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IRREGULAR MIGRATION: INCENTIVES AND INSTITUTIONAL AND SOCIAL ENFORCEMENT

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CARIM Analytic and Synthetic Notes 2009/03

Irregular Migration Series

Background Paper

Cooperation project on the social integration
of immigrants, migration, and the movement
of persons (CARIM)

Co-financed by the European University Institute
and the European Union (AENEAS Programme)



CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

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This publication is part of a series of papers on the theme of Irregular Migration written in the framework of the CARIM project and presented at a meeting organised by CARIM in Florence: "Irregular Migration into and through Southern and Eastern Mediterranean Countries" (6 - 8 July 2008).

These papers will also be discussed in another meeting between Policy Makers and Experts on the same topic (25 - 27 January 2009). The results of these discussions will be published separately. The entire set of papers on Irregular Migration are available at the following address: <http://www.carim.org/ql/IrregularMigration>.

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[Full name of the author(s)], [title], CARIM AS [series number], Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, [year of publication].

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CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - “*cooperation related to the social integration of immigrants issue, migration and free circulation of persons*” of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 12 countries observed by CARIM: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey and, since February 2007, also Libya and Mauritania. All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: www.carim.org

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Abstract

National and international migration laws determine the legal or illegal status of a migrant. For any given legislation the number of illegal migrants depends on the social-political and economic conditions of the sending countries and on the organizations which favour frontier transit, but also on push-pull forces in the host countries.

This note elaborates on why employers decide to use irregular workers – be they locals or foreign nationals; why workers decide to reside illegally in another country; why institutions enforce the law; and last but not least how society pushes institutional action or enforces legislation directly. Without social enforcement it is very costly to institutionally enforce a law which limits employment and income access to legal workers in societies where irregular employment is common practice.

For SEM countries the relationship with neighboring sending countries is crucial in reducing the pressure of irregular inflows: political contacts, bilateral agreements, operational cooperation, development programs etc are legal instrument that can staunch the illegal flows and the same instruments are used by the EU with regards to its neighbors.

Résumé

Le statut légal ou illégal du migrant est défini par le droit national et international. Pour une législation donnée, le nombre de présences illégales dépend des conditions sociopolitiques et économiques des pays de départ et des organisations qui favorisent le transit et le franchissement des frontières mais aussi des facteurs attractifs et répulsifs des pays d'accueil.

Cette note se veut de savoir : Pourquoi les employeurs décident de faire appel aux migrants irréguliers, qu'ils soient parmi les nationaux ou les étrangers ? Pourquoi les travailleurs décident-ils de résider illégalement dans un autre pays? Pourquoi les institutions appliquent-elles la loi? Et enfin, mais pas de moindre importance, comment la société accompagne l'action de l'institution dans l'application directe de la législation?

Sans l'adhésion et l'implication sociétale, il est coûteux d'appliquer une loi qui limite l'emploi et l'accès au revenu aux travailleurs légaux dans des sociétés où l'emploi illégal est une pratique courante.

Pour les pays du Sud et de l'Est de la Méditerranée (SEM) la relation avec les pays voisins de départ est déterminante dans la réduction des flux des migrants irréguliers : les contacts politiques, les accords bilatéraux, la coopération opérationnelle, les programmes de développement, etc. sont autant d'instruments légaux de pression pour réduire les flux illégaux de migrants. C'est d'ailleurs ces mêmes instruments qui sont utilisés par l'UE avec les pays voisins.

Introduction

National and international migration laws determine the legal or illegal status of a migrant.

Changes in the law can change the status of a person. In Jordan, Libya and Egypt law changes have transformed flows of legal emigrants from, respectively Egypt to Jordan (2007 MOU), from Sub-Saharan African to Libya (visa requirement in 2007), and from Sudan to Egypt (visa requirement in 1995), into illegal flows, while the entrance of Romania into the EU legalized many illegal Romanian immigrants in Southern European countries. Legislation is, however, not the only determinant of the legal or illegal status of a foreign national. For any given legislation the number of illegal presences depends, of course, on the social-political and economic conditions of the sending countries and on the organizations which favour frontier transit but not only. There are also additional push-pull forces in the host countries.

