◎ THEMATIC REPORTS

Coherence between Migration and Development Policies

The EU's security-oriented migration policy is at odds with its rhetoric of using migration as a potential source of development in poor countries.

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The debate on the interdependence between migration and development has gathered tremendous momentum over the last 10 years, within the European Union and on a global level. Indeed, since the adoption of the multi-annual programme creating an area of Freedom, Security and Justice – the so-called 'Tampere programme' – in 1999, the possible synergies between development and migration policies are being explored. Bringing the two policy areas closer together to increase effectiveness and coherence is a great challenge for many reasons. The EU has different levels of competence in both policy areas; policymakers and politicians have diverging goals and objectives related to 'their' policy area; and EU Member States have their own privileged or preferred relations with various third countries. Migration and development is a 'chicken or the egg' debate. How realistic is the UN Secretary General's call for a 'triple win': i.e., benefiting migrant receiving countries, countries of origin and migrants themselves? In this report, the interaction between development and migration is analysed from the angle of its impact on the (re)distribution of wealth.

1999: Linking EU migration and development policies in the spirit of partnership with third countries

In October 1999, under the Finnish Presidency, the European Council adopted an ambitious five-year programme for the further development of EU policies in the area of Justice and Home Affairs. The programme was based on the recently acquired legal competence of EU institutions in the area of asylum and migration, as laid down in the Amsterdam Treaty adopted in 1998 (the treaty establishing the European Community). Partnerships with countries of origin (of migrants) was the first of four objectives in the European Council conclusions under the chapter 'A common EU Asylum and Migration Policy'. The aim is to develop a comprehensive approach to migration, including development issues, in countries and regions of origin and transit by increasing the coherence between internal and external policies of the EU. The conclusions also call for stronger external action, in particular by integrating Justice and Home Affairs concerns into the definition and implementation of other EU policies and activities.

The NGO community broadly welcomed the European Council's conclusions, but expressed its concern that the EU may make (economic) assistance to countries of origin or transit conditional upon their willingness to take measures to control migration flows. Indeed, the formulation of the text could lead to an interpretation of development aid as 'conditional'. Countries of origin would need to comply with EU requirements in the management of migration flows.

2001: September 11 and the Laeken Council conclusions

In December 2001, the European Council dedicated part of its conclusions to "the Union's action following the attacks in the USA on 11 September" (Council of the European Union, 2001). Indeed, the events in the US caused a dramatic change in the climate within which EU migration policies are debated. Obviously, the debate on its external dimension was equally affected. No more talk of development cooperation with third countries to address root causes, but instead, as feared by NGOs, migration management measures became integrated into the EU's foreign policy. "In particular, European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan" (Council of the European Union, 2001, p.11). The external dimension of Justice and Home Affairs has turned into a security debate. The European Council asked the Commission to submit amended proposals for directives concerning asylum procedures and on family reunification. The management of EU external borders has become the core instrument in the fight against terrorism and illegal migration networks, mentioned in the same phrase, suggesting a direct relation between the two.

2002: The Seville Council – Migration management, a key element of cooperation agreements

The European Council of Seville of June 2002 urged that:

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BOX 1: The evolution of European immigration policy

In the aftermath of WWII, the need for foreign workers for the reconstruction and modernisation of Western Europe led countries such as Britain, France and the Netherlands to adopt liberal immigration policies. The high immigration flows in that period were guided by economic concerns. In the 1970s, Northern European countries, hit by economic recession and growing unemployment, put a halt to their *laissez-faire* immigration policies. Moreover, it had become clear that the stay of the first-wave of migrants was not temporary, but permanent.

Until the mid-1980s, Western European states were reluctant to cooperate on immigration and asylum issues. The right to freedom of movement was recognised in the founding treaties of the European Communities, the Treaty of Paris (1951) establishing the European Coal and Steel Community (ECSC) and the Treaty of Rome (1957) establishing the European Economic Community (EEC). However, such a right was only limited to EC nationals, who were conceived as workers, rather than citizens. Nation states retained most of their policy-making authority regarding the immigration of third-country nationals (TCNs).

From the early 1990s, Western European countries witnessed an upsurge in immigration flows and asylum demands. The reaction of policymakers was to strengthen national restrictions and increase cooperation on border control. In addition, the Schengen Agreement, signed in 1985, but which came into force ten years later, provided a further incentive to cooperate on asylum and immigration issues. With the dismantling of their internal borders, signatory countries sought to reassert their control over external borders through collaborative action. They adopted a common visa policy for TCNs and created a common Schengen Information System (SIS) to facilitate interstate judicial cooperation.

The need for a common European immigration and asylum policy was officially recognised in 1992 in the Treaty of Maastricht. European Union cooperation on these issues was especially enhanced by the Treaty of Amsterdam, signed in 1997, which gave increased power to EU institutions on the subject. In 2004, the Dutch presidency of the European Council set a new agenda for immigration and asylum issues, known as the Hague Programme, for the period 2005 to 2010. More recently, in October 2008, the European Council adopted the 'European Pact on Immigration and Asylum', drafted by the French presidency of the Union.

The new five-year policy framework for immigration and asylum for the period 2010 to 2014, referred to as the Stockholm Programme, is expected to be adopted by EU leaders at the European Council summit in December 2009, after talks with the European Parliament in autumn.

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[A]ny future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration. (Council of the European Communities, 2002)

In December 2002, the Commission adopted a communication on 'Integrating Migration Issues in the European Union's Relations with Third Countries'. The Commission listed the push and pull factors for migration on which EU policies could impact. Being very migration control oriented, the policy proposals concentrated on measures preventing migration. In line with the Council conclusions, the European Commission proposed to start negotiating readmission agreements with Albania, Algeria, China and Turkey, as well as with African, Caribbean and Pacific (ACP) countries, the latter based on Article 13 of the Cotonou Agreement. Moreover, the communication provides that new readmission agreements with ACP countries should cover third country nationals. Such a provision means that any country signing a readmission agreement with the EU accepts to readmit nationals of other countries who transited through the country on their way to the EU.

NGOs were, and are, very critical of such provisions, as they do not include any safeguards for the protection of the human rights of readmitted persons, particularly if they are not citizens of the country of readmission.

2005: The Hague Programme and the Commission communication on synergies between migration and development

The Hague Programme, successor to the Tampere Programme of 1999, also contains a chapter on the external dimension of EU migration policy. The partnership with third countries, however, is reduced to EU support to increase the ability of these countries:

…to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return. (EU, 2004)

The development aspect of migration policy is very limited in the new multi-annual programme. Existing financial instruments are oriented towards increasing the capacity of third countries to control their borders and new instruments are established to finance forced return operations. The goal of addressing the root causes of forced migration is off the radar.

2005: Commitment to policy coherence for development

In 2005, the European institutions adopted a joint statement on EU development policy, known as 'The European Consensus', in which the commitment to increase Policy Coherence for Development (PCD) is agreed:

The EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries. (EU, 2006)

The European Consensus is unambiguous about the goal of increased policy coherence. It specifically states that the positive impact on development of initiatives in 12 policy areas has to be assessed. Hence, achieving the Millennium Development Goals (MDGs) is the final aim of the whole exercise. This is equally applicable to EU migration policy. However, the statement is immediately followed by a restricting addition:

…the Commission will aim to include migration and refugee issues in country and regional strategies and partnerships with interested countries and to promote the synergies between migration and development, to make migration a positive force for development. It will support developing countries in their policies of management of migratory flows…. (EU, 2006)

Although it is stated in the European Consensus that migration can contribute to development, it is obvious that financing capacity building and resources in developing countries to control borders does not contribute in any way to achieving the MDGs. The EU's own Home Affairs interest in controlling borders and stopping migrants from reaching Europe prevails.

2008: European Pact on Immigration and Asylum

The European Pact on Immigration and Asylum was an initiative of the French EU presidency aimed at renewing the Member States' commitment to achieving a common migration and asylum policy. The Pact also contains an 'external dimension' formulated as "to create a comprehensive partnership with countries of origin and transit to encourage synergy between migration and development" (EU, 2008). The predominance of EU interest is also clearly reflected in this political declaration, as it states that cooperation with countries of origin will be developed to discourage and combat illegal immigration.

The Pact is no more than a political commitment, but Member States agreed that it would be the basis for the next multi-annual programme for Justice and Home Affairs (2010–2014).

2009: The Stockholm Programme – Focus on 'internal' solidarity

The Hague Programme for Justice and Home Affairs ends in 2009. The Council started negotiations on the next multi-annual programme – the 'Stockholm Programme' – on the basis of a Commission Communication and inspired by the European Pact. The chapter on asylum and migration concentrates on internal solidarity, even if it contains a part related to partnerships with third countries (EU, 2009):

Solidarity must remain at the centre of the common policy and the EU should provide more support to the Member States most exposed to migratory pressure. (Ibid)

Under the heading 'migration and development', the Commission mainly proposes additional measures to facilitate transfers of remittances and to alleviate the brain drain. NGOs hope that this section of the Programme will be reinforced during the negotiations. The contribution of EU migration policy to the achievement of the MDGs should be much stronger than it is in the Commission's proposal. Non-governmental development organisations (NGDOs) and development experts should, therefore, follow and influence the debate, with the aim of prioritising development goals in shaping the next steps in the EU's migration policy.

Challenges ahead: Migration policy as an instrument for reaching the MDGs

The debate on migration and development in the EU is mainly oriented towards preventing migration and creating incentives for countries of origin to align themselves with the EU Member States' goals

concerning the management and control of migration. This trend is based on a number of assumptions, which deserve to be thoroughly reconsidered.

Assumption 1: Most developing countries are countries of origin of migrants to the EU.

Current EU migration and development policies target countries that are most important in European immigration statistics. The Least Developed Countries are underrepresented in migration statistics and, consequently, run the risk of not being considered. This casts doubt on the PCD commitment of migration policymakers. The criterion for prioritising the allocation of development aid resources to developing countries should be their level of performance in achieving the MDGs, rather than the number of citizens present or trying to reach EU territory.

Assumption 2: The migration of highly qualified workers from developing countries always constitutes a brain drain.

A common assumption is that qualified people leaving a developing country cause a brain drain and, therefore, put at risk the development efforts of the EU. This argument is used in shaping migration policies as a justification for denying people the right to leave their country to come and work in the EU. The link between migration and brain drain is partially true in a number of countries, but cannot be generalised. Moreover, a less debated phenomenon, but equally critical, is the one of 'brain waste', which refers to the flow of highly qualified migrant workers, who are employed below their qualifications.

The response to the problem of brain drain is again inspired more by the aim of controlling migration, than by a desire to achieve the MDGs. Instead, a more effective way to combat brain drain lies in investing in MDG 2 – achieving universal primary education – while at the same time increasing access to higher education. Concurrently, MDG 8 – develop a global partnership for development – should be promoted, in particular, the 'development of decent and productive work for youth'.

A more elaborate analysis of the impact of EU policies on brain drain can be found on page 14 of this report.

Assumption 3: Migration can be reduced by addressing root causes.

Poverty reduction as such does not reduce migration. As mentioned above, it requires resources to migrate. In other words, the poorest don't migrate. It is a myth that more development will lead to less migration.

Partnerships with countries of origin and transit should, therefore, be aimed at addressing the root causes of forced migration and displacement. Human rights violation and political and social instability are among the main causes of refugee movement. Taking into account that the number of asylum seekers in EU Member States is not repre-

sentative of the whole refugee problem, the EU can best address these causes by supporting the development of democratic controls on governance structures, which would contribute to conflict prevention.

Assumption 4: Circular migration is the one size fits all solution.

In the current debate, circular migration is presented as the ideal response to all incoherence between migration and development policies. Circular migration broadly refers to the repeated movement of workers across borders, as advocated by the EU for its citizens between the Member States. However, the definition of circular migration is unclear in the political discourse, reflecting a diversity of objectives ranging from reducing the negative impact of brain drain to controlling migratory movement.

In view of achieving a 'triple win' (benefiting receiving countries, countries of origin and migrants), an adequate interpretation and organisation of circular migration may increase the positive effects of migration for developing countries, while at the same time helping EU member states address their labour needs and reduce irregular migration. But, circular migration can only be facilitated by a legal framework that promotes mobility and protects workers' rights.

Concluding remarks

The EU's commitment and efforts to ensure policy coherence are positive and deserve the critical support of civil society organisations: Support, because ensuring policy coherence is a must, and critical, because all policy decisions in the area have to be inspired by the same main goal, the achievement of the MDGs. There is, and will be, a permanent tension between long-term and short-term objectives, but the MDGs cannot be jeopardised by short-term objectives related to migration control. The full potential of migration as a tool for the redistribution of wealth and as one of the instruments for reaching the MDGs can only be realised if that goal is clear and if all policy and decision makers fully adhere to it.

Apart from a political will and the close monitoring of the process by civil society organisations, the achievement of the MDGs will probably require some institutional changes and shifts of competences within the Directorate Generals (DGs) and from national to European governance levels. ∎

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Migrant Workers' Remittances:
A Development Instrument in Question

Although remittances can play a positive role in poverty reduction, excessive reliance on remittances fosters dependence and economic vulnerability.

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Over the past two decades, remittances sent by migrants to relatives who stayed behind have created increasing enthusiasm among academics, policy-makers and financial institutions. Over the past few years, numerous international summits have highlighted the link between migration and development, notably the UN High-level Dialogue on International Migration and Development, the Global Forum on Migration and Development, and the Euro-African ministerial meeting on Migration and Development. The World Bank's *Global Economic Prospects 2006* focused entirely on the economic implications of remittances and migration. However, the recent enthusiasm around remittances as a development tool is exaggerated. Evidence suggests that a national development strategy heavily dependent on remittances is not sustainable. Moreover, discourses on the positive effects of remittances on development often neglect one important aspect: the costs borne by migrants in the process of generating them.
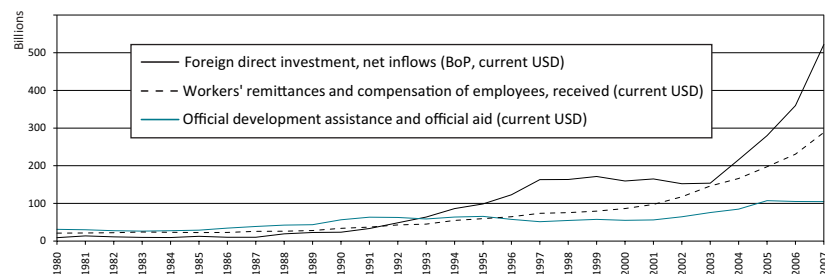
Remittance flows include money sent by migrants to relatives in their home countries, financial investments in real estate or business, and savings in banks in their country of origin[2]. In recent years, such flows have been increasingly viewed as a mechanism for funding development in the Global South and for achieving the Millennium Development Goals (MDGs). Hence, remittances have become the 'new development mantra'.

Enthusiasm around remittances is based on a number of claims. First, remittances represent the second-largest source, after Foreign Direct Investment (FDI), of external funding for developing countries. In 2008, officially recorded remittances were estimated to have reached USD 305 billion, which is almost three times as much as Official Development Assistance (ODA) (USD 119.8 billion in 2008) and nearly two-thirds of FDI (USD 517.7 billion to developing countries in 2008). It must be noted

Figure 1: Absolute trends for FDI, ODA and remittances for low and middle income countries 1980-2007

Source: World Bank

that this amount represents only a fraction of the sums actually remitted, as large amounts of money are transferred through informal channels.

Second, remittances are the fastest growing source of external funding, with amounts doubling between 2002 and 2007 (Ratha et al., 2007).

Third, until recently, remittance flows were considered less volatile than private capital flows, as they often moved counter-cyclically. In other words, they remained stable, or even rose, during economic downturns (World Bank, 2005). This assertion is, however, contradicted by the current financial and economic crisis, which has triggered a drop in remittance flows. The World Bank projects a decline in remittances flows of 7 to 10 per cent in 2009 as a consequence of the crisis (Ratha et al., 2009).

A fourth argument in favour of remittances is that they often cover an important part of the remittance-receiving country's trade deficit. For example, remittances are considered to have financed more than 70 per cent of the Albanian trade deficit since 1995 (Mansoor & Quillin, 2007) and 75 per cent of Moldova's trade deficit in 2005 (Razin, 2006).

Moreover, evidence suggests that remittances improve a country's creditworthiness for external borrowing, enabling it to borrow at lower interest rates (World Bank, 2005). For example, in the case of Albania and Bosnia and Herzegovina, the ratio of debt falls by roughly 50 per cent when remittances are taken into account. Being less indebted, these countries acquire better access to credit (Mansoor & Quillin, 2007).

Sixth, remittances are considered to contribute significantly to poverty reduction, both directly and indirectly. Remittances can act as income insurance for households, especially during times of crisis, such as economic downturns, political conflicts and

environmental disasters. The Asian Development Bank estimates that, in 2006, remittances maintained 4.3 million people out of poverty in the Philippines (Balea, 2009). In Kosovo, remittances are said to have played a significant role in post-conflict reconstruction (Vathi & Black, 2007).

Beside the direct effect of remittance income on poverty reduction, remittances can also have an indirect effect on the national economy. When invested, remittances can contribute to employment creation. Moreover, the additional consumption made possible by remittance income can stimulate the local economy and thus benefit families that do not receive remittances (World Bank, 2005).

Remittances at times of global crisis

Without doubt, remittances represent precious income insurance for poor households. Yet, reliance on remittances makes remittance-receiving countries vulnerable to economic fluctuations and to the various immigration and labour policies in remittance-source countries. These concerns are particularly acute in countries where remittances constitute an important share of GDP.

The risks involved in remittance dependency are sadly illustrated by the current global financial crisis. As a result of the global economic downturn, 2008 witnessed the first sustained drop in remittances since flows started being recorded. The World Bank estimates that remittances will fall by 7 to 10 per cent in 2009. Remittances to Sub-Saharan Africa and Europe and Central Asia are expected to decline by 4.4 per cent and 10.1 per cent respectively. Moreover, the Inter-American Development Bank (2009) estimates that the decline in remittances "will have a direct effect on more than 1 million households in Latin America and the Caribbean, half of

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1 The author thanks Badara Ndiaye for his useful comments.

