationwork.org.uk). The analysis has shown that irregular migrants are likely to be included in all these datasets to some extent, but the characteristics of this hard-to-count population, and the understandable reluctance to be recorded in official datasets make it likely that many are missing. Adjustments for under-enumeration in some data sets may not have accounted completely for irregular migrants in some areas, but on the other hand some areas may have over-estimated total populations.

It is clear that regularisation would remove some obstacles to inclusion, such as fear of discovery and possible deportation. If irregular migrants were regularised and this did lead to more being included in official datasets, it would contribute to a better enumerated population, with a more accurate reflection of the actual characteristics of this group of people, such as their country of birth, and their circumstances such as housing and (un)employment. However, some regularised migrants would still be classified as difficult to count because they would retain the same characteristics outlined earlier, at least for a while, and some problems would still exist in the attempt to include them in official data sets.

This analysis shows that the position of irregular migrants within different official demographic data sets is complex. It also highlights the significant consequences of possible under-enumeration, in terms of potential funding misallocation and the ability of society to measure true difference within its population and to plan services accordingly.

<sup>90</sup> More detailed information on the data sources available on the MigrationWork website [www.migrationwork.org.uk](http://www.migrationwork.org.uk)

<sup>91</sup> Based on a calculation of a per capita grant of £549 for formula grant for 2009/2010 calculated from the weblink <http://www.local.odpm.gov.uk/finance/0910/head0910.xls>

#### 4. “What would be the impact on pay and labour conditions for other workers if irregular migrants were given legal status in the UK?”

The market for irregular migrant labour is similar to the market for regular labour, migrant or otherwise: it is created by employers because without them there are no employees. In the UK and other European countries, economies depend heavily on a cheap labour force that is only offered “3D jobs”: dirty, dangerous and difficult. Some European countries like Greece and Spain recognise this and political debate is open about these labour needs and how they are to be met.<sup>92</sup>

A recent study on the economic impacts of migration in the UK indicates that if immigration overall has any effect at all on UK wage levels it is very small, although it is likely, like other impacts, to fall disproportionately on low paid workers<sup>93</sup>. Given that the overall effect is small and that irregular migrants are clearly a minority of all migrants to the UK, their current impact on the wages of the wider workforce seems likely to be marginal at most. Any impact is likely to be felt predominantly in the informal economy where many irregular migrants work.

Overall the deregulation of the labour market is far more likely to have done more to consolidate low pay and poor working conditions for workers than the presence of irregular migrants in the labour force. Low-paid workers, including many migrant workers, are increasingly not employed directly by companies or public service providers, but engaged by agencies<sup>94</sup>. This enables companies to benefit from flexible labour, whilst avoiding liability for civil penalty fines. But it also reduces workers’ entitlements in a diluted sense of responsibility for workers’ health and safety, pay and working environment, and raises barriers to workers in accessing their employment rights.

The presence of an irregular workforce, however, does make the enforcement of a National Minimum Wage more difficult, and it also legitimizes discrimination in the workforce. All enforcement is made more difficult if workers believe that they have an interest in concealment as well as the employer. While the main victims of this are the migrants themselves, the inability to control health and safety puts other workers and customers or users at risk<sup>95</sup>. Bringing irregular migrants into formal employment could help to strengthen the position of all workers in accessing employment rights and improving working conditions in the low-paid sector.

Enforcement of workers’ rights is weaker in the UK than in other European countries and this opens opportunities for exploitation<sup>96</sup>. Irregular migrants effectively lose most enforceable rights (and employment tribunals have been unable to enforce even contractual terms where the work itself is not compliant with the law). Cheap labour may often be enough of an incentive for employers to break the law. The informal economy of course employs many workers who are UK-born or migrants with regular status, as well as irregular migrants. But irregular workers may have less choice than other workers and so be at risk of lack of security, poor health and safety and low wages. Trade unions,

<sup>92</sup> Fasani, F. (2008) *Counting the Uncountable. Data and Trends across Europe - Italy Report*. Clandestino Project.; Maroukis, T. (2008) *Counting the Uncountable. Data and Trends across Europe – Greece Report*. Clandestino Project.

<sup>93</sup> Reed, H. and Lattorre, M. (2009) *The economic impact of migration in the UK: Labour migration economics of migration Working Paper 3*. IPPR. London

<sup>94</sup> TUC (2007) *Migrant Agency Workers in the UK*,

<sup>95</sup> Anderson, B., Ruhs, M. Rogaly, B. (2006), *Fair enough? East European migrants in low-wage employment in the UK*, Centre on Migration, Policy and Society (COMPAS), Oxford: COMPAS.; Evans Y, Herbert J, Datta K, May J, McIlwaine C and Wills J (2005), *Making the City Work: Low Paid Employment in London* Queen Mary University of London.