The following note will look particularly at those economic forces in the host country which condition the size of irregular labor (not entrance) and which depend upon the behavior of four main actors: employers, workers, institutions and society.

The interests of these four actors determine the propensity to comply with the law and thus the acceptability of irregular work.

More precisely, this note elaborates on why employers decide to use irregular workers – be they locals or foreign nationals – and asks whether employers have an immediate benefit; why workers decide to reside illegally in another country and whether illegality abroad is better than legality at home; why institutions enforce the law and whether it is in their direct interests to do so; and last but not least how society pushes institutional action or enforces legislation directly.

1. Employer decision

Let us analyze, first, whether the employer has an incentive to hire a worker irregularly. The employer hires workers as long as benefit outweighs cost, that is while the gross wage (W) is equal to the value of worker productivity (p^{π}). The gross wage is made up of two parts: social security contribution (c) and what the worker earns (w). In many countries the worker has to pay income tax (t) on what he/she earns, a tax which is proportional to the amount earned and to the type of employment undertaken.

$$W = c + w = p^{\pi}$$

What the worker carries home is then $W - t - c = V$.

If productivity is constant because, say, we are in a technologically simple sector: for example, areas of agricultural production and family services¹, the employer has an interest in paying the workers just their earnings (V), avoiding social contributions and any income taxes paid by the worker. This would mean a saving of about 30% on labor costs (W).

However, the employer is not only interested in saving money. He or she is also interested in worker productivity. Thus, in a non-regulated market, where wages are not set administratively or by national agreements with the trade unions – the kind of market that is typical of the SEM region – the employer can pay the most productive workers more because the employer will get more from them.

If, for a given human capital level, productivity increases with wages (efficiency wage), the employer faces a different scenario as by paying the worker more, he gets more product.

¹ With the exception of Jordan where social contributions are not levied on family businesses.

The employer can also replace labour by using more capital-intensive technology with more capital and less skilled labour. If the employer has not enough money to invest in labour-saving technology, then it is necessary to invest, instead, in more skilled labour, that means higher wages, so as to increase labour productivity.

The choice of the employer is strongly conditioned by the technology prevailing in the sector in which he or she is operating. The employer can opt for a different technology mix – more capital or more skilled labour or less skilled labour – but being rational, he or she will choose the most productive technology in terms of factors of production.

If the product or service provided is produced with a low technology mix, for example in a sector like agriculture or family services, where there is little room for technological innovation, the profit maximizing employer has the option of using cheap labour.

In a world where the employment of irregular labour carries with it little or no “stigma”² and where enforcement is absent or minimal the employer will hire regular workers only if they are more productive. After all, regular workers are more expensive and their use is complicated by labour legislation which causes rigidity. Firing a worker is more difficult and, over time, more costly. In addition occasionally labour laws, to reduce competition between nationals and foreign nationals, block the latter’s access to some jobs, hence favouring irregular foreign employment in those jobs.

If irregular employment prevails in a given sector, say in family services, hiring a foreigner irregularly becomes usual and there is no institutional enforcement and no social stigma.

Both in southern Europe and in south east Mediterranean countries the size of the irregular economy is large with much variation inside the countries. In agriculture the concentration of informal employment is between 50 and 90%, while in the city centers it goes down to 20-40%.

Social stigma and enforcement are very limited in rural areas, while they are more important in the urban ones.

When institutional enforcement, instead, exists and is widespread, the benefit of irregular hiring is reduced by the risk of being caught and by the amount of any resulting fine.

Where the employer who uses irregular labour is stigmatized, the employer risks being discriminated against in the goods market and in the labour market as the best workers refuse to apply for jobs. In a world where such a negative stigma is pervasive the employer who hires irregular workers loses productivity and market share.

Nevertheless, illegal migrants are not equal for society. Some groups are appreciated more than others for extra-economic reasons (same religion, shared history etc) and the “stigma” of hiring is less pronounced as are the consequential discriminatory effects.