2 Parallel to 'economic remittances', the term 'social remittances' refers to the ideas, behaviours, identities, and social capital that flow from the host society to the sending country, and conversely. However, this article focuses only on economic remittances.

which are in Mexico". Added to the fall in FDI, export incomes, and ODA, falling remittances are causing hardship in many developing countries.

The decline in remittances is largely due to the fact that migrant workers have been harder hit by the recession than natives. A report from the Centre for Immigration Studies shows that unemployment among immigrants (legal and illegal) in the US was higher in the first quarter of 2009 than at any time since 1994, when immigrant data was first collected separately (Camarota & Jensenius, 2009). The rise in unemployment in the Spanish labour market has particularly affected the migrant population. While the overall unemployment rate approximated 17 per cent in the first quarter of 2009, the unemployment rate among foreign workers reached 28 per cent[3].

The current situation offers little reason for optimism about the future. The World Bank economists Dilip Ratha and Sanket Mohapatra (2009) fear that, "if the crisis were deeper and if it lasts longer, the decline in remittance flows may become even sharper". They also argue that weakening job markets in migrant host countries are likely to lead to more tightening of immigration controls, which, in turn, will affect remittance flows. The strengthening of immigration controls is not a new phenomenon, but it may be exacerbated in the context of the global economic crisis. In 2006, the United Kingdom introduced a system granting points to prospective migrants according to their labour market-related 'attributes', such as educational qualifications, previous earnings and age. Such a system favours highly qualified migrants over low skilled or unskilled migrants. In February 2009, the British Government raised the minimum educational and financial requirements, even for highly qualified migrants. The Home Office estimates that the number of non-EU highly qualified workers entering Britain after April 2009 will fall by almost half because of tougher entry requirements (Ford, 2009). In October 2008, Spain introduced a 'voluntary return programme' giving financial incentives to migrants willing to return to their home country. If migrant workers agree not to return to Spain for three years, they are repaid their contribution to the unemployment insurance scheme: 40 per cent upfront and the balance upon return to their country of origin (Abend, 2008). More recently, in May 2009, the Italian Lower House approved legislation that makes entering or staying in Italy without permission a crime punishable by a fine of €5,000 to €10,000, sets up citizen anti-crime 'patrols' and sentences landlords to up to three years imprisonment if they rent to undocumented migrants[4].

3 These rates were communicated by the Spanish Statistics Institute to the Migration Policy Institute (Washington DC).

4 For further information on the new Italian immigration legislation, see Italy's national report on page 62.

Figure 2: Remittance dependency cycle
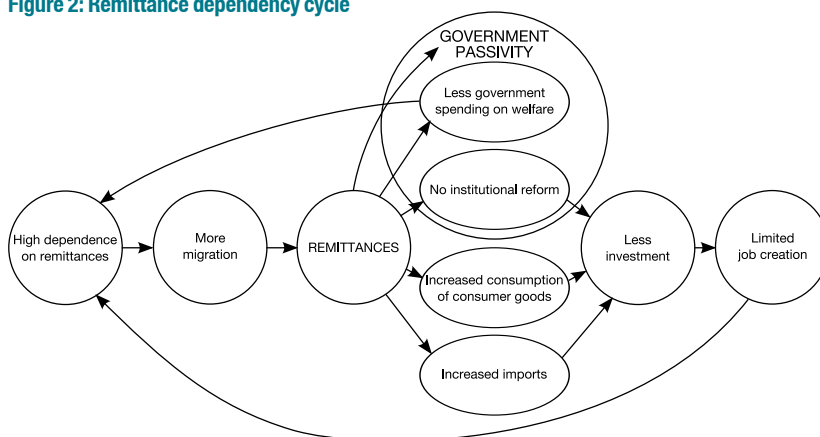
Source: Vogiazides (2008)

The vicious cycle of remittance dependency

Declining remittances heavily affect developing countries' economies. Yet, even when available, remittances should not be considered as a sustainable development strategy.

Remittances are predominantly spent on consumption, rather than used as savings or for investment. A World Bank study on remittance expenditure patterns in six East European countries reveals that only roughly five per cent of remittances are used for business investment purposes (Mansoor & Quillin, 2007, p.64). Such a model of remittance use alleviates family poverty, but does not create many new jobs through investment, which would boost incomes and possibly prevent new migration flows.

Moreover, new consumption patterns, made possible by the availability of foreign exchange, translate into an increase in imports, which widens the balance of payments deficit. This stimulates national demand for additional remittance transfers. In this sense, remittances contribute to macro-economic instability (Hernandez & Coutin, 2006, p.199).

The income provided by remittances may also absolve governments in remittance-receiving countries from their responsibility to develop long-term economic and social policies to address poverty and inequality, which are the main causes of emigration (Phillips, 2009). From an economic perspective, Glytsos (2002, p.8) explains that

[t]he comfortable finance of deficits by remittances relaxes governments from adopting long-term economic policies for changing the structure of the economy to make it more competitive against the rest of the world.

Therefore, excessive reliance on remittances might impede the diversification of the industrial system. Similarly, high remittance flows might relax governments from investing in the areas of social and welfare provision, especially as remittances are often higher than social spending. For example, remittances to Moldova in 2003 were estimated at USD 484 million, more than double the USD 190 million spent on social assistance and pensions by the Government of Moldova (Ruggiero, 2005, p.55).

A state's dependency on remittances can easily become a vicious cycle as reductions in public spending may lead to more migration and thus more remittances (Hernandez & Coutin, 2006, p.202). The decision to migrate may be motivated by poor welfare coverage, as well as few employment opportunities, resulting from the passivity of the government. Lack of employment opportunities are exacerbated by the fact that remittances are primarily spent on consumption rather than invested productively. To sum up, high reliance on remittances fuels government passivity and hampers private investment, which, in turn, affects the labour market and leads to more migration and, thus, more remittances. The vicious cycle of remittance dependency is illustrated in Figure 2.

In a development strategy based on remittances, migrants are expected to bear the risks and costs related to migration in order fulfil their basic needs and those of their families. Migrants are also expected to compete in the global market in order to secure minimal social and economic welfare, as these are no longer guaranteed by government action. Yet, a large part of the world's population is left out of the picture: those who don't migrate and don't have a migrant in their family. It is acknowledged that the 'poorest of the poor' do not migrate because of the costs involved (travel costs, documents and living expenses in the host country). International migrants constitute only 3 per cent of the world population while about 39 per cent, that is 2.6 billion people, lived on less than USD 2 per day in 2005 (World Bank, 2008). The majority of people are thus left without options: they cannot migrate nor can they rely on basic state provision. Even for those who can afford to migrate, generating remittances is not without costs.

Costs of remitting

Remittances are often described as a costless source of income for developing countries as, contrary to loans, they do not need to be repaid (Hernandez & Coutin, 2006, p.193). Such a picture, however, is far from reflecting reality. For the great majority of remitting migrants, sending remittances requires taking risks, hard work and sacrifices.

The risks include the hardships involved in travelling to a rich industrial country. During the first half of 2009 alone, 339 people who attempted to cross the Mediterranean from North Africa to Italy and Malta were reported dead or missing. Another 87 went missing or died during boat trips from West Africa to Spain and 8 in the Aegean Sea between Turkey and Greece (Fortress Europe, 2009).

Moreover, remittances are, in the majority of cases, the fruit of hard work in rather unwelcoming labour markets and under poor conditions. In advanced industrial states, the vast majority of migrants are relegated to low-skilled and low-paid jobs. They are often used as a cheap and flexible labour force. A significant number of migrants also enjoy fewer social, economic and political rights than natives. The fact that no European country has ratified the 1990 UN Convention on the Rights of Migrant Workers and their Families is an indication of their lack of commitment towards improving migrants' wellbeing.

Migrants' sacrifices can also consist of emotional suffering. Such suffering can be related to separation from their families, working below their qualifications, or being subject to racism and discrimination.

The action of remitting itself is not exempt from costs and difficulties. Remittance transfers usually involve financial costs. A growing number of banks and financial institutions see the opportunity for profit that remittances represent[5]. Although many analysts and policymakers, including in the European Union, advocate for the reduction of remittance costs, governments of remittance-source countries take little action to remove obstacles to transfers and improve access to remittance services for poor people[6].

In addition, many migrants impose heavy constraints on their own spending in order to remit. Remitting can require large sacrifices considering the low wages and high living costs in advanced industrial countries. The sacrifices involved may prevent migrants from saving money and thus investing in business or having access to better accommodation or education.

All of these issues contradict the discourses presenting remittances as a costless source of income for developing countries. Hernandez and Coutin (2006, p.203) even suggest that remittances should be re-qualified as the '*dolor*'[7], rather than 'dollar', bill. When assessing the development potential of remittances, one should take into consideration the costs they entail.

Conclusion

While remittances do contribute to poverty reduction, they should not be seen as a panacea for development.

Governments in remittance-receiving countries should seek to break the cycle of remittance dependency by ensuring good welfare coverage and a secure investment climate. This would allow remittances to be increasingly invested in the local economy, which, in turn, would generate more jobs, and decrease the pressure to migrate. The promotion of remittances should be only one part of a country's development strategy, accompanied by state policies aimed at guaranteeing effective public services, such as health and education, improving social security, and making the country safe for investment. The weaknesses inherent in development strategies based on remittances have come to light as a result of the current economic downturn. Remittance-receiving countries should also put forward the development benefits of migration and remittances in international arenas, such as the WTO and UN meetings. Finally, they should closely cooperate with remittance-source countries to ensure respect for migrants' fundamental rights.

Remittance-source countries, if they are really committed to boosting the development potential of remittances, should incorporate migration and remittances into their development aid policies. Such incorporation should go beyond mere acknowledgement in the discourse and involve more liberal immigration policies towards citizens of poor developing countries, as well as concrete efforts to facilitate remittance transfers. Immigration liberalisation does not need to involve a complete removal of restrictions, but a realistic increase in quotas for legal migrants. Perhaps what is more urgent in the current context is to stop the criminalisation of migrants. Not only is migrating not a crime, but migrant-receiving countries should recognise the significant contribution of migrants to their national economies. Finally, receiving countries should show their commitment to protecting the rights of migrants by ratifying the UN Convention on the Rights of Migrant Workers and their Families. ∎

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5 In 2005, the widespread money transfer organisation Western Union declared profits of more than USD 3 billion (Le Monde, 2007).

6 Lower remittance costs are a result of market mechanisms rather than governmental intervention.

7 'Dolor' means pain in Spanish.

The Race for the Best:
A European Perspective on the Brain Drain

The 'brain drain' has re-entered the development debate: Against the backdrop of a highly competitive global knowledge economy, highly qualified migration represents a major issue for both Organisation for Economic Co-operation and Development (OECD) countries and developing countries.

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Definition, causes and consequences

The process of a brain drain implies the outflow of highly qualified workers, usually by transborder or transcontinental migration, and, hence, refers to both source countries and receiving countries. Europe itself did not become a region for immigration until World War II, and it has not only attracted, but also lost, highly qualified workers.

In recent years, terms like 'brain gain', 'brain circulation' or 'international mobility' have been introduced, alluding to the potential benefits of highly qualified migration, as compared to terms like 'brain waste', which imply loss of intellectual potential.

Highly qualified migration is basically driven by negative factors in the source countries (outflow) and positive incentives in the receiving countries (inflow). Motivations for people leaving their home countries are various and range from personal (poor career prospects, constraints on freedom) and economic (low wages, unemployment), to social (bad living and working conditions, social insecurity) and political (persecution, political instability and insecurity) reasons. Additionally, the north-south dominated flow of information provided by 'de-territorialised media' and accelerated 'cultural globalisation' following Western ideals (knowledge, consumption, individual liberty) leads especially young people in developing countries to consider emigrating to the Western world (Gebrewold, 2007, pp.97–102). Pull factors largely correspond to the scarcities found in source countries.

For sending countries, remittances, knowledge transfer, new or enhanced foreign trade relations, foreign education and values[1] are positive impacts of the brain drain, while loss of intellectual potential[2], staff shortages (especially in strategically important sectors like medical care, administration and education), loss of economic investment (cost of tertiary education) and loss of tax revenue[3] represent the negative consequences. By contrast, receiving countries 'accumulate skill', offset labour shortages, augment the 'average skill level' of their labour force and usually increase the economic profit ratio by increasing wage pressure in the national labour market (Exenberger, 2007, p.15).

The consequences of the brain drain cannot be generalised as they vary significantly according to conditions in source and receiving countries. As pointed out by Docquier et al. (2007), countries most vulnerable to brain drain are small, situated close to OECD territories and strongly tied to their former colonial powers. Religious fractionalization intensifies the negative impacts. A major factor in the extent of negative impacts is the amount of native human capital; this determines whether or not the brain drain causes an appreciable lack of human resources in strategic sectors such as health and education. Consequently, the brain drain is likely to benefit large populations and middle income countries, while significantly weakening small and less developed countries.

Finally, slowing migration has proved not to be as simple as imposing legal restrictions or reducing poverty (Gebrewold, 2007, p.101), because migration motives are manifold; people are willing to defy prohibitions (undocumented migration) and migration also implies costs (usually the poorest of the poor can't migrate). By contrast, in the case of highly qualified worker migration, increasing poverty causes growing numbers of emigrants (Exenberger, 2009, p.39) and migration happens, to a large degree, voluntarily and via legal channels (Kelo & Wächter, 2006, p.16). Regrettably, most data regarding international migration flows are unreliable and lack harmonisation, which makes analysis difficult[4]. Moreover, most statistics concentrate on education levels and neglect the professions of migrants in receiving countries. Indeed, as affirmed in the brain waste debate, many qualified migrants work in low skilled jobs (Kelo & Wächter, 2006, p.17).

Dimensions and flows

During the year 2000, of almost 22 million migrants living in the EU, 22 per cent had tertiary education.[5] Compared to 1990, this share has considerably increased (+7%), while the stock of primary educated migrants has relatively decreased. With respect to the population structure, the share of highly qualified migrants tends to be considerably higher than that of the average population in their home countries (Carrington & Detragiache, 1998, p.24)[6].

According to Docquier (2007, p.11), the regions accounting for the highest outflow of highly qualified workers are the Caribbean (42.8% of total emigration is skilled migration), Central America (19.9%), Sub-Saharan Africa (13.1%), South-East Asia (9.8%) and the Pacific (48.7%). The disproportion between general and highly skilled emigration is considerable in Sub-Saharan Africa (1% general versus 13.1% highly skilled).

In the case of European-born adults, almost half of the outflow of highly qualified workers emigrate to North America, while EU immigration inflows of foreign-born amount to 47.8 per cent from Africa, 24.9 per cent from North America and 22.4 per cent from Oceania (IOM, 2008, p.63, Table 2.2). In absolute terms, the US is the most favoured country, attracting almost 55 per cent of all highly qualified workers from developing countries, while migration of low educated Africans is negligible (Carrington & Detragiache, 1998, p.14).

In highly qualified migration flows, asymmetries are visible. In the case of Europe, three major directions are apparent:

1. From developing countries to the EU
2. Inter-European (East-West flows)
3. From Europe to the US, and, more recently, to developing countries

Developing countries to the EU: The case of health workers

The brain drain of health workers proceeds on two different levels; firstly, from developing countries to OECD countries and, secondly, from the public to

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1 Dirk Kohnert (cited in Gebrewold, 2007, p.40) argues that African elites with European tertiary education "played a decisive role in many liberation movements".

2 The brain drain has delayed the growth of an African middle class and, consequently, the development of sustainable structures within civil society (Kohnert, cited in Gebrewold, 2007, p.40).

3 For the Bhagwati Tax debate see Wilson (2005).

4 Migration data are vague because it is difficult to estimate the amount of illegal migration. Migration of highly qualified workers is more transparent, but, nevertheless, there are only a few harmonised international data sets on migration by country of origin and education level (Docquier & Marfouk, 2004, Non-Technical Summary and p.4).

5 Data includes only EU Member States that are also members of the OECD (19 of the 27 EU Member States).

6 For a global overview see Docquier et al. (2009).

the private sector. Particularly Sub-Saharan African and some Caribbean countries suffer from serious outflows of medical personnel on a life-threatening scale. The vulnerability of the local health system depends on the size of the source country and the occurrence of large-scale epidemics like AIDS, malaria or tuberculosis.

Over the last 20 years, Zambia experienced an outflow of two-thirds of its doctors, Benin lost more than half to France (Akokpari, cited in Exenberger, 2009, p.38) and, in 2006, one-third of all doctors working in the United Kingdom (UK) had been trained abroad (WHO, 2006, p.98). Some industrial countries offer health service provisions to developing countries, which – as in the case of Ghana – can be rather inadequate. In 2004, it is estimated that Ghana lost around 35 million pounds of its training investment in health professionals to the UK, while the UK saved about 65 million pounds in training costs by recruiting Ghanaian doctors, which clearly outstripped the provision of an estimated 37 million pounds by the UK to Ghana (Mills et al., 2008, pp.687–88).

The active recruitment of health workers from fragile health systems (especially in Sub-Saharan Africa) by high income countries has in some cases become a "systematic and widespread problem […] and a cause of social alarm", and, hence, could "be viewed as an international crime" (Mills et al., 2008, p.687). Moreover, an internal brain drain in the health sector of developing countries arises from migration to cities and an inflow to the private health sector, both of which severely impact on the public health care system and distress those who rely on this system. Persistent incentives favouring the outflow of health workers are occasionally intensified by salaries (up to 5 to 20 times higher than public remuneration) and working conditions provided by sending countries (Pfeiffer et al., 2008, p.2137).

The EU intends to tackle this problem with a directive that contains guidelines and tools to turn the brain drain into brain circulation. In order to monitor implementation and to avoid brain waste, Member States are requested to send relevant data to the Commission (Council, 2007, §§.22–24).

Within the EU: The East-West flow

Before the 1990s, East European migration mostly targeted overseas countries. Selective pro-migration programmes and the 2004 enlargement initiated an increase in East-West migratory flows, especially to Britain and Ireland, which together with Sweden immediately opened up their labour markets to the new Member States (Kaczmarczyk, 2006, p.23). Post-accession emigration might be only temporary, and, thus, also offers considerable opportunities for brain gain (European Commission 2008, pp.5–6). Theories of a widespread 'brain exodus' (Kaczmarczyk, 2006, p.22) and mass migration have not eventuated (see Pijpers, 2008; Kraus & Schwager, 2004).