<sup>96</sup> Anderson, B. and Rogaly, B. (2005), *Forced Labour and Migration to the UK*, Study prepared by COMPAS with the Trade Union Congress.

employers and other agencies could help to secure a long-term benefit by making sure that statutory employment rights apply across the low-paid sectors.

Any regularisation of irregular migrants should be accompanied by additional measures which effectively enforce an improvement in employment conditions across the low-paid sectors. Although the Gangmasters Licensing Authority currently operates to licence labour providers in agriculture, forestry, horticulture, shellfish gathering and food and drink processing and packaging, many other employers are not covered<sup>97</sup>. Other employment enforcement agencies, including the BERR (Department for Business, Enterprise and Regulator Reform) Vulnerable Workers Enforcement Forum, the HMRC National Minimum Wage enforcement teams and the Health and Safety Executive also play important roles in monitoring aspects of working conditions. But more effective enforcement against the exploitation of workers could be generated by a joined-up approach across employment enforcement agencies.

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<sup>97</sup> The Gangmasters (Licensing) Act 2004. The GLA has licensed 1229 providers and has revoked 89 licenses since it was set up in 2005.

## 5. “How have regularisation programmes worked in other countries?”

Many countries within the European Union (EU) have set up regularization programmes: 68 programmes have operated between 1973 and 2008<sup>98</sup>. Regularisation is widely used but not publicized and large numbers have occurred in the past. All EU countries except 5 have used some kind of regularisation mechanism, and 20 countries have ongoing programmes. About 5.5 – 6 million people have been regularised within the EU in the past 14 years. The UK, France and Belgium have current ongoing or permanent systems for regularisation, but some only affect small numbers of people. Larger, one-off programmes have been adopted in southern European countries, most of which are transit countries (where people arrive on their way to other countries).

Regularisation programmes have been mainly set up for two main reasons<sup>99</sup>:

- Humanitarian and human rights grounds (to resolve the situation of refugees; for family reunion; supporting those with ties to the country; on grounds of ill health; asylum seekers whose cases were found to be unfounded and who can not be deported because of generalised violence in their countries of origin);
- Labour market oriented reasons (regulating the labour market; to combat undeclared work and ensure compliance with tax and national insurance; to enforce social rights and labour standards and promote integration of regularised migrants).

**Spain** has operated six regularisation programmes since 1985, with 1.5 million people regularised as a result. Most of these programmes encountered administrative problems and had little impact. However the 2005 programme is said to have been successful. Its main aims were to tackle employment and migration management issues.

- Employment issues: It introduced sanctions against those employing irregulars and challenged the underground economy. These measures led to less unfair competition, increased tax revenues and social security contributions and encouraged integration through employment.
- Migration management: The government decided to widen the door for regular migration and also introduced tough border control measures. Applications to the programme could be presented by employers or workers (if they were part time or had several employers). The applicants had to provide proof of identity (which allowed background checks by the security services), provide evidence of a clear criminal record and that they were qualified for the job.

The Spanish regularisation had the backing of employers (some believe it was employer driven), trade unions, NGOs and the Spanish regions. It has been criticised from a number of perspectives – some critics were concerned about the level of migration and the long term impact particularly when the economic situation deteriorates; regions were unhappy that the financial benefits largely go to the central government rather than the regions; some worried about the likely pull effect. The exercise itself was described as daunting and stressful, but has been cited with approval by many policymakers.

*It provided a response to a critical situation, balancing the human rights and humanitarian needs of large numbers of irregular migrants with economic needs and the rule of law needs associated with tackling the shadow economy of Spain<sup>100</sup>*

**Council of Europe 2007**

<sup>98</sup> Kraler, A. (2009). *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration*. p 19

<sup>99</sup> Ibid

<sup>100</sup> Parliamentary Assembly (2007) *Regularisation programmes for irregular migrants*. 6 July 2007 Council of Europe Doc11350 p 2

Important factors in Spain attract irregular migrants: its geographical location, colonial and linguistic ties, the high level of demand for unskilled labour (including seasonal work) and limited opportunities for regular migration. Spain also finds it difficult to return irregular migrants and has legal restrictions on their detention after 40 days. Some analysts point to the current numbers of irregular migrants in Spain as evidence that the 2005 programme did not work, others that the programme was never going to “solve” these deep underlying causes<sup>101</sup>. As noted above, the 2005 programme was certainly a financial success, and the evidence is that most of those regularised were still in legal work a year later.