2. Worker decision

Irregular workers must often work irregularly: they have no choice . They might be refugees waiting for status recognition; they might be migrants fleeing poverty; labourers who were not able to regularly and legally enter a country; individuals in transit for a final destination, who look for occasional income while they finalize their projects; ‘over-stayers’, that is foreign nationals who remains in destination countries after the permit (of work or residency) has expired; or even circular migrants (e.g. valise migrants in Turkey).

These workers are unable to bargain either on labour conditions or on the wage that they will get. They will receive subsistence wages and no other support, no minimum health care, housing etc.

² See Akerloff 1980, Bask Van P.H. 1998, Blume L, 2002.

Not all irregular workers are in this situation, for others the decision to work illegally is part of an implicit choice, made to maximize their life income.

They are frequently only aware of the income that they earn and that they consume immediately, they do not make any life-cycle calculations. Thus pension and pension contributions are not a part of their maximization plan.

This is, however, a very rational choice. They have temporary migration plans and given that pension transferability agreements between countries fail to cover them, they prefer to insure their future through savings earned in the here and now.

The break-even wage is always a little more than what they receive in a regular job, after taking off income tax and social contributions. According to labour market characteristics, compensation might be much lower, because the reservation wage, namely the wage for which the worker is ready to accept a job is very low, sometimes even lower than a subsistence wage.

However, the environment in which irregular migrants live is crucial in favouring the decision by migrants to remain and work in the country irregularly.

Is the irregular immigrant persecuted by the state? Or are irregular migrants stigmatized by society?

If working irregularly does not provide a different de facto status, migrants can – be they regular or irregular – consume, in the words of economists, the same commodity bundle, the same goods and services and the disutility of being irregular is greatly reduced. If the risk of being stopped by the police is close to zero, if the migrant has access to some sort of health care and education – either because documents are not requested or because emergency health services are open and very supportive or because the health system is mainly private and because education is also available to illegal children – then illegality increases.

In the SEM countries irregular migrants find that the opportunities for receiving social protection are not evenly distributed. For instance, primary health care in Egypt is available to all persons. Instead, in Mauritania and Lebanon irregular migrants do not enjoy any social protection. While in Jordan there is free access to public hospitals, but irregular migrants do not take advantage of this for fear of detention and expulsion. In Israel, Syria and Jordan children of irregular migrants have access to school. In Egypt the right exists, but the demand for a valid residency permit as a precondition for enrollment exclude the children of irregular migrants. While in Lebanon admission to public school is limited to citizens but, if places are available, foreign children can also be admitted. Given the nature of many irregular immigrants in the area, political refugees and transit migrants the lack of social protection is only a slight disincentive, which does though worsen their stay.

But, even more important, if being an irregular migrant carries with it no “social stigma” then irregular migrants can circulate freely and illegality increases.

This could be the explanation for the increase in irregular labour migration in southern European countries where social services are universally granted, society tends not to stigmatize and little effective enforcement is provided by the state.

In addition, there are positive sides to irregular employment which play an important role. Irregular employment is more flexible in the number of hours worked. It is similar to self employment where you can work holidays or do over-time. More importantly, the worker can leave the job and the host country not just for limited holidays granted by the contract, but also for 3 months, and then the worker can come back and search for the same or another irregular job.

The rigidity of formal contracts does not satisfy many migrants who would like to work night and day for a period and then go back home for, say, the agricultural season. It must also be said that irregularity is not always a choice, and the migrant finds him or herself without rights at the mercy of an employer and society in the host country.

3. Institutional enforcement.

Frequently countries ratify international agreements or pass a restrictive law without any intention or even the capability of implementing them.

The main reason for the ratification of agreements or the passing of laws has to do more with international relations or politics, that is with issues far from the one defined by the law. Thus there is no compelling need to enforce the law immediately and, similarly, it does not matter whether the country is capable of doing so or not.

In addition law enforcement needs “implementing norms”, frequently new institutional bodies or a redefinition of the task of an already existing body. And, in all cases, human resources and funding are needed, resources and funding which might not be available and that have to be carved out of the Governmental budget.