In addition to considerable gains from the brain circulation of students (knowledge transfer) and expert migration (remittances contribute 5.5% to the GDP in Bulgaria and Romania, and 1.5% to Poland [Council of the European Union, 2009, p. 6]), the case of Poland also illustrates the dangers that may arise from low salaries in the health sector, heavy foreign demand for specialised medical personnel and a minor ability to attract foreign talent due to a poor immigration tradition (Kaczmarczyk, 2006, p. 23). Similar to the case of developing countries, brain circulation could be a chance for brain gain in Eastern Europe, but the outflow from sensitive sectors such as health entails serious risks.

EU to the US and developing countries

For many years, the EU has feared the brain drain from the EU to the US. In 2008, four per cent of all European scientists worked in the US (Bosch, 2008, p.2210). Three in four European born researchers with a PhD from an American University decide to stay, while only three per cent of US born scientists intend to work outside their home country (Dente, 2007, p.17). In addition, the rise of international cooperation in China (for example, between the Chinese Academy of Sciences and the Max Planck Society in 2005), the establishment and expansion of interesting faculties and institutes (for example, the School of Life Science at Fudan University) and attractive scientific funding, not only bring Chinese researchers back to their home country, but also commit European and American talents to China (Dente, 2007, pp.15–6). In the future, this may also be the case in India as well. Rising unemployment due to the current global economic crisis and China and India's tremendous need for talent (see Yin & Choi, 2005) may reinforce flows of highly qualified workers from Europe and the US to the emerging economies of China and India.

The brain drain and EU policy

Although the US still receives the largest share of global highly qualified worker flows, Docquier et al. (2005) affirm that the EU is the preferred migrant receiving region for highly qualified workers from several African countries, thus accounting for substantial human capital losses in one of the weakest regions of the world.

Although the Amsterdam Treaty moved asylum and migration policies from intergovernmental cooperation (third pillar) to supranational community policies (first pillar), inconsistencies remain. While general migration policy increasingly emphasises security issues and migration control, in highly qualified migration, the EU aims to increase its global share of highly qualified human capital.

This is done by attracting highly qualified workers to the EU, as well as by preventing the loss of its own human capital. The Council expressed this as to invest in "people and […] labour markets"

as well as in "knowledge and innovation" (target investment of 3% of GDP in research and development), the latter to be achieved by activating private investment (Council of the European Union, 2008, p. 61). The 7th Framework Programme for Research and Technological Development (2007 to 2013, with a budget of more than EUR 50 billion) represents a major instrument for attracting and retaining researchers. Out of this Framework, a 30 month project (MOREBRAIN) was approved, which analyses interrelations between information transfer and the brain circulation of European talent (see CORDIS, 2008).

Targeting highly qualified workers, the EU intends to introduce a selective immigration process called the Blue Card (approved by the Council in May 2009, to be implemented by 2011). The proposal, comparable to the US Green Card, plans more restrictive terms of admission. Beside the common instrument, Member States will retain national sovereignty to decide on a case-by-case basis.

By contrast, the EU's development cooperation policy views brain drain from developing countries as a danger, placing at risk the achievement of the MDGs. To avoid this, concepts of 'circular migration' and 'mobility partnerships' have been introduced (European Commission, 2007), whereby both sending and receiving countries will benefit from highly qualified migration. However, assumed

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BOX 3: EU Blue Card for highly qualified immigrants

On 25 May 2009, the Council of the European Union adopted a directive aimed at facilitating conditions of entry and residence in the EU for third-country nationals for the purpose of highly qualified employment: the so-called Blue Card.

The EU Blue Card Directive lays down a harmonised admission procedure based on common criteria set by EU Member States: Blue Card holders must have an employment contract, professional qualifications and earn a certain minimum salary. The card is valid for between one and four years, with a possibility, under certain conditions, to extend it or migrate to another EU Member State. The Directive also guarantees that holders will enjoy equal treatment to nationals and foresees favourable conditions for family reunification.

EU Member States have two years from the adoption of the Directive to transpose the provisions into their national law before they will be fully applicable in practice.

Members of the European Parliament and various civil society organisations have criticised the Council Directive as there are no firmly statements and measures to ensure that developing countries will not suffer from brain drain as the Blue Card is, in effect, a tool to attract highly qualified workers.

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mutual benefits are questionable, as Triandafyllidou (2009, p.2) points out, as "these partnerships [...] reflect power relations where the EU sets the rules of the game and third countries have to abide by these rules". ■

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Dangers of Readmission Agreements

With the adoption of the 'Return Directive' in June 2008 and the European Pact on Immigration and Asylum in October of the same year, the EU has intensified the fight against so-called irregular immigration, while still leaving Member States with a wide scope for defining national immigration policies. During the past months, EU Member States have implemented a number of policies aiming to reinforce border control and ensure the return of undocumented immigrants to their countries of origin – notably through 'readmission agreements'. EU countries also seek the cooperation of countries of transit and origin in their fight against irregular immigration by the conclusion of EU-wide and bilateral agreements with those countries. These bilateral agreements grant opportunities for legal migration in exchange for commitments by countries of origin to participate in the control of undocumented migrants. The result of these policies has been the increased stigmatisation, and even criminalisation, of asylum-seekers and undocumented migrants, and the detention and deportation of immigrants, in flagrant violation of their basic human rights[1].

Readmission agreements: A framework for the expulsion of migrants

Migreurop

A readmission agreement is an instrument through which signatory states commit to readmit into their territory their nationals who were apprehended while residing irregularly within the territory of a foreign state, but also other foreigners who transited through their soil. Readmission agreements can be either bilateral agreements, concluded between an EU Member State and a third country, or Community agreements, concluded between the EU – thus committing the 27 Member States – and a third country. Since the European Council of Seville of June 2002, 'readmission clauses' are required to be systematically included in every economic, trade or cooperation agreement between the EU and third countries.

These clauses and the readmission agreements form one of the central features of the EU's policy of externalisation, which became official with the Hague Programme in 2004, and through which the EU externalises to third countries a part of the control of immigration flows. Since then, all development aid, and even all 'economic and trade cooperation', has been subordinated to the negotiation of these agreements. This is notably the case with bilateral agreements for the 'concerted management of migration flows' signed between France and Spain and West African countries, and the 'mobility partnerships' envisaged by the EU.

These agreements are dangerous. They threaten fundamental rights (their implementation risks violating Article 3 of the European Convention of Human Rights through the signature of 'agreements in cascade'[2], which allow for the expulsion of individuals without any guarantee of respect for their life and integrity in the 'final destination' country); they violate the principle of non-refoulement[3] foreseen by the Geneva Convention (mainly through the implementation of the accelerated procedure currently foreseen in the agreements with Russia, the Ukraine and some Western Balkan countries); and lead to the generalisation of centres for foreigner at every stage of the expulsion procedure. Refoulements are increasingly frequent at the border of Europe, for example, between Italy and Lybia, or between Greece and Turkey, confirming that the issue deserves our urgent attention.

The work carried out by the Euro-African network Migreurop on readmission agreements[4] is organised both at the European and national levels and consists of collaborations among network members, and also with numerous partners in Latin America, Haiti, and Balkan countries, among others. At the European level, Migreurop sent an open letter to the European Commission and the Council of the European Union in January 2009 asking for increased transparency in the negotiation and implementation of readmission agreements[5]. This letter aims to remind European institutions of their responsibilities in relation to the signature and implementation of these Community agreements, and of the consequences of these agreements for migrants' lives and the enjoyment of their rights. At the national level, Migreurop's work attempts to draw the attention of national deputies and raise public awareness about the implications of bilateral agreements.

Forced returns, the case of Mali

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Association Malienne des Expulsés (AME)[6]

Mali: A country of emigration, immigration, transit and return

Historically and geographically, Mali is an important crossroads for civilisations and migration. Mali is at the same time a country of emigration, immigration, transit and return.

It is estimated that around one-third of the Malian population, that is four million people, live outside the country, of which more than half reside in other West African countries. A large number of undocumented Malian migrants in Europe are being confronted with the current strengthening of European immigration policies. The Malian authorities pay significant attention to migrants' financial contributions to the country in the form of remittances and to their support of development in their locality of origin. Created in 2004, the Ministry for Malians Abroad and African Integration (MMEIA) was designed to address the needs of Malians abroad and to make them more aware of their potential role in the country's development.

In recent years, Mali has also become an important country of transit for Sub-Saharan migrants on their way to the West African coast (Mauritania, Senegal, Guinea, Gambia and Guinea Bissau), to Maghreb, and across the Mediterranean to Europe.

Mali is also a country of return, frequently receiving Malian and other Sub-Saharan immigrants expelled from Europe, Maghreb countries of transit, or from war-stricken African countries.

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1 To date, no EU country has ratified the International Convention on the Protection of the Rights of Migrant Workers and their Families.

2 When a third country that is already signatory to a readmission agreement concludes the same type of agreement with another country it is called an 'agreement in cascade' or a domino effect.

3 Set out in the 1951 Refugee Convention, Article 33 (1), which states: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion". Convention Relating to the Status of Refugees, adopted on 26 July 1951, available from: <www.unhcr.ch/cgi-bin/texis/vtx/home?page=basics>.

4 More information on Migreurop's work is available from: <www.migreurop.org/rubrique271.html>.

5 Migreurops letter of January 2009 to the European Commission and the Council of the European Union is available from: <migreurop.org/article1350.html>.

6 Translated from French by Louisa Vogiazides.

Migrants blocked in transit are either escorted to the Malian border (with Mauritania, Algeria or Lybia) and abandoned in the middle of the desert, or sent back by plane tied down and muzzled. Malians subject to involuntary return describe massive raids, degrading treatment and long periods of detention with the prospect of a forced return to their home country, often with no money.

Situation of migrant returnees

Public concern about the issue of migrant expulsion is very acute in Malian society. Migrants' countries of return often lack appropriate structures for receiving migrants who have been forced to return. They also lack mechanisms for protecting the rights of returned migrants. Organisations supporting migrants have documented a large number of human rights violations on which they base advocacy efforts and judicial complaints. Explorative missions are carried out by Malian civil society organisation, often in collaboration with international solidarity organisations, in order to record the reality of forced returns at borders[7]. Their reports reveal the criminalisation of migrants in transit, flagrant violations of the integrity and dignity of migrants expelled on mass, arbitrary imprisonment, inhumane conditions during transportation and abandonment in the desert.

It is worth noting that the EU policy for controlling migration flows does not foresee centres of assistance for expelled migrants at the borders, nor are any international NGOs active in these border zones. The voluntary associations trying to assist returned migrants lack both the capacity and resources to fulfil the task. At the same time, the EU has financed the establishment of detention centres in countries such as Lybia and Mauritania for detaining illegal immigrants prior to their forced return. These centres are part the EU's strategy of 'outsourcing' immigration control outside of EU borders.

The General Delegation of Malians Abroad (DGME), whose mission includes the assistance, protection and promotion of Malians abroad, has an office at the airport of Bamako for the administrative and technical assistance of voluntary and involuntary returned migrants. The arrival of airplanes containing returned immigrants is supervised by civil protection, in collaboration with the Malian Red Cross. However, this is only the case during so-called 'urgent procedures', i.e., when the authorities are informed in advance, which is rarely the case. Involuntary returned migrants often arrive home after several years of absence utterly destitute. Most of them come from rural areas and have no family in Bamako. A number of Malian civil society associations, with limited resources, are active in providing accommodation, medical care, legal assistance and financial help to return migrants to their home region. No official aid is given to these vulnerable people.

Current challenges in Mali

In view of the risks of illegal immigration (including expulsion), the Malian authorities try to stem migratory flows by promoting education and employment opportunities in Mali, and by negotiating agreements on the concerted management of migratory flows. In 2008, the Ministry for Malians Abroad and African Integration, in partnership with the International Organization for Migration (IOM) and various associations supporting returned migrants, carried out a national awareness campaign on the dangers of illegal immigration.

Financed by the EU, a Migration Information and Management Centre (CIGEM) was inaugurated in Bamako in October 2009. The creation of CIGEM is part of the EU's 'Global Approach to Migration' launched in 2005; CIGEM works to promote the linking of migration with the development needs of migrants' countries of origin and encourages collaboration with migrants' countries of origin and transit in the management of migration flows. CIGEM's activities include the definition of a national migration governance policy, the promotion of a codevelopment approach[8], the promotion of legal migration schemes, and the fight against illegal immigration through awareness campaigns and the orientation of candidates for migration towards work and education opportunities at home.

The above initiatives in favour of legal immigration clearly reflect the EU and its partner countries' political will to put an end to illegal immigration. The incentives offered to potential migrants to remain in Mali and the mass expulsion of illegal migrants from transit countries and countries of destination are both sides of the same coin. They are part of the EU's self-interested strategy of 'chosen immigration'.

For example, the incentives offered by European countries for 'voluntary return' are poor and underfinanced. Migrants blocked in transit are not assured of being taken care of upon their return, while expelled migrants are not eligible for any 'reintegration' programme financed by the EU. Migrant associations also plead for the return of property and contributions to the social security system from the former country of residence. Some people reclaim up to 22 years of social contributions.

It is in this context that the cautious position of the Malian authorities in the negotiation of the agreement with France on the concerted management of migratory flows must be situated. On the one hand, they appreciate the contribution of Malian emigrants to Mali's national development, but on the other hand, they depend on EU development aid, which is increasingly becoming conditional on the adoption of agreements on the concerted management of migratory flows. How long the wrangle will last is unknown. The global economic crisis and its consequences have reaffirmed Mali's concerns. The crisis has been accompanied by cuts in EU development aid. The labour market contraction is also spurring tougher restrictions on migration, which affects the capacity of migrants to send remittances. Tougher immigration restrictions often imply human rights violations, but are ineffective in stopping illegal immigration: people still put their lives at risk to reach Europe, at any cost. ▪

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7 AME carried out an exploratory mission at Mali's border with Algeria together with the Afrique Magazine in 2007 and with Apdha (Spain) at the border with Mauritania in 2008.

8 Codevelopment is a trend of thought and development strategy in development studies that considers migrants to be a developing factor for their countries of origin.

Figure 3: Increase in the bilateral patterns of cooperation on readmission involving European countries
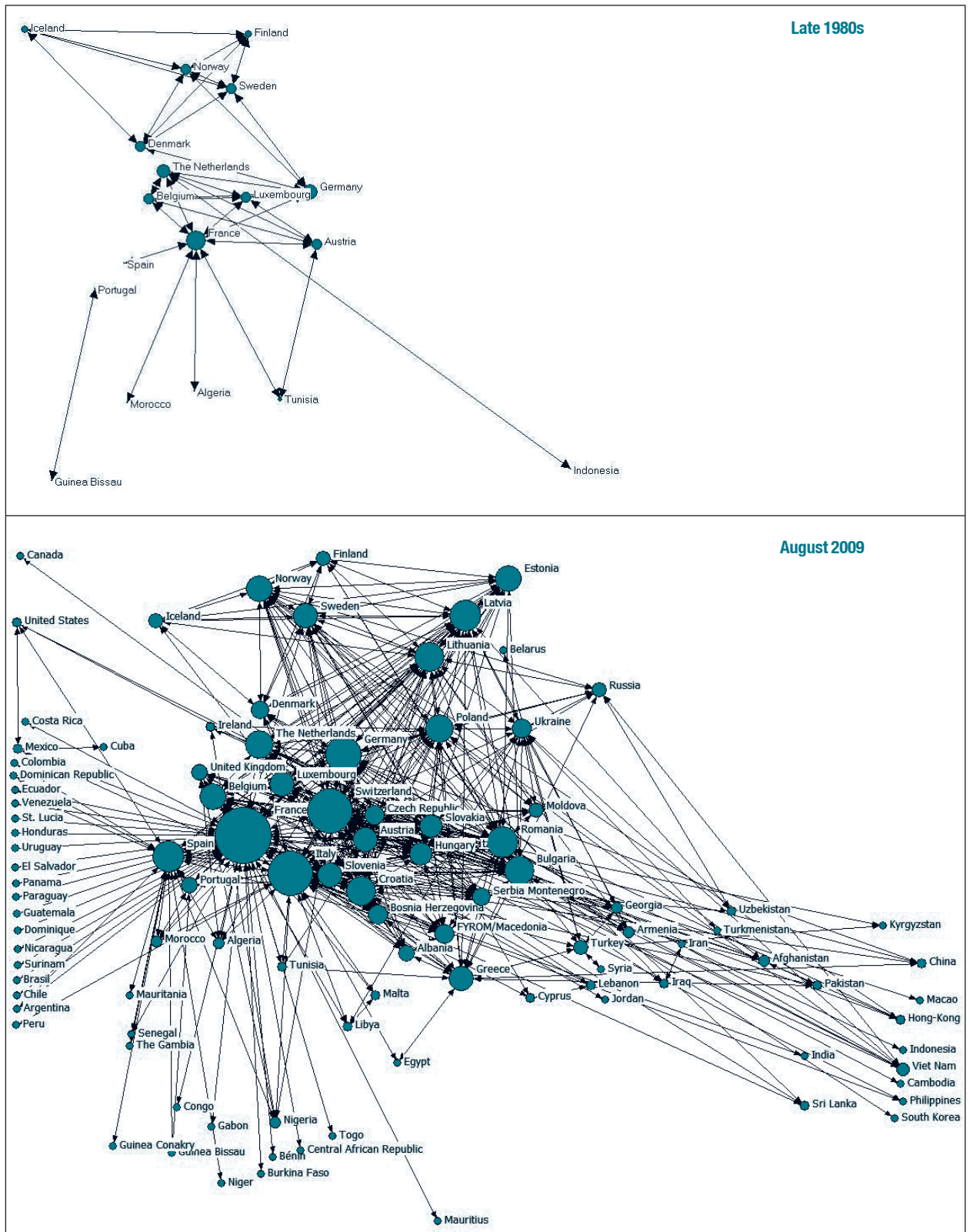
Late 1980s

August 2009

Trafficking in Human Beings in Europe: Perception of Civil Society

Trafficking can take place for a variety of reasons and it is, therefore, difficult to address all forms with the same sets of policies and measures. In order to identify the best possible actions for prevention, prosecution and protection it is necessary to differentiate between different forms of trafficking, without establishing a hierarchy. The 'push' and 'pull' factors for the trafficking of women into the sex-industry are different from the push and pull factors that fuel trafficking for labour exploitation in, for example, construction work.

