
Undocumented Migration Glossary

Work Package 5

Undocumented Worker Transitions

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Prepared by the Roskilde University and Working Lives Research Institute,
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The Undocumented Worker Transition project

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The project website is at: www.undocumentedmigrants.eu

Introduction

This European glossary on undocumented migration has been prepared during the course of the Undocumented Worker Transition (UWT) project with two purposes in mind. The first is a practical one to assist the functioning of the project and to develop common understandings among partners in the seven participating EU countries. This, however, is not a straightforward task, and has involved lengthy discussions and negotiations over terminology and its uses. The second aim of the glossary, therefore, is to present the outcome of these deliberations in the form of an innovative output that draws attention to the implications of the terminology used when discussing 'undocumented migration'. It is intended that this glossary will be of use to both to those carrying out research in this area and to policymakers concerned with migration.

The glossary seeks to consider irregular migration outside the constraints of a terminology that solely criminalizes the migrant and refugee worker, instead of describing the processes and systems that lead to such workers occupying these positions. It recognises the consequences of terminology and labelling for the rights and conditions of undocumented migrants. That said, we are not intending to invent new definitions, and are starting from existing definitions, manifested through formally established meanings or informally in use as "taken for granted" terms. Given that the glossary is produced in the English language only, we have been mindful of ensuring that the definitions we advance have a particular resonance within that language. However, it has been of crucial importance to develop definitions that can be *analytically* applicable in different contexts, recognising that both the definitions and the institutional and practical consequences of words are:

- Contextual: they are specific to the national and other contexts in which they are used and understood.
- Situational: they refer to the experiences of those people who are subject to those definitional and operational categories, specifically undocumented migrants themselves.
- Gradual: words have different meanings and consequences depending on many factors such as migrants' length of residency, year of entry etc.

The research team's common understanding has been that words and terms are political, social, historical and cognitive constructions, serving the needs of different countries and times and are subject to ongoing conceptual development and redefinition. Taking the terms "undocumented" or "non-compliant" as examples, in the English language these are relatively recent terms and are the outcome of political controversies and debates concerning the impact of the terms on perceptions of migrant workers. So if one looked at the literature in the UK ten years ago, the commonly used term would have been "illegal". Thus the terms we adopt are politically loaded: they are not just terms of definition, they tell us what we should think and how we should organize categories of status, rights and duties of people that have different values dependent on the body of legislation they are subject to.

Development of the Glossary

Desk research in preparation of the glossary included an examination of numerous documents provided by the EU, OECD, various NGOs, national reports and academic research on related issues.

Methodologically, the process involved identifying terms that could be said to be in the 'first circle' of relevance to the issue of "illegal immigration" – broadly defined as encompassing individuals who are present but without residency rights - and "undocumented migrant workers" – broadly defined as those who are working without permission, regardless of whether or not they have rights of residency. The criteria of relevance were established in accordance with the aims of the research project, taking account of practical and empirical considerations. In determining the relevance of terms, its statistical occurrence was significant: searching on the word "irregular migration", "illegal migration" or "undocumented work", for example, certain words would occur more often than others in EU reports, in OECD or NGO studies, as well as in the academic research.

The inclusion of a word in the glossary has, as already stated, involved a combination of theoretical, conceptual and practical considerations. The aims and themes of the research have also determined the relevance of terms to the glossary, so we have asked ourselves questions such as what do we mean when we talk about "migration status" or "the informal economy"? Or who are we talking about when we talk about "migrants"? And do we

understand the same thing when we use the term in each country?

The process, though, is inevitably highly selective: we have chosen to present a small number of terms that are directly relevant to the project, rather than a wider selection of terms. This has allowed us to present in-depth definitions and explanations of the reasons for these, as well as examples of the use of terms in different countries.

Where a definition includes a term in *italics*, this means that the term has its own entry in the glossary.

Definitions

Chain migration

Chain migration refers to a process in which initial movements of migrants lead to further movements from the same area to the same area. In a chain migration system individual members of a community migrate and then encourage or assist further movements of migration. Chain migration may also be based on ethnic or family ties (commonly referred to as 'family reunion') with members of the same family migrating at different times, usually with primary wage earners migrating first, followed by secondary or non-wage earners. In countries with rather restrictive regulations on migration but more or less liberal regulations on the rights of immigrants to family reunification usually in accordance with international conventions, family reunification as an incidence of chain migration explains much of the growth in the total migrant population.

The growth, and in part the specialization, of a migration movement also depends on access to a migration chain and on the possibilities it offers, especially in terms of inclusion in the host country. Once consolidated, the migration chain can keep the migration movement alive, even when the original mechanisms have disappeared.