**Italy** held five regularisation programmes over 25 years, which led to 1.4m irregular migrants being legalized, but these programmes were not regarded as successes. The reasons given as creating the need for regularization are also the reasons why irregular migration continues in Italy: the existence of a large shadow economy, demand for cheap labour, weak immigration control, lack of opportunities for regular migration and administrative problems. Fraud also emerged as a major issue. Regularization has become a way to manage irregular migration in the absence of any managed migration policy<sup>102</sup>.

**USA:** Controlling the long border with Mexico has been a major issue for the United States. A substantial legalisation programme was introduced in 1986 which gave an amnesty to 2.7m irregular migrants and established sanctions for employers. It sought to restrict undocumented immigration through employer sanctions, increased enforcement and a two tier amnesty programme which legalized people living in the US since 1982, and working in seasonal agricultural work. There was, however, no mechanism to stop illegal immigration flows, it did not address ongoing demand for foreign workers and family reunion visas and it was characterised by fraud. Several laws were passed in the 1990s to stop increasing number of “illegals”. Most of these measures did not succeed. Despite successive Clinton/Bush efforts to ‘crack down’ – or arguably because of them (see above) - the number of irregular migrants in the US has increased to 10 - 12 million<sup>103</sup>. President Obama has now announced his intention to initiate a new regularisation problem in the hope that it can solve some of these problems.

**Canada** had had limited experience of regularisation programmes. A programme between 1960 and 1972 allowed 12,000 Chinese nationals to be regularized and a more general programme for three months in 1973 enabled 39,000 people to gain status. A later four-year programme, ending in 1998, allowed thousands of failed asylum seekers who remained in Canada for three years or more without a removal order to be regularised<sup>104</sup>.

As an island, **the UK** does not have the migration patterns typical of southern European countries. It is a destination country and has had a case-by-case regularization scheme based on long residence for many years. Other general schemes include:

<sup>101</sup> Kraler, A. (2009). *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration*. IMISCOE Working Paper. N.24. ICMPD Austria; Parliamentary Assembly (2007)

Regularisation programmes for irregular migrants. 6 July 2007 Council of Europe Doc11350

<sup>102</sup> Ibid, Ibid. Also noted in Levinson, A (2005). *The Regularisation of Undocumented Migrants: Literature Survey and Country Case Studies*. COMPAS. 2005

<sup>103</sup> Broeders, D. And Engbersen, G. (2007), The Fight Against Illegal Migration: Identification Policies and Immigrants' Counterstrategies, *The American Behavioral Scientist*, 50 (12): 1592 – 1610; General Accounting Office US 135: 29. Testimony Immigration: Implementation of Legalisation Programme. Submission on immigration to Immigration and Refugee Affairs Committee on the Judiciary US Senate; Papademetriou, Demetrios G. (2005a) The “Regularisation” option in managing more effectively: A comparative perspective. MPI Policy Brief No. 4, 2005’ Papademetriou, Demetrios G.. (2005b) Reflection on restoring integrity for the US Immigration system: A personal vision. MPI Paper No.5, September 2005; Levinson, A (2005). *The Regularisation of Undocumented Migrants: Literature Survey and Country Case Studies*. COMPAS. 2005

<sup>104</sup> Jean McDonald [www.newsocialist.org/newsite/index.php?id+168](http://www.newsocialist.org/newsite/index.php?id+168)

- 1974 to 1978, programme after 1971 Immigration Act: 1809 Commonwealth and Pakistani citizens were regularised
- 1993-94: Exceptional Leave to Remain granted to 14,785 applications involving 32,000 adults.
- 1998: legalisation of a number of migrant domestic workers from the Philippines and Sri Lanka
- 1999: 11,140 long term asylum seekers (from the backlog of claims) granted Leave to Remain
- 2000: 10,140 long term asylum seekers (from the backlog of claims) granted Leave to Remain
- 2004: 9,235 long term asylum seekers were granted leave to remain (families in the backlog)
- 2004: migrant workers from 2004 European Union Accession countries allowed to regularize via work: an unknown number were already in the UK irregularly, and several thousand in the asylum system. They mostly became absorbed into the large numbers of accession state migrants who arrived after 2004 to live and work regularly in the UK
- 2005: 11,245 long term asylum seekers were granted leave to remain (Families in the backlog)
- 2006: 5,000 long term asylum seekers were granted leave to remain (families in the backlog)
- 2007: Case Resolution process (legacy cases) started to clear asylum backlog estimated initially at 450,000 by 2012.<sup>105</sup>

It should be noted that most of the previous UK regularisations

- Had minimal conditions attached (most of the asylum backlog programmes demanded a clean criminal record and little else).
- Were not identified as causing inherent problems: those migrants who were regularised simply became part of settled communities in most cases and the actual regularisation (as opposed to the inefficiencies that may have made them necessary) generally caused little adverse comment.
- Apart from some local authority unease at the timetabling and lack of liaison causing disruption to local services, the backlog clearances generally happened without further comment or difficulty, even though they have involved tens of thousands of migrants.