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Trafficking for sexual exploitation: A gender perspective[3]

Trafficking in women for sexual exploitation in the sex industry remains the most dominant form of trafficking in Europe today. While women are also trafficked for labour exploitation, in particular for exploitation in domestic work in Europe, the most prevalent form of trafficking in women and girls remains for the purpose of sexual exploitation. Almost all countries in the European Union are today both destination and transit countries for trafficked women. However, not all countries are origin countries (countries where the women are trafficked from). Great economic disparities between countries together with limited possibilities for people to ensure their livelihoods have fuelled the trafficking of women from Africa,

Asia, and Central and Eastern Europe, mainly to Western Europe and North America, not the other way around. Although international bodies, including the European Union, have called for better statistical data, most countries have not yet established any system to monitor trafficking. A key challenge in the identification process is to get statutory bodies, such as police, working together with NGO's that may be providing support services to victims. Data on detected cases remain hidden in prostitution and immigration offences files.

The overall number of women in prostitution in European countries has grown to more than half a million. In Vienna, Austria, almost 70 per cent of prostituted women come from Eastern Europe. There are about 15,000 Russian and Eastern European women in Germany's red-light districts. Many are in brothels, sex clubs, massage parlours and saunas under the financial control of criminal groups from the Russian Federation, Turkey and the former Yugoslavia, according to a survey by the International Organization for Migration (IOM) (UNESCE, 2004). An ILO report (Belsar et al., 2005) estimates that 12.3 million people are trafficked at any given time. In the most developed countries, 75 per cent of the traffic is for sexual exploitation, which involves mainly women and children.

Given the extent of the problem of trafficking in women and girls for sexual exploitation in Europe, it is essential to maintain a specific focus in this area. The aim is to develop an in-depth understanding of the root causes, the most effective prevention strategies, and how to meet the support and assistance needs of victims.

The specificities of trafficking in women

Poverty, racism and sexism are inextricably connected to trafficking and prostitution. Among the push factors making women vulnerable to trafficking and exploitation are poverty, gender inequality and violence against women. Using the case of Latvia, an expert from the European Women's Lobby (EWL) Observatory explains:

Latvia has inadequate legislation providing support for women suffering from a partner's violence (in fact one of the poorest in Europe)

and it has no functioning system of remedies. As a result many of the affected women choose to look for better life opportunities abroad, many of them becoming victims of sex trafficking.

Among the pull factors, there is the demand for trafficked women in destination countries through the expansion of the sex-industry: prostitution markets, the porn industry and so forth. The sex industry in EU Member States has become one of the most lucrative businesses. Even in countries with a rural spread of population (like Ireland), escort agencies on the Internet allow women to be made available to men in remote locations (O'Connor & Pillinger, 2009). Further, as suggested by the Mediterranean Institute for Gender Studies (MIGS), another factor affecting demand for sexual services is the tendency to stereotype women, and particularly Eastern European women, as sex symbols. Besides pornography, women are presented in popular culture and the media in general in ways that reinforce the stereotypes of women as either mothers or sex symbols.

Trafficking in women is also developing in the context of mail-order brides. The women are promised a marriage and family, but are forced into domestic and sexual servitude. Research done in the United Kingdom shows that many websites that catalogue mail-order brides are venues for pornography and prostitution (Eaves, 2009). Women are pictured with their children, or in infantilising, childlike poses. Many of the thousands of newlywed mail-order brides become victims of violence, sexual exploitation and sex trafficking. Current trends in the industry show greater supply of, and demand for, women from Russia and Eastern Europe[4], as well as women from the Philippines, Thailand and Vietnam.

The links between trafficking and prostitution

Both the European Union Action Plan on Trafficking as

well as the Council of Europe Convention recognise that demand reduction should be part of an integrated strategy against trafficking. In terms of trafficking for sexual exploitation, many actors are reluctant to recognise that there is a link to the demand for women in 'prostitution markets' in the destination countries. Without the demand for women in the sex-industry, there would be no business for pimps, and, as a result, no need for a supply chain. In short: no demand, no supply, no trafficking.

Increasingly, evaluation reports on the models regulating prostitution show that in those countries where the focus is to curb the demand, trafficking in women for sexual exploitation is less prevalent than in countries that have legalised/institutionalised prostitution as a form of work. There are different strategies to curb the demand in the sex industry, which include targeting the pimps and brothel-owners, raising awareness and changing attitudes, as well as establishing administrative penalties for buyers or criminalising the buying of sexual services and providing exit routes for women out of prostitution.

Curbing the demand is also important from a gender equality perspective as prostitution markets perpetuate inequality, as well as an ultra-conservative view of sexuality in which commercial interests are the dominant factor. It should also be pointed out that repressive policies actually targeting women in prostitution rather than focusing on the pimps and buyers are an unacceptable development and are contrary to the goal of support and protection. Women in prostitution should not be subjected to regulatory measures, obligatory health controls, administrative fines or other constraints, costs and/or punishments. Such women should be provided with planned and structured exit routes from prostitution, which may include training, education and employment opportunities.

Repressive immigration policies fuel trafficking

In the last decade, EU Member States have moved towards increasingly restrictive immigration policies, which have had a negative impact on trafficking. Vulnerability to trafficking is linked to the desire of women and men to seek better life opportunities than that which their country of origin can offer. Entering into an expanding international sex industry, where there has been an explosion in demand for migrant women, is one of the few ways they can survive poverty and globalisation (Penttinen, cited in O'Connor & Pillinger, 2009). Restrictive immigration policies, stricter border controls and biometric ID systems will not make women and men less vulnerable to trafficking. On the contrary, it may make them more vulnerable. Therefore, it is clear that trafficking cannot be efficiently counteracted without an overview and a strategy for the reform of European immigration policies and practices.

Increased focus on victim support and assistance needed

Work against trafficking must increasingly focus on the needs and wellbeing of victims. This does not mean that other aspects of fighting trafficking in women, such as police cooperation and prosecution, are deemed less important. However, it does entail a shift in focus, in which all actions must be measured against their impact firstly on the victim her/himself. This applies to policies and practices in all areas, from identification procedures, court procedures, compensation schemes, return policies and shelter set ups, to the rules on residence status for victims of trafficking, and so forth. Central to the success of this approach is the development in every country of good inter-agency models of work on combating trafficking that ensure the provision of quality services to victims.

Human trafficking for labour exploitation

Human trafficking outside sexual exploitation recently received more in-depth consideration when international and European legal instruments started being transposed into national law. Some of the international instruments that are important for the harmonisation of national legislation include the Palermo Protocol (which contains the definition of human trafficking), the revised EU Framework Decision 2002/629/JHA (which complements UN work at the regional level), the Council of Europe Convention on Action Against Trafficking in Human Beings (which encourages a common approach in nearly all destination, transit and source countries in Europe) and relevant ILO conventions (which define forced labour and slavery-like practices). Such harmonisation would enable the effective prosecution of traffickers and protection of people who have suffered as a result of this global crime against humanity.

Although there is no doubt that trafficking for sexual exploitation needs to receive continued attention, the general focus should include all modern slavery practices and not neglect other substantial numbers of trafficked persons. The latest ILO finding (2009) is that the annual illicit profits from labour trafficking are five times higher than their earlier estimates in 2005. According to the United Nations Office on Drugs and Crime's (UNODC's) Global Database on Human Trafficking Trends (2005), trafficking for labour exploitation accounts for only 23 per cent of all reported trafficking cases. However, statistics from some countries testify to the increasing number of labour exploitation cases. For example, in 2004, Ukraine's identified cases of trafficking for sexual exploitation were more than double those for labour exploitation. In 2007, the gap between the two categories had almost disappeared and in 2008, the number of labour exploitation cases exceeded those of sexual exploitation. Western European countries are also increasingly concerned

about hosting coercive labour practices and forced labour. Some findings suggest that regular migrants can also be trapped in trafficking and forced labour situations in Europe (Pereira & Vasconcelos, 2008).

The sectors particularly prone to exploitation are agriculture, construction, manufacturing, food processing, catering and domestic work, as well as illicit activities. Sometimes different types of work are associated with different genders and nationalities. For example, females are more likely to be found in domestic sector, males in the construction industry, Ukrainian women are preferred in caring for elderly and children and for cooking and cleaning, while Roma people are more often forced into begging. Yet there is little in-depth research into those associations or into the various employment sectors, especially unregulated ones, apart from the domestic service sector.

Despite the proven high level of demand for foreign domestic workers in Europe, in many countries this category of workers is still one of the most vulnerable to human trafficking. Excluded from labour legislation, working in isolated and unregulated conditions, and extremely dependant on the good or bad will of the employer, domestic workers are exposed to labour exploitation, which can often be combined with sexual abuse.

Migrant domestic workers who face exploitative situations in Europe come from different countries and regions of the world, with some nationalities prevailing in certain countries. For example, Latin Americans mainly work in the domestic sector in Spain; in Italy domestic workers predominantly come from the Ukraine, Moldova, Romania, the Philippines, Peru, Colombia and Ecuador; in Portugal – from African and Eastern European countries; and in Sweden – from Eastern Europe and Asian countries.

In many European countries the demand for domestic work performed by migrant women will continue to increase; therefore, safeguarding domestic workers' rights should be paramount in the efforts to curb human trafficking for labour exploitation. The creation by ILO of the Convention for Domestic/Household Workers' Rights provides significant impetus and is a crucial step forward at the international level.

Special assistance and proactive prevention

Together with the improvement of labour and other laws, it is important that trafficking cases are identified as such and are dealt under the relevant article of criminal legislation. Many COATNET partners report that it is very difficult to identify or prove incidents as human trafficking, especially for labour exploitation, using the current definition of trafficking. There is a lack of practical commentaries on how severe the exploitation should be in order to qualify for trafficking, what forms of constraint, coercion and vulnerability can indicate trafficking cases, and so forth. The situation is also aggravated by the fact that

many people trafficked for labour purposes do not recognise themselves as trafficking victims.

Being conscious of these challenges, some COATNET partners, namely KSPM (Re-Integration Center for Migrant Workers of the Church of Greece) Greece, Aidrom in Romania and Czech Caritas, have started developing interventions in the direction of building expertise and capacity to identify and support trafficking victims outside sexual exploitation, and to raise awareness about the availability of such services. The specific assistance needs of people trafficked for labour exploitation should be taken into account when developing assistance programmes. Obtaining compensation for damage suffered and a well-paid job placement is the first priority, with other types of assistance (access to shelter, medical care and social assistance) playing an additional role. Like in combating trafficking for sexual exploitation, the effective prosecution of traffickers depends on assistance and protection being provided to victims (which is a factor contributing to their willingness to cooperate with law enforcement), and on a human rights approach prevailing over immigration law enforcement.

Along with complex assistance to trafficked persons, proactive prevention aimed at the protection of all migrant workers, and, in particular, of vulnerable irregular migrants working in inadequately regulated sectors of employment, is equally crucial in combating trafficking for labour exploitation. Irregular migration and labour exploitation is likely to rise in times of global recession, which considerably contributes to the vulnerability of workers due to a more significant decrease in employment opportunities, stronger dependence on employers who, operating on a low profit margin, may reduce labour conditions even without clear evidence of the use of coercion, and due to the aggravation of the main root causes of human trafficking – poverty and social exclusion. In these circumstances, it is even more vital to continue work towards promoting the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted in December 1990.

Conclusion

Given the extent of the problem of trafficking in women and girls for sexual exploitation in Europe, it is essential to maintain a specific focus in this area, but a general focus should include all modern slavery practices, so as not to neglect the other substantial numbers of trafficked persons.

Repressive policies targeting women in prostitution and restrictive immigration policies contribute to the vulnerability of potential trafficked persons and should be avoided. It is necessary to improve and develop the protection of, and adequate services for, victims of trafficking. It is important to continue to develop systems to monitor trafficking, conduct action-oriented research into various employment sectors, especially unregulated ones, improve the identification and prosecution of both sexual and labour trafficking cases, and raise awareness about the availability of services for people trafficked into labour sectors, as in sexual exploitation. ▪

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Detention Centres: An Unjust and Ineffective Policy

The administrative detention of migrants is being performed in many countries around the world in violation of international human rights standards. Administrative detention should be applied only as an exceptional measure and based on the evaluation of each individual case. At present, it is used as a tool, however ineffective, to combat so-called 'illegal' immigration.

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Administrative detention: A global institution

In many countries, 'closed' facilities have been established in which not only undocumented economic migrants are detained, but also asylum seekers and refugees. The Italian 'centri di identificazione ed espulsione', the French 'centres de rétention administrative', the Spanish 'centros de interniamento' and the British 'removal centres' are facilities designed for the detention of so-called 'irregular migrants', in other words, people who enter the country of destination without the correct legal documents or, having made a regular entry, fall into an irregular status of residence and are now without a permit to stay.

Detention is aimed at guaranteeing the repatriation order to their home country when these measures cannot be executed immediately. This situation may arise if the migrant's embassy fails to establish the migrant's identity, or pending the organisation of repatriation travel arrangements. This restriction of personal freedom is applied to people who have not committed a crime, but who have simply committed an infringement of the administrative procedures for entry and stay. In one European country, Italy, these infractions have recently been deemed a crime. Moreover, it should be pointed out that, more and more often, administrative detention is applied to asylum seekers – people in need of international protection.

In 2008, Migreurop conducted a census of 235 removal centres in Europe: the countries with the highest number of centres were Germany (41), France (37) and Spain (22). In every EU country there is at least one of these facilities[1].

The European Union's Return Directive

The characteristics, management, type and timing of detention vary from country to country. At the European level, the Return Directive (2008/115/CE), adopted by the European Parliament in June 2008, sets EU-wide rules for the return of illegal immigrants to their home country. The directive gives migrants the option of leaving EU territory voluntarily within a period of 7 to 30 days. If they fail to do so, national authorities can issue a removal order and detain them for a period of up to 18 months. Immigrants in that category are also banned from EU territory for a period of five years. The Directive does not set a minimum period of detention and each Member State has the freedom to provide more favourable laws. However, the immediate effect of its approval was to justify a tightening of administrative detention procedures. Once again, Italy distinguished itself by immediately approving a law extending the maximum period of detention in detention centres from 60 to 180 days. The Return Directive has been broadly criticised for its restrictive nature and is referred to by anti-racism and human rights activists as the 'Directive of Shame'.

Article 5, paragraph 1 of the European Convention on Human Rights states that:

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.

Among the cases listed, letter f refers to the hypothesis of :

... arrest or detention of a person to prevent from entering the territory illegally, or a person against whom action is being taken with a view to deportation or extradition.

According to Article 5 (4) of the same Convention:

Everyone arrested or detained ... shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

The wording of this rule is in conflict with the extension of the administrative detention period to a period so long that it cannot be aimed at implementation of the removal measure.

According to the jurisprudence of the European Court of Human Rights (ECHR), Article 5 (1) (f) of the Convention for the Protection of Human Rights allows the regular administrative detention of a person "against whom action is being taken with a view to deportation or extradition"; however, the measures limiting freedom need to be "proportionate and appropriate" and the duration of detention must be commensurate to the need to ensure the measures for forced expulsion.

According to the ECHR, a violation of Article 5 can result from both a 'non-standard' administrative

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BOX 4: European asylum policy

The Dublin Convention of 1997, replaced by the Dublin II Regulation in 2003, was the first step towards the harmonisation of asylum procedures across the European Union. It set the criteria for determining the Member State responsible for examining an application for asylum made in any one of the Member States. This measure was aimed at discouraging 'asylum-shopping', i.e., the process of requesting asylum in multiple EU Member States. The Dublin Convention also promotes the principle of the 'safe third country', according to which asylum-seekers can be returned to the transit non-EU country through which they travelled if the latter is considered 'safe enough'. A number of critics have interpreted the Convention as an attempt by Western European countries to shirk their responsibility to protect the persecuted and most vulnerable. Besides, the principle of the 'safe third country' suggests the intention to keep asylum-seekers outside EU-territory, rather than carrying the burden of examining the validity of their asylum claims.

In recent years, EU countries have been proceeding towards increased harmonisation of their asylum policies. The European Pact on Immigration and Asylum, adopted in October 2008, sets the objective of creating a single European asylum procedure by 2012. Under the Swedish Presidency of the EU, the European Commission proposed a scheme to coordinate across the EU the resettlement of refugees from countries beyond the EU, the so-called Joint EU Resettlement Programme. The Commission hopes that this new scheme will ease the flow of migrants trying to reach Europe illegally. The identification of common annual resettlement priorities and the logistics involved with the reception of refugees would be carried out by EU Member States together with the support of a new agency, the European Asylum Support Office, to be created in 2010. Member States will participate in this programme on a voluntary basis. The Commission is also exploring ways of strengthening EU solidarity on migration flows, including by offering EU money to relocate refugees arriving in the most exposed countries such as Malta, Italy and Greece.

detention with respect to these criteria and the lack of an effective remedy (i.e., a procedure for appeal or review of the detention order). According to Article 5 (4) of the European Convention on Human Rights:

> [E]veryone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Each person subject to arrest or arbitrary detention has the right to compensation. Even in this case, a decision should be made within a short time, and certainly not after several months in a detention centre.

The Schengen agreements do not impose the establishment of detention centres, only that individual EU countries provide measures for forced repatriation. Although the Return Directive allows for the administrative detention of irregular migrants for a period of up to 18 months, it also refers to the principle of appropriateness and proportionality of the forced expulsion (Article 15). Moreover, this Directive affirms that deportation should be a last resort, after attempting voluntary repatriation.

The goal of European legislation harmonisation is still far from being achieved. The EU Return Directive does not prescribe a minimum period of administrative detention, and assigns national legislators the right to suspend appeals against forced expulsion measure.