Migrants' networks can generate chain migration. Relatives, friends, neighbours etc. of already resident migrants can profit from experiences, local knowledge and existing social and professional networks in the country of destination. Studies of immigrant businesses in certain countries (such as the UK, Germany and Denmark) indicate that chain migration, as far as upward socio-economic mobility is concerned, functions as a double-edged sword, providing and fulfilling the basic needs of recent arrivals, especially in circumstances characterised by no or few opportunities within the formal structure, while keeping them within the network/migrant enclaves.

Circular migration

The term refers to temporary labour migration at periodic intervals. Country of residence can be the country of origin as well as the country of destination. Circular migration is then a migration

movement for the purposes of temporary work that is repeated over the years.

In some countries (e.g. Italy and the UK) this type of migration is regulated by means of annual "flow decrees," which establish entry quotas for seasonal work, for example, the agriculture and the hotel-and-tourism sectors, with "residence contracts" that allow immigrant workers to reside in Italy for not more than nine months per year. Seasonal residence contracts are usually for workers from a limited number of countries with which the host country has stipulated bilateral agreements. Furthermore, since such contracts are not automatically renewable for the following year, migrant workers are effectively denied the possibility of settlement.¹ Circular migration can also be *in loco*, based on the territorial mobility of thousands of undocumented immigrant workers, who move from one province to another, from one region to another, travelling from one harvest to the next.

In other countries (Belgium, for instance) this type of migration is not formally regulated but well known by the authorities, above all, by the police. The police may expel irregular workers, while at the same time recognising that they would find it easy to return.

Compliant/semi-compliant/non-compliant

This categorisation, developed by Ruhs and Anderson², takes account of the complexity of immigration status and permission to work:

- *Compliant migrants* are legally resident and working in full compliance with the conditions of their immigration status.
- *Non-compliant migrants* are those without the rights to reside (or work) in the host country.
- *Semi-compliance* indicates a situation where a migrant is legally resident but working in violation of some or all of the conditions attached to their immigration status.

¹ For example, with a seasonal residence contract it is not possible to apply for family reunification.

² Anderson, B. Ruhs, M. (2007) The origins and functions of illegality in migrant labour markets: An analysis of migrants, employers and the state in the UK

Examples of 'semi-compliance' are students working over the number of permitted hours, au pairs working and earning more than allowed, migrants with a residence permit but no work permit working undeclared (e.g. migrants from the new member state countries in Austria), etc.

The categories have parallels with the terms documented, under-documented, and undocumented migrants, but we believe that the concept of compliance offers better understanding than that implied by the notion of having the correct 'documents'.

Forced migration

Forced migration is a general term that refers to the movement of refugees and internally displaced people (those displaced by conflicts within their country of origin), as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine or development projects.

Illegal employment

"Illegal employment" as a term establishes and addresses a situation characterised by an "illegal contractual relationship". This situation occurs where the employment contract, involving documented as well as undocumented immigrants or citizens, is 'tainted by illegality', in other words where the parties have agreed to perform all or part of the contract in breach of the collective agreements or labour law. This can include working where there is no legal authority to do so, but can also include working under an arrangement in breach of the law, for example, avoiding the payment of taxes or social security contributions, avoiding declarations to public authorities, for instance not paying income taxes etc.

The term "illegal employment", on the other hand, can, under certain circumstances, be it political discourse, economic realities etc., be used to evoke a sort of common interest between workers and firms. This "connivance" of the worker in general, and of the migrant worker in particular, is usually the expression of a situation characterised by limited "choice", usually determined by the conditions of migration and by the characteristics of the arrival context, the formal and substantial

opportunity structure etc. which oblige migrants to accept whatever work they can get.

(See also *Informal/hidden/shadow economy*)

Illegal immigrants

The label “illegal immigrants” is commonly used to describe foreign nationals who are not able to legitimise their residence or work or both in accordance with the rules of law of the specific country.

For many reasons, however, the terms *undocumented*, *unauthorised*, *irregular*, *non-compliant* or *semi-compliant* migrants are preferred to “illegal immigrants”:

“Illegal immigrants” is a term used in public and political debate referring to those “illegally resident” or those “illegally working”. However, the term ‘illegal’ in connection with migrants has political and/or societal consequences, which lead to denying humanity or basic human rights for a person or a group of people not from a specific country. The term “illegal migrant” also suggests a close linkage to, and maintains a connotation of, criminality.

Furthermore, labelling asylum seekers who find themselves in an irregular situation as ‘illegal’ may further jeopardize their asylum claims as it encourages a political climate of intolerance towards those seeking asylum.