The 2004 process involving EU accession state migrants is the closest thing to a conditional regularisation, because in order to get a right to reside and so access benefits on the same terms as other Europeans, migrants had to work for a year and register their presence. This “light touch” scheme has not been without difficulties but has generally been acceptable to employers and employees, although there have been problems for people who became unable to work. What is notable is that the regularisation element in this process has attracted virtually no comment or criticism.

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<sup>105</sup> Kraler, A. (2009). Regularisation: *A misguided option or part and parcel of a comprehensive policy response to irregular migration*. IMISCOE Working Paper. N.24. ICMPD Austria;; Parliamentary Assembly (2007) *Regularisation programmes for irregular migrants*. 6 July 2007, Council of Europe Doc11350; Levinson, A (2005). *The Regularisation of Undocumented Migrants: Literature Survey and Country Case Studies*. COMPAS. 2005

## 6. “If the UK government opts for regularisation, how can they make sure it really works?”

The widespread use of regularisation programmes both abroad and in the UK has provided a solid base of evidence to assess how a regularisation programme could best work. Regularisation programmes that have worked well:

- are based on a good understanding of the behaviour and needs of employers and migrants, and a flexible approach to meeting both of these without condoning exploitation
- learn from past programmes
- are undertaken in conjunction with other migration management tools, such as opening up routes to seasonal or low skilled employment and family reunions, where appropriate.
- take account of the needs of local and regional government, with adequate preparation and training of public service officials,
- are open and transparent in order to engage the confidence of migrants and their organisations and the communities in which they have settled or intend to settle.

There are arguments for an unconditional amnesty which we will not rehearse here. All regularisation processes conducted in the past have had some conditions and exclusions, usually, at a minimum, demanding a clean criminal record and some compliance with procedures or integration programmes. The successful programmes in the UK to date have included both those based on work (the 2004 EU Accession programme) and those based on humanitarian or pragmatic reasons (the asylum backlog clearance programmes).

The minimum standards needed for any successful UK regularisation programme should include<sup>106</sup>:

- Evidence of length of stay prior to legalization (although the successful 2004 regularisation of new EU Accession state nationals did not demand this);
- Compliance with procedures for registration and any other conditions for registration (such as documentation);
- Proof of identity;
- No criminal record (disregarding any offences that carry a sentence under 12 months or that are related simply to breaches of immigration rules);
- Compliance with residence and other conditions;
- Involvement in any integration programmes on offer, such as language tuition or help with training and work.

There are strong arguments against any regularisation programme which is based on demonstrating formal employment. This type of programme is not successful in tackling the underground economy, and also excludes the more vulnerable irregular migrants, especially those too old, sick or disabled to work or those caring for children. There is certainly concern among social services staff that a one-off “earned regularisation” based on employment would not deal with the people they support, because their care needs are so high or they are looking after children.

Conditional programmes that focus on employment run the risk that those migrants who are regularised may “slip back” into irregularity unless other measures are taken which tackle the wider issues of exploitation and low-pay at the bottom end of the formal economy. Regularized migrants often start at the bottom of the labour market, and may have complex conditions imposed as a pathway out of irregularity. If there are no tough controls on employers, no integration strategies that allow migrants to upgrade their skills, and no accompanying immigration routes to enable family reunion and other legal

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<sup>106</sup> Council of Europe (2007) *Regularisation programmes for irregular migrants*. Doc11350

migration, then it is likely that the regularised migrant or their family will face impossible pressures to take up exploitative employment or will fail to maintain their compliance with the immigration rules.

If the UK government is to adopt a long-term and sustainable strategy to deal with irregular migration, it will need to focus on the full picture of migration patterns and the policymaking around it. An approach that seeks to minimize irregularity rather than to punish it is likely to be more effective. Border controls can stop some people, but most irregular migrants in the UK arrive quite legitimately and become irregular later. Policies and practices are needed that recognize that how people actually live their lives, balancing work, family, community, faith and self. Any process must recognise that people have different needs to settle and that regularisation is a continuing, not a one-off, need.

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**Migrants' Rights Network**

Working for the rights of all migrants