Conclusions

Detention centres are the result of an approach that continues to promote:

- policies aimed at containing migration, rather than fostering social inclusion;
- policies based on an idea of citizenship that makes 'borders' the discriminator for the guarantee of social and civil rights (but not for economic interests), subordinating the first to the second; and
- domestic policies based on an idea of 'development' as centred on national economic interests, instead of people's wellbeing.

According to this logic, the right to life and freedom of movement is subjugated to economic and other interests by building new walls and creating new cultural and physical borders. The detention centres in Europe are symbols of these new frontiers; they are not (and cannot be) useful institutions for combating illegal immigration. The phenomenon of illegal immigration can only be reduced through a total change of migration and immigration policies to facilitate the entry, stay and regular settlement of foreign citizens in European countries[2]. It would be desirable if, in the next few years, these migration policies became a central issue for European governments to overturn the order of priorities as they exist now. Furthermore, in conclusion, to clear up any ambiguity: the democratic and anti-racist European movements have been asking for the 'overhauling' of detention centres, when they should be simply asking for their closure[3]. ∎
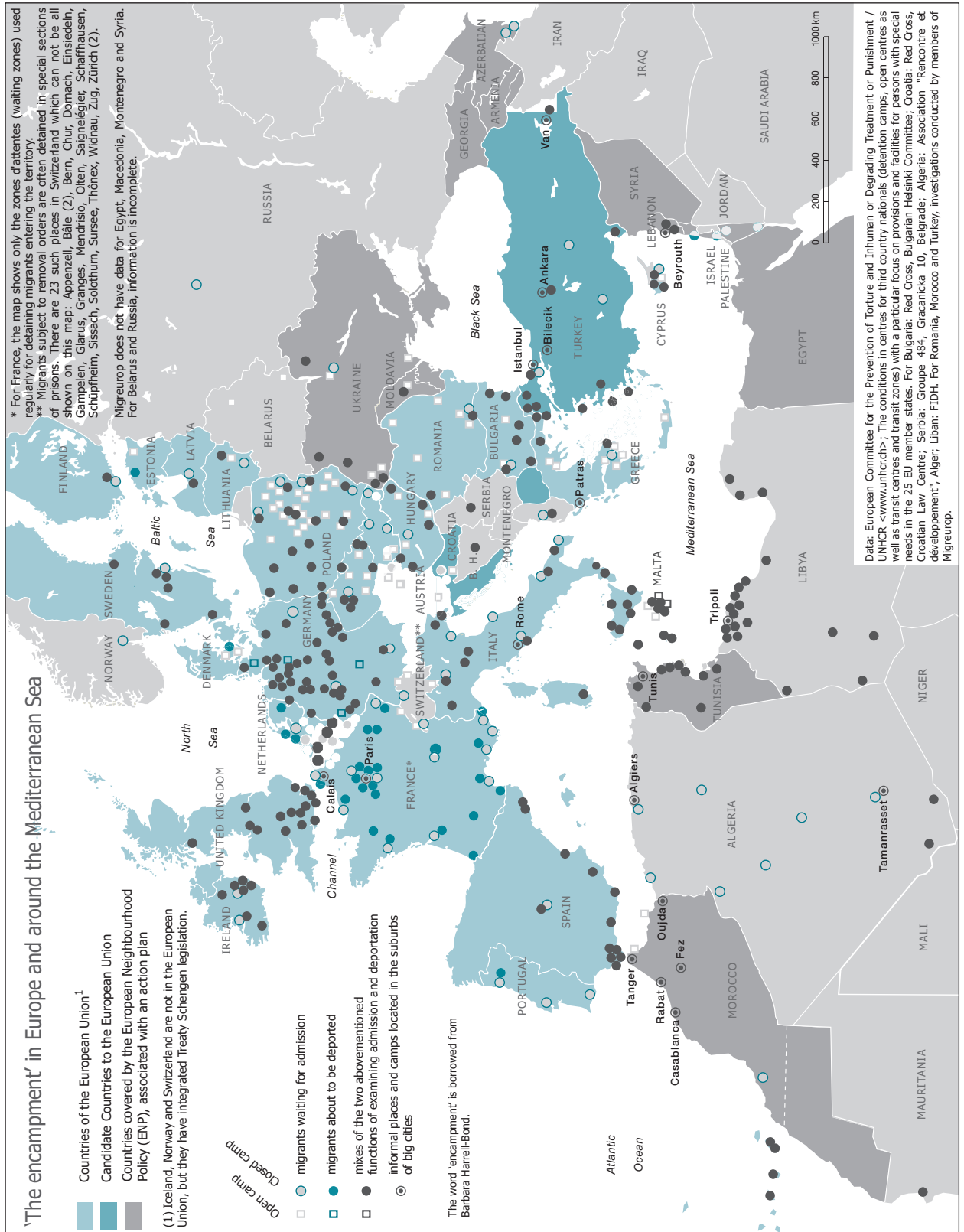
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2 Over the years, the democratic and anti-racist movements in Italy have put forward several proposals. Among the most significant contributions developed since the mid-1990s are: proposals for laws on citizenship and voting rights promoted by the Anti-racist network in 1997; the analysis made by the Migrants' Table of the Italian Social Forum on labour issues; the document "Migrants and rights" developed by ARCI (Associazione di Promotione Sociale) with many civil society organisations for an alternative law on immigration and asylum (www.arci.it); the document for the constitution of the immigration committee in Italy; the proposals for a different allocation of resources made by the Sbilanciamoci! campaign in its annual reports; asylum documents prepared by ICS, Médecins sans Frontières (MSF) and Amnesty International; the proposals by ASGI (Association for Immigration Law Studies) and Magistratura Democratica in "Per una legislazione giusta ed efficace sull'immigrazione. 7 anni di analisi e di proposte sulla condizione giuridica dei migrant"i; and the critical analysis of the Bossi-Fini law and the alternative proposals contained in Altreconomia, ASGI, Lo straniero, Lunaria, Terre di mezzo, "Bada alla Bossi-Fini!", 2002 and ARCI, ASGI, ICS, Lunaria, Progetto Diritti, "Migranti persone", 2005.

3 As regards Italy, the violation of human rights and living conditions inside the centres, and the waste of public resources devoted to them, has been denounced by: MSF, Rapporto sui Centri di Permanenza Temporanea e Assistenza, 2004; and Dentico N., Gressi M., Libro bianco. I Centri di Permanenza temporanea e Assistenza in Italia un'indagine promossa dal Gruppo di Lavoro sui CPTA in Italia, 2006. The Court of Auditors has reported in its reports the irrationality and the lack of transparency of public funds allocated to migration policies and, in particular, to finance the construction and operation of detention centres. See the reports drawn up by the Court of Auditors for the years 2002, 2003 and 2004, Corte dei Conti, Programma di controllo. Gestione delle risorse previste in connessione al fenomeno dell'immigrazione. For more information please visit www.corteconti.it.

'The encampment' in Europe and around the Mediterranean Sea

Countries of the European Union[1]

Candidate Countries to the European Union

Countries covered by the European Neighbourhood Policy (ENP), associated with an action plan

(1) Iceland, Norway and Switzerland are not in the European Union, but they have integrated Treaty Schengen legislation.

Open camp
Closed camp

○ migrants waiting for admission
● migrants about to be deported
● mixes of the two abovementioned functions of examining admission and deportation
◉ informal places and camps located in the suburbs of big cities

The word 'encampment' is borrowed from Barbara Harrell-Bond.

* For France, the map shows only the zones d'attentes (waiting zones) used regularly for detaining migrants entering the territory.
** Migrants subject to removal orders are often detained in special sections of prisons. There are 23 such places in Switzerland which can not be all shown on this map: Appenzell, Bâle (2), Bern, Chur, Domach, Einsiedeln, Gampelen, Glarus, Granges, Mendrisio, Olten, Saignelégier, Schaffhausen, Schüpfheim, Sissach, Solothurn, Sursee, Thônex, Widnau, Zug, Zürich (2).
Migreurop does not have data for Egypt, Macedonia, Montenegro and Syria. For Belarus and Russia, information is incomplete.

Data: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment / UNHCR <www.unhcr.ch>; The conditions in centres for third country nationals (detention camps, open centres as well as transit centres and transit zones') with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states. For Bulgaria: Red Cross, Bulgarian Helsinki Committee; Croatia: Red Cross, Croatian Law Centre; Serbia: Groupe 484, Gracanicka 10, Belgrade; Algeria: Association "Rencontre et développement", Alger; Liban: FIDH. For Romania, Morocco and Turkey, investigations conducted by members of Migreurop.

Source: Migreurop, available from: <www.migreurop.org/IMG/pdf/L_Europe_des_camps_2009.pdf>

EU Policy on Labour Migration: Implications for Migrants' Rights

The EU's approach to economic migration encourages the immigration of only highly qualified workers, failing to ensure the application of human rights standards towards low or unskilled and semi-migrant workers.

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René Plaetevoet
December 18

European cooperation over the entry and residence of migrants[1] for employment-related purposes has been facing many difficulties since the Treaty of Amsterdam came into force in 1999. In 2001, the European Commission's proposal for a general directive laying down the basic conditions and rules of admission concerning migrants for employment purposes failed to find agreement in the European Council. Since then, the official discourse has regularly advocated the overarching importance of the principle of subsidiarity and national competence over this policy area (EC, 2001). Nevertheless, trying to abide by previously-acquired political commitments related to the establishment of a common area of freedom, security and justice, the Commission re-launched the debate about the 'added value' of common rules on labour migration. The 'Green Paper on an EU Approach to Managing Economic Migration' was presented in 2004 (EC, 2004).

Although most of the civil society actors who participated in the consultation process were in favour of a more skilled-transversal/horizontal and human rights-based approach, the majority of Member States expressed their support for a policy that prioritises measures to attract highly qualified migrants over others. The Hague Programme (a multi-annual programme setting the agenda for immigration and asylum policies for the period 2005 to 2010) reaffirms the reluctance shown by some Member States to reach a harmonised position towards legal labour migration (EC, 2005a). Following these discussions, in 2005, the Commission presented a 'Policy Plan on Legal Migration', introducing a list of actions and legislative initiatives that it intended to adopt by the end of 2009 with respect to the "coherent development of EU legal migration policy" (EC, 2005b). This Plan falls short of the expectations expressed by the majority of civil society actors. Whilst it foresees common rules on the social and legal rights of economic migrants,

Member States remain fundamentally free to set admission volumes and conditions of entry. Bilateral agreements between Member States and third countries continue to characterise the management of economic migration in the European Union.

Policy Plan on Legal Migration

The Policy Plan on Legal Migration argues that:

> [T]he current situation and prospects of EU labour markets can be broadly described as a 'need' scenario. Some Member States already experience substantial labour and skills shortages in certain sectors of the economy, which cannot be filled within the national labour markets.

These shortages concern "the full range of qualifications – from unskilled workers to top academic professionals". EU demographic deficits – falling birth rates and an ageing population – are listed as the second main reasons for taking measures in the field of legal migration.

On this basis, a comprehensive plan for migration policy embracing all skill levels was expected. However, this is not what the Policy Plan represents. Although the Green Paper had floated the idea of a "horizontal framework covering conditions of admission for all third-country nationals seeking entry into the labour market of the Member States", this was rejected by several Member States. Instead the Policy Plan proposes four 'specific instruments' and a 'general framework directive' designed to "guarantee a common framework of rights for all third-country nationals in legal employment already admitted in a Member State, but not yet entitled to long-term residence". The four specific directives will cover the following categories of third-country nationals: highly skilled or qualified workers, seasonal workers, intra-corporate transferees and remunerated trainees. But the Commission's approach clearly indicates the emphasis on attracting highly qualified workers to the EU.

This new 'fragmented approach' reflects the Commission's step-by-step approach, which it took to avoid another failure, as in the case of the proposal put forward in 2001. It also implies that the final objective of reaching a homogeneous framework of rights for all migrant workers entering the EU 'legally' is in jeopardy. Civil society organisations, academia, trade unions and some consultative

institutions like the European Economic and Social Committee (EESC)[2] warn that the implementation of the Policy Plan could endanger guiding principles such as fair and equal treatment, fundamental rights and non-discrimination (Caritas Europa et al., 2008; ETUC, 2007).

But the main criticism remains the clear discrepancy between migrant labour needs and allegedly suitable measures to match these needs. The likely need for low-skilled workers in the years ahead, as stated in the Plan, is not comprehensively addressed. The only directive dealing with this is the one on seasonal workers, but, given the temporary nature of the seasonal workers programmes, it does not address the problem in the medium and long-term. The Plan fails to offer an adequate and realistic road-map for meeting the EU's future labour needs (Castles, 2006). The risk is that the EU's important demand for low- and semi-skilled labour will continue to be largely addressed by undocumented migrant.

Economic migration: A predominantly national prerogative

A number of governments have used the increased hostility towards migrants among majority populations to introduce more restrictive measures. In Italy, for example, Members of Parliament approved a bill that basically criminalises irregular migration and all those who are helping irregular migrants. Spain attempted to provide incentives to unemployed migrant workers to return home as a way to address the impact of the economic crisis on the building industry (Closa, 2008, p.198). Whilst this is less restrictive than the Italian measures, it was not welcomed by organisations working in the field because the measure is neither realistic nor effective. Given the slowness and weakness of European legislation in the field of economic migration, it seems unlikely that Member States will find it necessary to intervene at the Community level.

At the structural level, whether or not the ratification process of the Lisbon Treaty will be concluded constitutes a matter of concern for the advocates of a stronger European policy on economic migration. The new Treaty would finally extend the 'Community

1 In this text, migrant or migrant worker will be used, although the official term used by the European Union is third-country national, i.e., any person who is not a citizen of the European Union within the meaning of Article 17(1) of the Treaty of Amsterdam.

2 In its Opinions, the EESC adopts the view that immigration policy and legislation should fully respect the human rights of all people and the principles of equal treatment and non-discrimination.

method' to the decision-making process in this policy area, thus giving more power to the European Parliament (co-decision) and less to the Member States (qualified majority voting in the Council)[3]. This favourable change in the institutional framework has to be seen, however, in the context of an even more important change. Whilst the new Treaty will mean that Member States lose decision power in the Council, it will at the same time reinforce their competence in the area of economic migration. This is stated in the text of Article 79(5) of the Lisbon Treaty referring to the general Article on immigration:

This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

The provision was already included in the negotiations for the directive on highly qualified migrants and in the Hague Programme, but it would be the first time it appears in a constitutive text. This provision against 'more Europe' has been recalled in the French Presidency's European Pact on Immigration and Asylum (Carrera & Guild, 2008). The Pact, even though it is not a legally binding document, represents a strong political reaffirmation of the principles of subsidiarity and nationalism. This is particularly evident in the field of economic migration, as no reference is made to the Commission's proposals on highly qualified migrant workers in the Pact, although it calls for an increase in the 'attractiveness' of the European Union to this category of workers.

A new multi-annual programme following the Hague Programme is currently being discussed and is scheduled to be formally adopted by the Heads of State and Government in December 2009. The programme will seek to consolidate and put into practice "a policy on immigration and asylum that guarantees solidarity between Member States and partnership with non-Union countries." (EC, 2009) This so-called 'Stockholm Programme' is expected to provide new political impetus to proceed in the overall 'communitarisation' of immigration and asylum policy. Nevertheless, it would be unrealistic to expect that it will bring about a common and transparent framework for economic migration based on international human rights principles and standards, as well as mutual accountability.

According to the European Commission, "implementation of the principles and objectives of the Pact on Immigration and Asylum will provide the basis for EU action in the coming years" (Ibid, p. 23).

Two directives: A European 'Blue Card' for highly qualified immigrants

In 2007, the Commission published the two draft

Directives on the so-called 'Blue Card' proposal for highly qualified immigrants (EC, 2007a & 2007b). The criteria for obtaining the Blue Card include a work contract, professional qualifications and a certain minimum salary level.

Attracting highly qualified workers is seen as a strategic priority for the economic development of Europe. Furthermore, the low numbers of migrant workers the subject of the Directive was viewed by the Commission as the ideal start for the implementation of the Policy Plan on Legal Migration.

A major concern about the Blue Card proposal is that highly qualified migrant workers will receive more generous treatment than other migrant workers, which will institutionalise discrimination on the basis of skill level in the acquisition of labour rights (Lusetich, 2007). On 25 May 2009, the Council of the European Union adopted, without discussion, the Blue Card Directive. Following publication in the Official Journal of the EU[4], Member States will have two years to incorporate the new provisions into their domestic legislation[5].

In a second Directive, the Commission proposes to guarantee a common set of rights to all third-country workers lawfully residing in Member States, but not yet entitled to long-term residence status, and to introduce a single application procedure along with a single residence/work permit. The proposal illustrates to some extent the Commission's willingness to close the 'rights gap' between third-country workers and EU citizens by granting the former employment-related rights in such fields as working conditions, education and vocational training, recognition of diplomas, social security and housing (EC, 2007b). It is, therefore, unfortunate that this proposal did not receive preferential treatment.

As negotiations in the Council are still ongoing, it would be premature to give a definitive opinion on this proposal. However, some general observations can already be made. The proposal is the most important of the Policy Plan's package, because it addresses the problem of migrant labour force exploitation. Regulating the social and economic rights of migrant workers means reducing unfair competition between Member States and ensuring decent working conditions. Whether or not this objective will be met is a matter of political will. Extended negotiations usually lead to a watering down of the initial proposal. Hence, it will not be surprising if the final Directive offers less protection than originally envisioned.

As stated by the European Economic and Social Committee (2008):

The starting point for this debate must be the principle of non-discrimination. Migrant workers, whatever the period for which they

are authorised to reside and work, must have the same economic, labour and social rights as other workers.

In this sense, seasonal workers shouldn't be excluded from the scope of the Directive, even if the Commission is drawing up a specific Directive on this category of workers. This exclusion would endanger the right of equal treatment and should be considered particularly alarming in the light of the renewed EU turn towards temporary migration programmes.