The amount spent in fighting irregular migration in the USA and in Europe is very high and largely ineffective. In Europe it is also very difficult to know how much is spent. But, to give an example, in Italy, in 2004, 115 million euros were spent fighting irregular migration, something like 380.000 euros per day and the year before the expenditure was 165 million. In 2004 13 million was spent on expulsion, and 40 million for the Temporary Residence Centres where illegal migrants are hosted (EMN, 2007).

The institutions involved are many: government, police, labour control institutions, the courts....

If the institution itself does not have a specific interest and if there is not the pressure of some population group to implement the law, enforcement will be nil, limited or occasional.

If local administrators are in an electoral campaign and want to be re-elected and the electorate wants more control over illegal immigration, more enforcement will take place even if this enforcement is not effective in the long run. If a body exists only to enforce a law and thus the money its receives and the power it has are derived from its ability to enforce said law, it will enforce the policy. Frequently, however, it will enforce the law without passion, concentrating rather on what is easiest to pursue and most visible.

However, this is rarely the case.

Institutions have many priorities and diverting human and monetary resources from one objective to fight illegality will only work if it is rewarding and justifiable. Sometimes these strategies are pursued because there is international pressure (e.g. the Libyan-Italian case) and pursuing it provides benefits elsewhere, and it is just an exchange of favours as it is frequently named.

On other occasions the institution pursues illegal migrants in the country because it is easier to get results there than in the battle against professional criminals, and the institutions need to show their efficiency. However, in general the main push for institutions to pursue illegal migrants is elite protest or public protest. This stick though is not sufficient. It is not sufficient because the solution to the problem is always complex and costly. A population, for instance, does not want a camp in their area, and moving people from one area to another proves difficult. Unfortunately “Pareto” optimum solutions³ are rarely available and are expensive.

The trade off is always difficult and if a problem can be postponed or if there is the chance that it will work itself out, then any reckoning will be put off, with the hope that a costly intervention can be avoided.

³ A Pareto optimal solution is a solution which increases the well-being of everybody without reducing the well-being of anyone.

4. Society enforcement

The gist of a law is not always in line with the prevailing values of a society. The approval of a law does not immediately imply that the society complies with the law's underlying principle.

If citizens do not consider a law to be in line with their values then they have three options: first, they can refuse to support institutional enforcement; second, they can refuse to invest in pushing the institution to enforce the law; and last but not least they will not intervene in enforcement.

Let us give a different example: taxation. While in North European societies complying with such a norm is common, it is a consensual issue; in Latin societies compliance is a much less consensual issue, and, if the detection of tax evasion is low and the economic incentive to pay taxes is low as well, then the incentive to find loopholes to avoid paying taxes becomes a popular activity.

If society per se does not feel illegality is a problem, it does not cooperate in implementing an institutional enforcement. An example of a society where institutional and social enforcement go together is Switzerland. Sometimes it is uncertain if irregular migrants worry more about social or institutional controls. It is not clear if the "stigma" of illegality is strongest among citizens or among institutions. What is certain is that the two go together and reinforce each other.

When the synergy between the norm and society is loose, society will not cooperate in enforcing the norm, frequently protecting illegal behavior or even investing in circumventing the law.

If the tradition of hiring native workers without contracts is widespread, then society does not worry about hiring an illegal foreign national, especially if the type of occupation in which they work is not particularly formal – e.g. agriculture, families, in small shops, very small companies – where in the production process there is no one dedicated to administrative issues.

In many European countries hiring an irregular housekeeper is not perceived as being against the law because it has been practiced for years, because legal hiring is too complex and too long (in Italy frequently two years are needed to bring someone from abroad) and moreover because it is a way of helping a needy foreign lady while, at the same time, solving a personal problem.

If there is not the clear perception of illegal practice, even if an act is, in fact, formally illegal, then society will not enforce the law and it will encourage illegality.

The hiring of an illegal worker in the construction sector is less often perceived as an acceptable action because of the high risk of accidents. However, the complexity of the legal hiring procedure for temporary occupation sometimes discourages legal contracts.