Furthermore, civil society actors are arguing that:

[G]iven the increasing globalisation of the labour market and the international mobility of workers, a new approach regarding the portability of acquired social security rights would be advisable. (Bridges not Walls, 2008)

Directive proposals on seasonal workers, intra-corporate transferees and remunerated trainees should be launched by the Commission before the end of 2009.

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BOX 5: The European Union's Return Directive

Adopted in June 2008, the Return Directive sets EU-wide rules for the return of illegal immigrants to their home country. The text gives migrants the option of leaving EU territory voluntarily within a period of 7 to 30 days. If they fail to do so, national authorities can issue a removal order and detain them for a period of up to 18 months. Immigrants in that category are also banned from the EU territory for a period of five years The Return Directive has been largely criticised for its restrictive nature. The Bolivian president Evo Morales has described it as a 'shameful' directive that violates basic human rights.

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The need for international accountability

When introducing the Policy Plan on Legal Migration, the European Commission wrote that the package aimed, among other things, to introduce tools for a "fair and rights-based approach to all labour immigrants". The Commission repeated this human rights rhetoric in its Communication on the proposed Stockholm Programme:

... to maximise the positive effects of legal immigration for the benefit of all – the countries of origin and destination, host societies and immigrants – a clear, transparent and equitable approach that respects human beings is required.

This is, however, not backed up by a commitment to international accountability and scrutiny. International labour migration, by its very nature, involves more than one country, and, therefore, requires

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[3] Since 2001, the unanimity voting process has been considered as one of the main obstacles to 'communitarisation'.

[4] Published in the Official Journal of the EU on 25 June 2009.

[5] The new Directive does not apply to the United Kingdom, Ireland or Denmark.

mechanisms to ensure that each country involved is held accountable for the laws, policies and practices that have an impact on the lives of migrant workers and their families. This is the case for countries of origin, transit and destination. For this accountability to be effective, it is important that all interested actors are involved in this process, not only governments, but also civil society and international agencies.

Laws and regulations developed by the EU should, in our view, be guided by relevant international labour and human rights standards as agreed and adopted by the international community. Because the effective implementation of the UN human rights protection regime is essential to guarantee respect for the human rights of all migrant workers, it is necessary for all EU Member States to ratify all of the core UN human rights treaties. The most relevant of such instruments to the rights of economic migrants is the UN Migrant Workers Convention[6]. This Convention covers the entire migration process and provides many areas of protection for migrant workers and their families. Besides issues related to employment, it includes provisions on human rights, slavery and forced labour, personal liberty and security, protection against violence, confiscation of identity documents, expulsion, medical care, the education of migrant workers' children, family reunification, transfer of earnings, recruitment, and the right to the protection and assistance from the country of origin's consular services.

In addition to the UN Migrant Workers Convention, the International Labour Organization (ILO) conventions set internationally recognised labour standards that are of importance to all workers, including migrant workers. Most relevant are Conventions 97 and 143. Convention 97 is based on the principle of equal treatment of nationals and regular migrant worker in labour-related areas. Convention 143 aims to eliminate irregular migration and irregular employment, and sets requirements for the respect of the rights of migrants with irregular status.

When one looks at the ratification status of these three important conventions, one sees that the EU Member States are not doing well. None of the Member States have ratified the UN Migrant Workers Convention, even though both the European Parliament and the European Economic and Social Committee have, on several occasions, urged them to do so (European Parliament, 2009). As far as the ILO conventions are concerned, the results are only slightly better, with 10 Member States having ratified Convention 97, and 5 Member States having ratified Convention 143.

This means that, in order to ensure international accountability, we have to look at ways to make the most of the implementation of the other UN conventions. All EU Member States have ratified other core human rights treaties such as the Committee on the Elimination of Discrimination Against Women (CEDAW), Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Racial Discrimination (CERD) (17 December 2008).

However, recognition of rights on paper is not sufficient to guarantee their implementation. State parties have an obligation to submit regular reports to the monitoring committees set up under these treaties. Governments collect information from their relevant ministries and administrative units in order to draft the initial and subsequent periodic reports. This exercise prompts them to take stock and analyse their legislation and practices in relation to a given treaty.

Conclusion

In conclusion, we can state that there is a need for a common and transparent framework that is based on international human rights principles and standards, as well as on mutual accountability. The sectoral approach favoured by the European Commission, the European Council and the Member States complicates the migration management system, largely excludes semi- and low-skilled migrant workers and does not take into account respect for the basic human rights of all migrant workers and members of their families, regardless of their status. ∎

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6 The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted in 1990 and entered into force in July 2003. For further information see: "Guide on Ratification", the International Steering Committee for the Campaign of the Ratification of the Migrants' Rights Convention, Geneva (2009).

Undocumented Migrants' Right to Health and Education in Europe: Protection Needs vs Immigration Control

The immigration control mechanisms now implemented in EU Member States force undocumented migrants into a state of policy-driven social and physical destitution by curtailing their most fundamental rights to health and education; ineffective and inhumane, these policies are detrimental to Europe's social inclusion, human rights and public health responsibilities.

Eve Geddie

Platform for International Cooperation on Undocumented Migrants (PICUM)[1]

Undocumented migrants are those without a residence permit authorising them to stay in their country of destination. They may have been unsuccessful in the asylum process, overstayed their visa or entered irregularly. While undocumented migrants have rights that are recognised and protected under international and European human rights law, their innate entitlement to hold rights is increasing being questioned and marks one of the greatest threats to the European human rights regime today (PICUM, 2007a).

The European Union is an institution founded on principles of democracy, human rights and rule of law, and these remain the pillars on which the credibility and sustainability of the expanding Union rely. The EU's Charter on Fundamental Rights formally recognises the importance of social equality and prohibits "discrimination on any ground"[2], while its 2008 annual human rights report pledges "the same importance to economic, social and cultural rights as to civil and political rights" (European Community, 2008, p.43). In clear conflict with these stated ideals however, policies are developed by the EU and it's Member States that effectively strip migrants of their innate social rights on the grounds of their administrative status.

Undocumented migrants in Europe

The routes to becoming undocumented are complex and often the result of arbitrary policies and procedures over which the migrant has little or no control (MRCI, 2008, p.19). It is the experience of PICUM and those within its network that the majority of undocumented migrants enter Europe legally, but after a period, encounter difficulties and find themselves without the relevant permit for residence or employment. Irregularity is the result of an administrative infringement and not a criminal offence; irregular migration is a process "fuelled by exploitation, redundancy, misinformation and administrative delays" (Ibid, p.30).

Once they have an unregulated status, migrants are systematically denied those elements that constitute a basic standard of living and face a *de facto* violation of their fundamental rights. As the trend to link migration control mechanisms to social services increases, undocumented migrants' fear of discovery and deportation hugely limits their ability to access their social rights or seek redress against violence, abuse and exploitation. By seeking to deter migrants from entering Europe through unsanctioned means and compelling those living in an irregular situation to leave of their own accord through the creation of an intolerable set of living conditions, these policies rely on the violation, not the recognition, of fundamental human rights. Consequently, the most impoverished and socially excluded members of European society are systematically denied the means of obtaining a basic standard of living. Their lack of adequate housing, education, health care and fair working conditions creates a state of extreme poverty and destitution, belying the myth of a socially inclusive Europe[3].

While undocumented migrants constitute a considerable proportion of Europe's migrant population, they have remained invisible to policymakers and there are few social strategies that address their needs. This paper will outline the tenets of the right to health and the right to education, and explore the extent to which undocumented migrants residing in Europe may enjoy these rights.

Undocumented migrants' right to health

Non-discrimination is a core guiding principle in the protection of human rights. Everyone is entitled to human rights without discrimination of any kind. This means that human rights are for all human beings, regardless of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Non-discrimination protects vulnerable individuals and groups from the denial and violation of their human rights.

The right to the highest attainable standard of health is a fundamental human right protected by international law. An important element of the right to health is that both health care and other essential conditions for health must be affordable to all without discrimination. Thus, authorities are under an obligation to ensure that health policies and programmes consciously address the different needs of those facing barriers in accessing care.

The definition of right to health as provided by the UN International Covenant on Economic, Social and Cultural Rights, Article 12(1) affirms that State Parties recognise: "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The content of this provision has been further clarified by the Committee on Economic, Social and Cultural Rights (CESCR), established to monitor the implementation of the Convention, in its General Comment 14:

> States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal migrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy….

Undocumented migrants' access to health care in Europe

While no Member State's legislation specifically forbids access for undocumented migrants, publicly subsidised health care, either partially or fully, is not entirely guaranteed in Europe. In some countries, all health care (even emergency care) is provided only on a payment basis and treatments are generally unaffordable for undocumented migrants (PICUM, 2007b).

Besides the common hindrances facing undocumented migrants at the legislative level, there are many other practical obstacles in all European countries linked to procedures and administrative conditions, discrimination, language and cultural barriers, medical fees, and so forth. Many undocu-

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1 PICUM leads an independent network of over 107 member organisations providing humanitarian support and protection to undocumented migrants in 25 countries across Europe and beyond. For more information visit www.picum.org.

2 Chapter III, Article 21(1) of the Charter of Fundamental Rights of the European Union.

3 The 2000 Nice Summit marked the EU Member States' adoption of a social affairs agenda, setting out their future priorities. This agenda confirmed their dedication to issues such as employee protection, gender equality, poverty reduction and tackling discrimination.

mented migrants are unable to pay medical fees in those countries where they are requested to do so. Those undocumented migrants who do seek health care generally opt for the services provided by NGO clinics and hospital emergency units.

Research shows that undocumented migrants mainly seek health care when they are severely ill (PICUM, 2007a). In fact, a high percentage do not access any kind of health care, even in countries where they are entitled. Health is commonly not their main concern, because often all of their energy is exhausted in acquiring the minimum subsistence necessary for survival. Many undocumented migrants lack information about their right to access medical services in the country where they live. On many occasions, they do not seek medical help because they have an enormous fear of being discovered and deported. They easily confuse the levels of administrations and public authorities, and often fear that hospitals or health centres will inform the police of their presence.

There are many vulnerable groups of undocumented migrants as regards access to health care, including women, children and people with severe chronic diseases such as HIV/AIDS. Disadvantaged on the basis of their gender and administrative status, undocumented women are particularly exposed by the inability to access health care services. Across Europe, undocumented women are giving birth at home alone, or putting their lives at risk to obtain abortions as they lack entitlements or are too fearful to avail themselves of treatment in hospitals or clinics. Those suffering abuse and health-related crises often have no idea what their rights are, and may face repercussions if they contact the police or seek assistance. Women's health is inexorably linked to the accessibility of preventative care, immunisations, health education, family planning, and pre- and post-natal care, yet the basic entitlements taken for granted in Europe are systematically denied to undocumented women. They have no access to medical services and support programmes for psychological trauma caused by sexual violence, and, while they have priority needs in the area of reproductive health and rights, there are significant legal and practical barriers preventing their access to information and services

Undocumented migrants' right to education

The right to education is both a fundamental human right and an enabling right that is necessary for the realisation of other human rights. The UN body responsible for monitoring the implementation of economic social and cultural rights has affirmed the importance of education as:

the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the

means to participate fully in their communities[4].

Education plays a vital role in empowering women, safeguarding children, tackling social injustice and promoting integration[5]. In Europe, it is generally taken for granted that all children, regardless of gender or background, will be able to complete a full course of primary schooling. While European governments have committed themselves to the promotion of free and equal education in developing countries as a means of tackling extreme poverty and gender inequality, they deny this right to those without a valid residence permit.

The right to education for children is confirmed and consecrated by a wide range of international conventions, which recognise the right of instruction as a fundamental right of every child (PICUM, 2007a, pp. 40-43). The Convention on the Rights of the Child (CRC) is the fundamental instrument in the protection of children's rights at international level. Article 28 of the convention guarantees access to education for all children, including those who are undocumented. The article stresses obligations regarding children's right to access education free from discrimination of any kind.

States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all.

The principle of non-discrimination reported in Article 28, and more directly in Article 2, comprehensively guarantees the right to education without distinction between undocumented children and children whose residence is authorised.

Therefore, all migrant children, irrespective of their status, should have access to the same statutory education as national children. Any limitation regarding the enjoyment of these rights, such as administrative and practical barriers, should be removed as they are contrary to international obligations

Undocumented migrants' access to education in Europe

Despite the protections afforded to undocumented children under international law, growing tensions exist in Europe between their protection needs and the immigration control agenda. Education has

emerged as a key issue in this struggle. In some EU Member States, undocumented children are refused access to schools on the basis of their status; while in others, immigration police use the education system as a means of detecting and deporting undocumented families. Exploitation, discrimination and the increased rates of detention facing undocumented minors severely limits their education. The importance of schooling for a child's formation and social integration is an established and incontrovertible fact. For undocumented children, however, the educational system holds added significance as it often initiates the process through which they may become regularised. In some countries, regular school attendance enables children to receive residence permits when they reach 18 years of age[6].

Generally speaking, at the legislative level, access to compulsory education is granted to all children in the EU. The right to education for undocumented children is explicitly referenced in Belgian, Italian and Dutch legislation; in France, Spain and Poland, undocumented children are implicitly included in the reference to 'all children'; while Hungarian and Maltese law only mentions the right to education for those with a valid residence permit (PICUM, 2009, p.16). On a practical level, however, numerous difficulties emerge for those with an irregular migration status. These barriers may be practical, such as lack of identification; institutional, such as discriminatory legislation; or broadly societal, such as the fear of being detected. As a result, both compulsory education and higher education can be difficult for undocumented youth to obtain[7].

Identity documents are often needed by schools to prove the number of students in attendance so they may receive reimbursement from the state. In some cases, schools may provide services for a particular catchment area and require students to prove residence in that area before enrolment. Fear of authorities is another leading factor that prevents undocumented migrants from entering education; while in most countries, police roundups in schools are rare, the fear of being detected is so embedded that many parents prefer not to risk sending their children to school[8]. Additional costs can also pose a significant barrier; while access to primary education is free, undocumented families are excluded from economic aid for extra expenses such as books, transportation, and so forth. Poor knowledge of the

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4 Committee on Economic Social and Cultural Rights, Article 1 of General Comment No. 13 on the right to education.

5 As underlined in the report Integrating Immigrant Children into Schools in Europe, "Almost all European countries comply fully with this basic right, extending it to all immigrant children, irrespective of their residential status. In other words, families of refugees or asylum seekers or those who are irregularly resident, no less than those with long term residential status, may all enroll their children at a school in the host country" (EC, 2004, p. 67).

6 In Italy and France, for example, the conferral of a residence permit once the student reaches adulthood is tied to physical presence in the territory for a certain number of years and having followed a scholastic course.

7 Although individual countries vary in their definitions, compulsory education is generally defined as primary and secondary education from 6 to 16 years of age.

8 As French Interior Minister, Nicolas Sarkozy initiated a policy whereby immigration police visited schools to detect undocumented parents when they went to fetch their children.

national language can limit undocumented families' ability to enrol their children in school and sustain their attendance. The precarious living conditions experienced by undocumented families are also shown to have a direct affect upon their children's schooling; those forced to move regularly can rarely complete an entire school year. A specific problem cited in many countries, and a clear form of discrimination against undocumented students, is the fact that they are not regularly issued diplomas at the end of their scholastic career.

Conclusion

Inequality and discrimination in Europe's social systems continue to be widespread, with the educational attainment and health status of migrants and minorities lagging behind that of majority groups. There remains a large gap between the theoretical entitlements granted by law to all and the concrete practices experienced by undocumented migrants. The current barriers implemented at the policy level have placed an enormous strain on local actors such as NGOs, health care and educational professionals, as well as local authorities, who witness firsthand the humanitarian crisis they cause.

Despite this bleak picture, many positive examples of collective responses exist at local levels which have enabled undocumented migrants to enjoy their rights. Civil society actors across Europe have reacted strongly against the inhumane policy-driven destitution experienced by undocumented migrants. Individuals have come together, founded associations or formed informal networks, to curtail the effects of migration control mechanisms, help irregular migrants to overcome numerous practical barriers and finally, raise awareness about the issue to encourage real policy change.

These organisations often work with limited resources to guarantee a basic standard of living and defend the fundamental rights of undocumented migrants. Furthermore, there is a worrying tendency across Europe to criminalise and penalise those providing humanitarian and social assistance. Professional groups, such as social workers, church groups, doctors and teachers, experience clashes between their professional ethics and the incriminatory discourse regarding undocumented migrants.

Due to the difficulties facing undocumented migrants in accessing health care, many civil society organisations are offering these services themselves, referring migrants to other agencies that provide such services, and working with social services to try to integrate undocumented migrants into the public service system. Several initiatives have also emerged which seek to protect the right to education for undocumented children residing in Europe; in France, the Network for Education Without Boarders (Réseau Education Sans Frontières – RESF) grew from a gathering of trade unions, parent's associations, community groups and educational

institutions who were committed to the protection of non-deportation of undocumented student at all educational levels.

While civil society actions may provide a short-term solution to the issues facing undocumented migrants, a more sustainable and accountable response must urgently be developed at the policy level. The European Union and its Member States are obliged to uphold the human rights of those within their jurisdiction. While Member States may control their borders, immigration and social policies must be coherent with their human rights obligations. Under human rights law, migrants without a valid residence permit should not face limitations on their fundamental rights on the grounds of their immigration status. Any distinction made in relation to undocumented migrants seeking to realise their innate entitlement to health care, adequate housing, fair working conditions and education are thus in violation of universal principles of human rights protection. ■

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Racism and Racial Discrimination

Racism and discrimination towards migrants in the areas of employment, education and health continues to be worrying in Europe.

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European Network Against Racism (ENAR)

In the words of the European Commission against Racism and Intolerance, "the situation continues to be worrying" in Europe (ECRI, 2009, p.7).

There has been a continuous increase in racially motivated incidents and crimes in Europe, including violent attacks, against visible minorities, namely people of African and Asian descent. The Roma people also face widespread negative attitudes and prejudice as well as discrimination and exclusion in all areas of life. Religious discrimination is a daily experience for minorities and faith-based groups, particularly Muslim and Jewish communities. Immigrants, both documented and undocumented, are vulnerable to various contemporary forms of racism, including slavery and various forms of institutionalised/legalised discrimination. There is also evidence of manifestations of racism and xenophobia against EU citizens – particularly against nationals of Bulgaria and Romania.

Although situations vary from country to country, surveys conducted in 2008 show the persistence of racism and racial discrimination in a number of areas, including housing, employment, education, health, policing and racial profiling, violence and crime, access to goods and services, and in the media and political discourse[1]. Ethnic and religious minorities are more likely to be homeless or live in poor quality housing. Racial discrimination in employment remains a major barrier to the economic and social inclusion of minorities, and immigrants and refugees are particularly vulnerable to the effects of the current global economic crisis. Unequal access, unequal outcomes and unequal attainment mark the participation of minorities in the educational field, due to direct and indirect barriers to access, segregation provisions and the lower quality of education granted. Access to available health care is limited by legal status as well as by factors such as habitat segregation, employment, mechanisms of social insurance and poverty. Law enforcement agencies reportedly do not respond appropriately to racist crime and are even perpetrators of racist practices and abuse against ethnic and religious minorities; racial and ethnic profiling is increasingly used as an accepted method in the fight against both crime and terrorism, despite it proving ineffective and even counterproductive. Racist crime and the mistreatment of ethnic and religious minorities is gaining more and more public acceptance. An increase in racist violence and crime is reported in Bulgaria and Cyprus, while a decrease is noted only in Belgium, France, Germany and Slovenia.

Members of ethnic minorities, including immigrants, have difficulty accessing crucial mechanisms. Recourse to legal remedies is often prevented by lack of information and basic instruments (mandatory by law), like judicial interpreters and translated documents. Financial services, including insurance, are generally more expensive for non-nationals; furthermore, there are very few examples of targeted services, even at the minimum level of providing information in different languages. A significant increase in racism in the media is also noticeable, as well as an increase in support for racist and xenophobic political parties. Xenophobic attitudes have also become normal in the positions taken by mainstream parties.

Antidiscrimination policies

Almost all European countries have adopted legal provisions against racial discrimination. Nevertheless, there are still important gaps to be filled, the most important being the distance and inconsistency between legislation and its implementation. Furthermore, some countries are weakening equality legislation through non-specific provisions contained in other laws (such as immigration laws) and through security and antiterrorism measures[2]. Legal remedies are often barely accessible to members of vulnerable groups; specialised bodies are limited in power and scope and under-resourced; and law enforcement agencies are neither specifically trained nor monitored for discriminatory behaviour.

At the EU level, a positive development is the adoption by the European Council (seven years after the original Commission proposal) of the Framework decision on combating racism and xenophobia (2008). Although watered down during the intergovernmental negotiations, it may prove to be an important instrument, but needs to be consistently implemented by Member States, which does not seem to be a priority for any of the European governments.

As regards antidiscrimination legislation, the EU claims that the so-called 'Race Directive' (EC, 2000) is the most advanced legislation in the world. Unfortunately, the Race Directive has serious limitations: Article 2 excludes "any treatment which arises from the legal status of the third country nationals", thus allowing Member States to adopt discriminatory immigration laws and creating a de facto barrier to access by immigrants to legal remedies against racial and multiple discriminations. Furthermore, implementation in Member States is far from in full compliance with the EU legislation, a distance that has forced the European Commission to initiate infringement procedures against several Member States.

The same gap can be noticed in relation to the implementation of other policies, particularly migration, integration and social inclusion.

Migration policies

Racism and racial discrimination can, but should not, be confused with the unequal treatment of third country nationals. Nevertheless, over-restrictive migration policies can undermine the principle of non-discrimination as well as the EU's commitment to fight racism. Drawing a line between racial discrimination and discrimination on grounds of nationality is difficult: third country nationals are, to a large extent, members of Europe's ethnic and religious minorities. As a consequence, those minorities are disproportionately affected by discrimination, including lawful and structural discrimination on the grounds of nationality. Racist crime, including violence, is often caused or aggravated by negative narratives and perceptions about migrants and asylum seekers.

EU and Member States' policies are often based solely on a utilitarian approach, focusing on the economic role of migrants, rather than on respect for their fundamental rights. The European Commission recently confirmed this approach, stating that "promoting further channels for legal immigration should match the skills of immigrants against national labour market needs" (SEC, 2009). While it seems reasonable to take into account the labour market dynamics, making it the main approach can endanger fundamental rights. In the words of UNESCO:

There is no guarantee that the logic of economics and that of human rights will lead to exactly the same protections and to exactly the same degree; indeed, where one is systematically subordinated to the other, such convergence seems unlikely. Perhaps

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1 For a detailed description and analysis of the situation in the EU 27, see the ENAR Shadow reports, available on the ENAR website (www.enar-eu.org).

2 The most remarkable example is the recent legislation adopted in Italy under the so-called 'Security Package', which is expected to (and already has) negatively affect the fundamental rights of immigrants and asylum seekers as well as the public perception of ethnic and religious minorities, including the Roma people.

more importantly, however, the economic logic that is used to justify a set of rights in the context of legal migration pulls in largely the opposite direction when confronted with the issue of how to deal with irregular migrants; neither rights-as-incentive nor rights-as-just-desserts leave any conceptual space for a robust protection regime of that vulnerable group of people (as current EU legislation in this field amply demonstrates). (MacDonald & Cholewinski, 2007)

Additionally, the link established in public discourse, both by politicians and the media, between security issues (including terrorism), immigrants, and members of ethnic and religious minorities has fuelled and legitimised widespread racist and xenophobic attitudes, a trend confirmed by the success of extreme Right-wing parties supporting overtly racist and xenophobic positions in the last European Parliament elections. It cannot go unnoticed that the negative perception and representation of immigrants affects not only third country nationals, but EU citizens as well, particularly those who are citizens of the 'new' Member States or belong to certain ethnic, religious and linguistic minorities, namely Roma and Muslims.

Integration policies

The Common Basic Principles (CBPs) for immigrant integration adopted by the Justice and Home Affairs Council of 19 November 2004 provide a very good basis for framing effective integration policies, with a strong link to respect for fundamental rights. Unfortunately, five years later, surveys show that few Member States have actually implemented these principles, and, those that have, to a very limited extent. Rather than mainstreaming the Common Basic Principles into other policies, EU governments have often mainstreamed security and control issues into integration. Provisions like language and integration tests have often been misinterpreted and misused to restrict immigrants' fundamental rights.

Social inclusion

Antidiscrimination and social inclusion are linked by a direct and mutual relationship. Equal treatment and non-discrimination are a pre-requisite for successful inclusion into the host society; social and economic inclusion is an unavoidable step towards equality. Unfortunately, both at the EU and the national level, the link is often ignored. Social inclusion plans of action often mention discrimination as an issue to be addressed, but rarely include specific measures to deal with the disadvantages faced by ethnic and religious minorities. Antidiscrimination is too often limited to the legal protection of individuals, rather than actively promoting equality through social and educational provisions, including positive action. There are very few examples of a positive integration of antidiscrimination and social inclusion policies. The situation of the Roma people is a clear example

of the vicious cycle of racial discrimination and social exclusion. Roma in the EU suffer systematic and institutionalised social exclusion, which affects access to children's education, health care, employment and housing, and strengthens the discrimination against them as well as negative public perceptions.

Challenges

Eradicating racial discrimination requires an integrated approach, based on respect for fundamental human rights.

As far as immigrants and asylum seekers are concerned, the European Network Against Racism has put forward 15 principles (2009) as the basis for a non-discriminatory approach:

1. **Promote positive values, conceptions and principles:** Public perceptions often become political assumptions and these are more often than not based on the premise that migrants should be restricted from fully exercising their human rights.

2. **Use positive terminology in political discourse:** Terminology must not perpetuate a negative image of migrants.

3. **Take a human rights-based approach:** The implementation of community law must be framed in conformity with international human rights obligations.

4. **Comply with human rights instruments:** The EU should ensure that all its actions, decisions, regulations, directives and measures are in line with international human rights standards.

5. **Make use of demographic data to challenge assumptions:** Demographic and other statistics should be used to publicise how much migrants contribute socially, economically and culturally.

6. **Ensure antidiscrimination for all:** Emphasis must be placed on antidiscrimination for all, irrespective of status or nationality.

7. **Respect the link between antidiscrimination, migration, integration and social inclusion:** Integration must not be used as a means of restricting the exercise of human rights of migrants and must not exclude or discriminate on any ground, whether on the basis of race or nationality or social or any other status.

8. **Enforce existing labour laws:** Strengthening the implementation and enforcement of existing labour laws under national and community law and under ILO conventions must be a priority.

9. **Protect workers' rights:** Fundamental human rights must cover all workers irrespective of legal status or skills and avoid direct or indirect penalisation of those who face exploitation, for example, through the application of detention and deportation policies.

10. **Ensure policy coherence:** Policy coherence with the EU employment and social policies,

the Lisbon Strategy and the fundamental rights agenda is an essential prerequisite for effective policy making.

11. **Promote gender sensitive and age sensitive policy making:** The specific needs of migrant women must be adequately addressed, as well as those of unaccompanied minors, young people, elderly people and specifically young people in employment.

12. **Ensure participation:** Migrants' voices must be heard in decision making on migration policy.

13. **Ensure equality in education:** It is important to pursue policies that promote the educational attainment of migrant children as well as the education needs of migrants more generally, including the second generation.

14. **Recognise the global context:** An effective approach must tackle poverty and social exclusion, especially within the context of the global economic crisis.

15. **Be proactive not reactive:** The achievement of a positive approach to migration requires policymakers and civil society to be proactive by pursuing a rights-based approach to migration.

The same principles, mutatis mutandis, should apply to policies concerning ethnic and religious minorities. The European Union and its Member States should actively combat negative associations that stigmatise specific groups, such as the Roma and Muslims, with particular attention to the language used by the media and political actors. Fundamental human rights, such as freedom of religion, freedom of movement and the right to family life, should not be jeopardised under any circumstances. Members of ethnic and religious minorities should be protected against discrimination in employment, housing, education and health care; this should include positive measures to deal with disadvantages and to accommodate cultural diversities. Minority communities should also have a say in the decision-making process and in policy making. ▪

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Reframing Immigration, Integration and Asylum Policies from a Gender Perspective: Ensuring Gender-Fair Policies

A new gender-based migration approach is urgently needed to address the inequalities and discrimination that migrant women suffer.

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While migration and gender has for a long time remained an invisible issue in policies, especially at the EU level, since the 1980s research projects have been flourishing at the local, national, European and international levels. These research projects have challenged both mainstream research and immigration policies, which have for a long time focused on the male migrant worker, reinforcing a model of migrant women as only expected to assist their husbands and children, rather than seen as active in their own right. This representation of migrant women does not reflect the reality of women's migration, as argued by Kofman et al. (2000), who point out that "women were present almost from the beginning of post-war migration both as primary migrants and working alongside male partners". However, this representation has been at the heart of the different migratory regimes, which are highly gendered[3].

We need to question policies and, for this, the voice of migrant women's organisations needs to be heard to understand what is really happening on the ground: What are the specific impacts of immigration policies on women? Are asylum procedures sensitive enough to gender? Do supposedly gender neutral integration policies actually work for migrant women? This report will highlight key challenges to demonstrate the need to reframe these policies and underline key recommendations to move in the direction of policies that take into account the real situation of women.

Reframing labour and family immigration policies

The first challenge towards a reframing of immigration policies is to challenge the dominant perception of female migrants as 'unskilled' migrants[4]: they are indeed rarely seen as having the skills needed to contribute to the knowledge economy, which is restricted to occupations dominated by men in areas such as finance, science and technology. This perception is even more dominant in relation to women who come under family immigration. However, the share of women immigrants holding a tertiary degree in Organisation for Economic Co-operation and Development (OECD) countries is only three percentage points below that of men and, in some countries, there is an equal share or even higher proportion of foreign-born non-OECD female migrants in skilled occupations than native-born (Kofman & Raghuram, 2009). However, immigration regulations have an impact on the ability of highly qualified women to migrate. Kofman and Raghuram (2009) compared the modes of selection of highly qualified migrants from a gender perspective and found that the sectoral and earnings based selection practised in most European countries implicitly favours men, while the Canadian system, under which immigration is based on education and language attainment, has led to an increase in highly qualified female migrants.

The second challenge, as pointed out by Gregoriou (2008), is to link the immigration debate to the problem of aging western societies, the issue of care provision and feminised care labour, and to the difficulty of recognising and regulating the informal economy of cheap and flexible labour. This link is essential to deal with the increasing migration of female domestic workers who are providing indispensable care services to a growing number of EU citizens who need support: families with children, those with disabilities, the elderly and others. While their labour is "instrumental for liberating us from the responsibility of reproductive labour and rendering us fit for the gender-blind framework of the workplace", these 'reconciliators' are usually excluded from protection under national labour codes and do not have access to labour visas, or face specific barriers to having their status regularised, which results in many of them being undocumented with virtually no social rights[5].

The third challenge is related to the increasing restrictions imposed by family immigration policies and their gendered-nature. Kraler and Kofman (2009) point out that the criteria (in particular the income requirements) for family reunification make it more difficult for women to qualify. To meet the income requirements, women need to work fulltime, which makes it difficult for those who have childcare responsibilities and no access to subsidised childcare, which is often dependent on having long-term residence status. The fact that women in Southern Europe are concentrated in informal work is an additional barrier to family reunification.

Recommendations

1. **Frame gender-sensitive labour migration policies:** As highlighted by the Organization for Security and Co-operation in Europe (OSCE, 2009), there is an urgent need to frame gender-sensitive labour migration policies that:

   - Develop enabling environments that provide equality of employment opportunities and access to benefits to both migrant men and women

   - Follow a 'two-way' approach, encompassing general migrant protection provisions and those specifically targeting female migrant workers in order to empower them with choices, to access resources and to claim rights

   - Introduce temporary special measures to compensate for past discrimination that may adversely affect female migrants' current situations

2. **Conduct needs assessments:** Member States should ensure that labour market needs assessments carried out in their countries take into account the need for domestic and private care-related work.

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1 The European Women's Lobby (EWL) is the largest alliance of women's non-governmental organisations in the European Union, bringing together thousands of member organisations in Europe <www.womenlobby.org>.

2 This article has benefited from key inputs from all the members of the European Network of Migrant Women (ENoMW) (www.migrantwomennetwork.org) through the project "Equal Rights. Equal Voices. Migrant Women in the European Union", carried out by EWL in partnership with ENoMW. We would also like to thank Eleanore Kofman, Middlesex University, for her valuable comments.

3 It is essential to take into account that gender is intersectional: race, age, sexual orientation, marital status, socioeconomic status and other grounds of discrimination interconnect with gender.

4 It should be noted that the categorisation of skilled and unskilled work also needs to be deconstructed as research has long pointed out that the notion of 'skill' is socially constructed and highly gendered (Phillips & Taylor, 1980).

5 This issue has been highlighted by organisations such as the Mediterranean Institute of Gender Studies (MIGS) in Cyprus <www.medinstgenderstudies.org>, Kalayaan in the United Kingdom <www.kalayaan.org.uk> and the European network RESPECT <www.respectnetworkeu.org>.

3. **Conduct a gender-impact assessment of bilateral labour agreements and migration policies:** A gender-impact assessment of bilateral labour agreements and all migration policies, including family reunification, must be conducted to ensure that these policies do not discriminate indirectly or directly against migrant women.

Reframing asylum policies from a gender perspective

Women's experiences of political activities and of persecution may differ from those of men. Both politics and persecution have historically been interpreted by Member States through the framework of male experience, thus often excluding women's political opinions on gender roles as well as acts of gender-based violence and/or discrimination by either state or non-state actors. The 1951 UN Convention on the Status of Refugees does not specifically refer to gender as a ground for persecution, but each ground must be analysed from a gender perspective as asylum is not gender neutral. The European Women's Lobby (EWL) and other organisations, such as the Refugee Women's Resource Project at Asylum Aid in the United Kingdom, have been calling on EU Member States to apply the United Nations High Commission for Refugees (UNHCR) Gender Guidelines (2002) on International Protection with regards to Gender-Related Persecution (see EWL and Refugee Women's Resource Project at Asylum Aid, 2007).

Without such guidance it is very difficult to ensure that the gendered nature of persecution, of which women are the prime victims, is fully understood and that women's asylum claims are given equal and fair assessment. We are referring to situations where heterosexual, bisexual and lesbian women fear various forms of gender-based violence and discrimination by state and non-state actors, including where they are in danger of being killed or subjected to physical and mental violence by their husband/partner, family or the state; persecuted for opposing gender-discriminatory norms or laws; raped in situations of conflict and war; and along with their girl children are subjected to practices that are carried out in the name of 'culture', such as female genital mutilation or forced marriage. Without guidance there is also a risk that some asylum-seeking women struggling for their human rights and those of others will be depoliticised and regarded as passive victims of abuse, instead of being recognised as agents in their own right and as women human rights defenders. Similarly, it is crucial that asylum procedures are gender sensitive to ensure that women benefit equally from a non-discriminatory process, for example, through the choice of the gender of the interviewer and ensuring that country information relating to the situation of women is taken into account.

Recommendations

1. **Establish a Gender Unit within the European Asylum Support Office:** Such a Unit would prove vital in providing an institutional framework to coordinate gender specific issues within the broader asylum support system.

2. **Member States should adopt, and the European Commission should promote, gender-sensitive asylum guidelines:** Within the framework of practical cooperation, the EWL calls for an EU ad-hoc gender expert group to establish and promote EU gender-sensitive asylum guidelines with the aim of assisting asylum determining authorities in interpreting gender-specific asylum claims.

3. **Develop gender-disaggregated data and studies:** It is particularly urgent in the context of the Dublin system to undertake a study on the disparities between Member States concerning the granting of protection on the basis of gender-based persecution and the forms this protection takes.

4. **Country of origin information (COI) must be gender sensitive:** COI should include information regarding the situation of women in countries of origin, both legally and de facto.