If institutional enforcement were strong with high penalties and frequent checks, even if society per se did not consider the law appropriate, then society would respect the law because it would be too costly to ignore it. If institutions are serious about the enforcement of a law then there is the possibility of educating the citizen in appropriate behavior, even if the citizen does not, in principle, wish to comply with the norm.

There are, however, special categories which benefit or suffer because of irregular migrants: the entrepreneurs or the workers or the citizens living near irregular migrants. The first has a long tradition in lobbying which can be traced in the settlement of immigrants and the cyclical variation in entry visas.⁴ And, in addition, the interest of the employer group produces pressure for legalization to ratify well-established irregular employment position and is shown by regularization in Southern European

⁴ See for instance Facchini, Mayda, Misha, Do interest Groups Affect US Immigration Policy, Centro Studi Dagliano n 256, 2008, find strong correlation between temporary work visa and expenditure in lobbying activities in the USA at industry levels.

countries⁵ and by the amnesties in the SEM (in Jordan for Egyptians in 2007; Lebanon 2006, 2007; Egypt for Sudanese 2004).

However, if other groups feel threatened by illegal migration as citizens compete with foreign nationals for the same jobs or because they are deprived of public space or utilities monopolized by foreigners, or because of robberies and violence, then some segments of society are openly deprived (e.g. Mauritania, Syria) and the solution becomes more complex. Institution usually support the strongest groups, which are the groups which have more money or more political power (perhaps because of religious ties) or the group which has more votes or a louder voice in public debate. If the group under threat is small and weak, then the institutions will be less likely to intervene. Not all voices in society are equal and political power listens to protests in a selective way and the conflict in society between more control or less control is difficult to solve and risks the direct intervention of single groups.

If the demand for more institutional enforcement is unanswered or is considered unanswered then the unsatisfied groups themselves act as enforcers by pushing undesired people away or by directly patrolling the public-private spaces.

The direct replacement of institutional enforcement by social enforcement is risky because an action can easily spiral out of control becoming hostile and xenophobic.

5. Concluding comments and the role of external actors: neighboring countries and the EU

The direct interests of the main four actors condition the dimensions of illegal employment. The demand for irregular labour in the host country increases only if social and institutional enforcement is limited. If there is not a pervasive “stigma” against employing irregular workers then the number of illegal labour migrants will grow.

The recent and rapid increase in irregular migration in the SEM region, which has reached a stock of irregular labour of about 2-3 million, plus a million and half refugees and an estimated stock of 200.000 transit refugees (Fargues, 2008) is not attributed only to a pull effect, but also to push effects; and thus it is more difficult to manage given the diffusion of irregular employment. If the culture of formal jobs and legal labour contracts is not widely present then citizens will continue to make the distinction between legal and illegal migrants, but not particularly between irregular and regular employment. And the fight against irregular employment become an impossible challenge for the destination country.

For the SEM countries relations with neighboring sending countries is crucial in reducing the pressure of irregular inflows: political contacts, bilateral agreements⁶, operational cooperation, development programs etc are the legal instrument to staunch illegal flows and the same instruments are employed by the EU with regards to its neighbors. A restrictive immigration policy likely reduces legal flows, while it certainly increases illegal inflows, which become potential irregular labour inflows. Open-border policies are not viable, but more flexible legal contracts could accommodate many forms of temporary migration (e.g.. valise migrants or circular migrants) and easier legal access to labour would permit many refugees.

Lastly and most importantly EU migration policy affects the general scenario. The EU has tried to anticipate illegal entrance by extending external border controls to neighboring countries with bilateral agreements, which force these neighbors to control illegal transit inflows into their territories. To bring about such agreements the EU has to intervene directly and help neighbors in patrolling, in many cases

⁵ In Italy the first was in 1986, and than 1999, 1995, 1998, 2002; in Spain 185, 1991, 1996, 2000, 2001; in Portugal 1992, 1995, 2001; in Greece 1997, 2000.

⁶ A positive conditionality approach could be used.

funding these activities. But, even more importantly, the EU needs to promote a legal culture and a life-expectancy approach among its neighbors. Without social enforcement it is too costly to enforce a law institutionally which limits employment and income access to legal workers in societies where irregular employment is common practice.

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