Removing the main obstacles to migrant women's integration[6]

At the EWL seminar in 2007 on "Equal Rights. Equal Voices. Migrant Women in the European Union", migrant women's organisations (which are now working together in the framework of the newly created European Network of Migrant Women) identified five main areas crucial to migrant women's integration. These areas are:

1. **Legal status:** An important feature of family migration policies is the dependency of the spouse and the right to stay dependent on the sponsor. However, this dependency is reinforced in countries where spouses' access to the labour market is barred. This is an additional obstacle to women who have experienced domestic violence making an official complaint and can result in 'brain waste', with highly qualified migrant women remaining unemployed or in occupations far below their qualifications. Finally, because of the gendered nature of labour migration, as we have seen above, many migrant women are undocumented in Europe, do not have access to fundamental rights and face additional barriers to regularisation because of the informal nature of their work.

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6 The challenges and recommendations set out in this section are taken from Greiner (2008) and EWL (2007); please consult these documents for full list.

2. **Employment and education:** The gendered nature of labour migration results in many women entering European countries through family immigration regimes or in sectors such as domestic work, working below their qualifications. As emphasised by Kofman et al. (2009), the process of recognition of qualifications of non-EU country nationals is a major obstacle to labour integration, as well as the lack of support structures (such as professional, affordable and accessible language courses and childcare facilities). Multiple discriminations in the workplace also need to be tackled.

3. **Sexual, health and reproductive rights:** Migrant women are facing limited awareness and lack of access to sexual health education, while service providers lack understanding of the health needs and cultural specifics of migrant women. Conditional access to health care also needs to be removed.

4. **Violence against migrant women:** Migrant women are not free from violence, and very often their experiences are further exacerbated by their lack of language skills, extended family and knowledge of the existing support system. Furthermore, they may face specific forms of violence such as female genital mutilation or honour-based violence. It is, however, essential to develop a specific approach that does not fall into the trap of stigmatisation and to remove obstacles such as conditional access to shelters based on legal status.

5. **Participation in public and political life:** The right to vote and to access European citizenship are essential to ensure migrants' full participation in public and political life. However, migrants face additional obstacles to using these rights such as lack of information on the host country's political system in different languages, and also lack of migrant women role models or capacity-building programmes for migrant women activists. Migrant women are particularly underrepresented in public and political life.

Recommendations

Legal status:

1. Automatically grant independent status and a work permit to the spouse of the principal legal status holder at the earliest opportunity in order to fully guarantee and protect their rights and to facilitate their social integration.

2. The law of the country of residence should be applied when it comes to personal status.

3. Undocumented migrant women should have full access to their basic fundamental rights and gender-sensitive channels of regularisation need to be developed.

Employment and education:

4. All migrant women, whatever their status, should have access to professional, affordable and accessible language courses, and care services for all dependants (children, older people, disabled persons).

5. Recognise qualifications acquired abroad and ensure access to life-long learning.

Sexual, health and reproductive rights:

6. Migrant women, irrespective of their legal status, should have access to public funds to ensure safe, equal, culturally sensitive health services and rights, in particular sexual and reproductive health services and rights.

7. Educational health tools on migrant women's health need to be developed for service providers.

Violence against migrant women:

8. Guarantee all migrant women, regardless of their status, access to designated services and shelters for victims of domestic and sexual violence, and further develop the existing infrastructure if necessary.

9. Statutory agencies need to involve experts from migrant communities and service providers should be provided with training.

10. Specific legislation needs to be implemented that guarantees that abused migrant women do not remain legally and economically dependent on the perpetrators of violence.

Participation in public and political life:

11. Clear, simple and gender-sensitive procedures to acquire permanent status and citizenship rights need to be made available.

12. Funding should be made available for migrant women's NGOs to provide training to migrant women activists.

Conclusion

Despite the Treaty of the European Community requirement that the European Community should "eliminate inequalities and…promote the equality between women and men in all its activities"[7] (i.e., gender mainstreaming), in practice most of the Member States and the European Union have failed to integrate a gender perspective into their policies on immigration, integration and asylum. There has, nevertheless, been increasing acknowledgement of the need to integrate a gender perspective in recent policy papers[8], but how this will be done

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7 A consolidated version of the Treaty establishing the European Community (2002) is available at <eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf>.

8 See, for example: The European Commission's Communication on "A common agenda for integration" COM (2005) 389; The European Parliament Kratsa report on

Figure 5: Proportion of women in migrant stocks, by region, 1960 and 2005
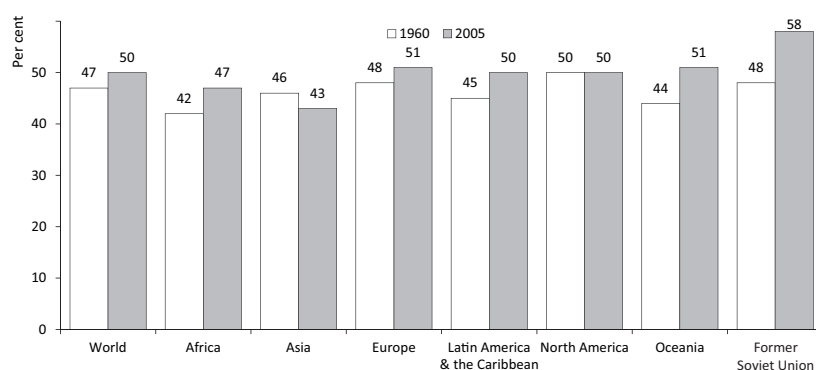
Source: United Nations 2006

still remains to be seen and is one of the main challenges. The gender bias of current policies needs to be urgently addressed and lessons could be drawn from the Canadian example where a gender-based analysis of immigration, settlement and integration programmes has been instituted. It is also important for civil society to play a key role in supporting the implementation of these commitments. Consultation and funding are essential in this regard. Migrant women's organisations should be included in consultative bodies and in framing research and impact assessments at local, national, European and international levels. This is not possible without funding for migrant women's organisations and organisations supporting migrant women, as well as for gender equality, social and antidiscrimination policies. This is even more important in times of economic crisis, as progress towards women's rights is at risk of being jeopardised.

Finally, it is essential to note that reframing immigration, integration and asylum policies from a gender perspective is an essential step to ensure gender-fair policies, but this needs to be accompanied by a reframing of all policies from a women's rights-based approach to ensure a coherent policy framework. As pointed out by Jean-Michel Baer of the European Commission, "Migration, labour market or education policy initiatives will have only limited success in removing barriers to inclusion and economic growth if they are not articulated with policies that address wider economic and social inequalities" (EC, 2009). This would mean looking at the gendered and fundamental rights impact of not only social and economic policies within the European Union, but also of external relations, development and trade policies. ▪

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Migrant Youth: From Integration to Transculturalism

With its ageing population, Europe needs to admit the importance of young migrants to its economy and to fully support their integration into European society.

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Age, migration and Europe: A reality to be taken into account

Europe is currently facing important demographic changes. The percentage of young people within European societies is decreasing sharply, and this will have extremely important consequences for the European social model, particularly in the areas of welfare, education and employment. Current birth rates in Europe are not sufficient to allow the population to renew itself. Between 2005 and 2030, the working age population (15 to 64) is projected to fall by 20.8 million. Moreover, the demographic dependency ratio, defined as the ratio of the population dependent population (aged 0 to 14 and over 65) to the non-dependent population (aged between 15 and 64 years), will rise from a rate of 49:51 (i.e., 49% of the population dependent) in 2005 to 66:34 (66% of the population dependent) in 2030 (EYF, 2008a; EYF, 2008b).

On the other hand, young people represent an important percentage of migrant communities, whose higher fertility rates are already benefiting European demographics. Indeed, according to the United Nations Population Fund (UNFPA), young people historically make up a large share of the migrant population. If the definition of youth includes young people up to the age of 29[2], young people represent half of global migrant flows (UNFPA, 2006). The population in Europe will slightly increase until 2050 due to net immigration flows. Without immigration, the European population would have already started to decline (EC, 2005).

1 The European Youth Forum (EYF) is an independent, democratic, youth-led platform representing 99 National Youth Councils and International Youth Organisations from across Europe: 38 National Youth Councils and 61 International Non-Governmental Youth Organisations, which are federations of youth organisations in themselves. The EYF works to empower young people to participate actively in society to improve their own lives by representing and advocating for their needs and interests and those of their organisations towards the European institutions, the Council of Europe and the United Nations. Representation, internal democracy, independence, openness and inclusion are among the main principles for the functioning of the EYF and its member organisations.

2 As is the case in the UNFPA report; however, the European Youth Forum considers a person to be young up to 35 years of age.

Despite these statistics, the youth perspective is rarely considered in national and international debate on migration. A further understanding of the needs of young migrants is needed and the important role played by young migrants in European society should be acknowledged.

Unacceptable double standards: Incentives and disincentives for young migrants

There are many points of view from which the relationship between migration and youth can be framed within the European context. The current European policies frame migration within the Lisbon Growth and Jobs Strategy, focusing on the need to effectively tackle demographic changes in order to ensure growth.

Many provisions have been introduced in key areas such as employment and education to maximise economic growth, implying the need for Europe to be the most competitive and knowledge-based economy. These provisions have a crucial impact on the lives of young migrants.

The European Union has put in place special conditions of entry and residence for third-country nationals for the purposes of highly qualified employment (EC, 2007), including a Blue Card permit system. The Blue Card scheme (which will come into force in 2011) is similar to the US Green Card system, but is only valid for two years, although renewable. Applicants must have a one-year EU job contract with a salary of at least three times the minimum wage. Blue Card holders are treated equally in relation to national workers, limited only in their access to education grants, housing and social assistance. The Blue Card system aims at attracting highly qualified workers by fast tracking procedures, eventually increasing mobility within the EU.

A Directive on the conditions of admission of third-country nationals for the purposes of education, school student exchange, unremunerated training or voluntary service was also adopted (2004/114/EC). In 2001, the first Erasmus Mundus programme, an EU cooperation and mobility programme in the field of higher education, was launched. The second phase of the programme for the period 2009 to 2013 is now being implemented.

Although these initiatives are important, they exclusively target elite migrants and contribute to establishing different categories of migrants, among which only some are identified as 'useful' in terms of economic growth. Furthermore, the needs of other categories of migrants are not taken into account.

For instance, the European Union has introduced a Directive on Family Reunification of Third-Country Nationals (Directive 2003/86/EC), which hints at a toughening of the conditions for reunification and leaves a significant part of sovereignty to the Member States. Some countries have begun to fear abuse of family reunification procedures and have passed bills that have been highly controversial, and perhaps even discriminatory and in contravention of the Geneva Convention of 12 August 1949. Such moves could result in an increase in the number of separated children and youth. This is even more significant considering the fact that family reunification is still the main reason to migrate in many EU countries (EYF, 2008b).

At this point, it should be mentioned that the Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals (Return Directive 2008/115/EC) does take into account the specific situation of vulnerable groups, including minors, unaccompanied minors and single parents with minor children. Indeed, it ensures basic rights to them such as emergency health care, the essential treatment of illness and access to basic education. However, at the same time, the document sets out exceptions in relation to conditions of detention of third-country nationals during the period granted to them to voluntarily return to their countries of origin. In particular, the Directive allows for the detention of minors and families, although this should be a measure of last resort. The detention of migrant minors for reasons related to their residence status is at odds with international human rights standards.

The needs of young migrants are certainly not duly taken into account by such policies and legislation. Specific attention should be given to child and youth migrants regardless of the reason for their decision to migrate, their level of education, or their economic or other status. The European policies on migration, including the European Common Immigration Policy, draw from economic growth paradigms, overlaid by security, and establish a hierarchy among migrant groups. As a consequence, they ultimately strengthen prejudice and fail to acknowledge the tremendous benefits that young migrants bring to Europe, in addition to their contribution to European economic growth.

Difficulties experienced by migrant minors wishing to reunite with their families, detention conditions imposed on unaccompanied minors, degrading and humiliating detention conditions, and

discrimination experienced by young migrants in the field of employment, education, and access to health and social services are against international law standards and, sadly, undermine the credibility of a European Union claiming to be the stronghold of fundamental rights and freedoms.

Migration, cultural diversity and youth

The link between migration and cultural diversity is one of the most exploited arguments and sources of controversy and debate. Although important, focusing exclusively on this link by identifying either the extraordinary added value brought to Europe by migration in terms of diversity, as many civil society organisations do, or the threat represented by non-European migrants, which is often the core message of populist political propaganda, corresponds to the same cultural model. Although apparently opposite points of view, both draw from the assumption that Europe is not a diverse society and from the dichotomy of 'us' and 'them', which, even though applied on the larger European scale, is typical of the discourses developed in the context of nation states.

However, young people represent an extremely diverse group of people, cultural diversity being only one aspect of their diversity. Young people hold a wide range of political views, enjoy different cultural activities, belong to groups expressing different trends, believe in different Gods or are atheist, have same sex partners or different sex partners, and have different ethnic origins, among other things. Young Europeans already belong to different cultural traditions, which may play an important role in shaping their ways of being, or not. In this sense, the weight given to cultural differences needs to be downsized.

Migrant youth bring additional value to European diversity. This being said, the risk of identifying them as a homogeneous group should be avoided as this is at odds with the concept of diversity itself. In this sense, although young migrants surely share many similar experiences because of their migrant status, they are and should be considered a diverse group, rather than a homogeneous entity where migrant status is the predominant defining feature.

Young migrants are a resource for European societies, although everyone, including the migrants, bears an enormous responsibility for ensuring that their full potential is developed. Indeed, the role of young migrants in society has to be framed within the existing patterns related to the participation and contribution of young people to society. Young people are indeed a major source of social change; they are the ones actively promoting improvements and holding ideals, and they have the energy and commitment to redress injustice. Young migrants could also bring about positive change, but they often experience difficulties compared to their European peers. In this respect, although other groups of young Europeans are surely subjected to social

and economic distress, young migrants bear the existing inequalities at the global level, for which Europe is partially responsible. In addition, they are not protected from discrimination on the grounds of nationality and/or migrant status[3], and they experience prejudice because of both their age and their migrant status.

Ensuring the participation and integration of young migrants within European societies has a lot in common with the challenge of ensuring the participation and integration of young people in general, although characterised by additional and specific difficulties. The successful integration of young migrants is often hindered by restrictions in the fields of education and employment, even when holding a long-term residence permit, by difficulties in contributing to political life, by long and bureaucratic procedures to access nationality, by a lack of legal protection against discrimination, and so forth. Practices established in these key areas of life differ greatly from one country to another, but the overall picture is not very encouraging. Only a few countries have adopted and implemented policies on the aforementioned areas that are favourable to the integration of migrants (Niessen et al., 2007).

The integration of young migrants should ideally contribute to breaking down cultural barriers and, ultimately, to changing the very predominance of the existing cultural discourse, which considers cultural differences as the most difficult differences to cope with. For this to happen, we need to reflect on current European policies and on the responsibility of both national governments and European institutions to ensure the effective integration of migrants and young migrants into society. This implies the existence of legislation and policies ensuring equal opportunities for young migrants, as well as special actions aimed at promoting their capacity to take decisions autonomously, enabling them to think critically, and providing them with the whole set of opportunities to allow them to actively contribute to civil and political life. At the same time, a reflection needs to be stimulated and developed with and within migrant communities themselves to promote mutual understanding, avoid any manipulation of presumed cultural differences, and to question ties and allegiances based on stereotypes and nationalism.

The way forward: Involving young migrants in shaping their own future

The process leading from integration to transculturalism, implying, as explained above, a downsizing of the cultural component, is certainly a difficult one. However, this process could represent an alternative

to the current intercultural and multicultural models, which do not take a genuine stand against the opposition of cultures, and to the model of diversity based on collective rather than individual features.

Towards this aim, the move from integration to transculturalism should not take place without the active involvement of young migrants. Education plays a major role in promoting new visions and new patterns of integration coming from the migrant communities themselves. In this respect, both formal and non-formal education can provide further occasion for young migrants to reflect upon their own future and their role within European societies. This reflection should be developed jointly with their non-migrant peers and should allow young Europeans to frame European issues in the context of a globalised world, where European realities are intertwined with global dynamics, migration being one of them. Such a process requires formal and non-formal education actors to have a better capacity to reach out to young migrants and to provide them with the space they need to develop their full autonomy.

Civil society organisations as well as the media bear an enormous responsibility to ensure government accountability for the need to promote the integration of young migrants and to provide further and alternative ways to participate and for individual development. The European standards on political participation (Council of Europe, 1992) should be effectively implemented, while at the same time supporting other forms of participation. Participation in civil society, volunteering and engagement in awareness-raising activities need to be adequately stimulated.

Towards this, the European Youth Forum believes that youth organisations must play an important role in integrating migrants and building a transcultural society. The structure of democratic youth organisations gives young people the possibility to experience and learn about the principles of participative democracy and active citizenship.

The inclusion of migrant organisations in existing youth organisation networks, and the exchange of both experiences and resources, can benefit the development and empowerment of migrant organisations – empowering individual migrant youth.

Conclusion

The youth perspective needs to be further taken into account when designing and implementing policies on migration. Statistics show that the link between age and migration is a crucial one and cannot be overlooked anymore. Young migrants and young non-migrants face many similar challenges and encounter many barriers in attempting to become autonomous and to fully participate in society. Therefore, joint efforts and actions should be undertaken by both youth organisations and migrant organisations in order to effectively tackle these challenges.

Institutional stakeholders have a duty to design

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3 The European antidiscrimination law does not provide any protection against discrimination on the grounds of nationality and migrant status. It provides protection against discrimination based on age only in the field of employment and occupation (Directive 2000/78/EC).

and implement migration policies embedding human rights and fundamental freedoms. Towards this aim, the human rights of migrants, including the most vulnerable groups within them, such as minors, young migrants and asylum seekers, need to be respected, regardless of their migrant status; this principle should be the cornerstone for decision makers when tackling migration issues.

Finally, integration requires considerable effort in terms of raising awareness, changing cultural patterns and promoting a genuine model of diversity where individuals no longer need to strongly belong to ethnically-based communities in order to advocate for their rights. In a context where multiple identities are recognised, the importance of the cultural component will be diminished and the discourse around integration will no longer be organised around cultural cleavages. In this post-integration reality, young migrants and migrants in general will be considered simply as individuals, despite migrant status and ethnic origin, living within political entities that do necessarily need to be based on nations and nationalities to exist. ▪

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