Immigration discourse

Immigration discourse refers to government policy and immigration priorities, the practice of formal institutions and societal/public attitudes. It refers to the cognitive framework that defines and justifies subject positions and legitimises or de-legitimises certain modes of behaviour, treatment, overall policy perspectives and premises on which practice is based. The discourse, or the right to define it, is both contested and subject to attempts at change by different collective actors, including the media, branches of politics, the government and the opposition.

The discourse around immigration is a comparatively new topic in many European countries. Generally, government policy on immigrants is determined by the agencies, boards and committees appointed or supported by

governments, by ministries covering labour or social affairs, the ministry of the interior, or the ministry of integration and immigrants, such as in Denmark or Sweden. Also organisations like the Red Cross, labour market organisations, voluntary organisations and many NGOs participate in strengthening or questioning the dominant discourse.

Immigration discourses vary according to local and national contexts, economic trends, the demand and supply curve, demographic forecasts, national or international policies and cultural factors. In analytical frameworks, the character and the strength of both the dominant and the oppositional discourses can be recognised.

Immigration law

Immigration law, defined in rather broad terms, refers to all legal regulations in the context of migration, defining the terms of entrance to the country for legal residence and work, and naturalisation, expressed in a variety of laws in different countries.

In Denmark and Spain, for example, immigration law is known as 'Aliens' Law'. It is the law that governs migrants' routes of entry and rights, and is separate from Asylum Law and laws related to dealing with the issue of integration of people of foreign descent who legally reside in the country.

Immigration status/migration status

Immigration or migration status describes the status of an individual or a group in relation to immigration rules and regulations. For example, someone complying with all the rules attached to their visa or work permit would have 'regular' or 'legal' immigration status. In other words, immigration or migration status defines the status of non-citizens present on a state's territory with respect to immigration rules. It differs dependent on the form of compliance with immigration rules and is associated with differential rights. Immigration status is created by each state (and its legal framework).

In Austria, for instance, the status of residence can either be regular, irregular or not defined, in the case of rejected asylum seekers who cannot be deported. The status is then granted after the authorities determine that one is admissible to the

country. It can be short-term, long-term, temporary, permanent, refugee or humanitarian. The individual can get status as a visitor, a student, for temporary (seasonal) work, or can be without any status. The status definition is under any circumstances closely attached to a foreign national juridical status (i.e. the set of rules that regulate his or her presence and residence) and is changeable in accordance with fulfilment of certain criteria or judicial requirements.

Informal/hidden/shadow economy

The terms 'informal', 'shadow', 'grey', or 'hidden' economy and 'unregistered', 'cash-in-hand', 'undeclared' or 'underground' work may be used interchangeably in many countries. Those working in such circumstances are likely to be working under an illegal contractual relationship – see *Illegal employment*.

Generally the informal economy refers to activities involving the paid production or sale of goods or services that are unregistered or hidden from the state for tax and employment law purposes, and are not registered by the official statistics and authorities when calculating the GDP. The informally produced and purchased goods and services are then part of the market economy and contain, firstly, undeclared and non-documented economic remunerated activities which therefore do not appear in national accounts and statistics. Secondly, the informal economy contains economic activities that avoid the payment of taxes and social insurance contributions. Thirdly, the informal economy supports working relations not in compliance with ruling labour law (duration of employment, conditions of payment, occupational health and security).

The informal economy is sometimes said to include activities not recognized as producing value, such as unpaid domestic and care work, although this is not the definition used by this project. In many countries the informal economy is taken to include the production of both legal and illegal goods and services (although in the UK the usual definition excludes criminal activities) and within this we can make a distinction between the underground economy and the illegal economy:

- The underground economy is constituted by irregular production and/or labour that is

perfectly integrated into the formal economy and "represents that ensemble of activities which contribute to the formation of the revenue and of the wealth of a nation without, however, being reported in the official statistics."³

- The illegal economy, by contrast, consists of the production of illegal goods and services: it can also operate within the formal economy, but does so "as an organization and with methods that nonetheless place it within the circle of criminal activities."⁴ The phrase 'Black economy', used in many countries, as also part of the informal economy, generally refers only to the illegal or criminal economy.

The term 'informal employment' is often more useful in describing the range of work situations of irregular migrants, as the informal economy suggests that it is separate from the formal economy, while many believe that they are closely linked. Informal employment, on the other hand can range from employment by a business that conducts some or all of its activities informally to unpaid or underpaid work in a family business, and may cover work that is not declared by the employer, even though the worker is paying contributions to the state, such as National Insurance in the UK.

Irregular immigration/irregular migrants

The term irregular immigration is preferred by some to *undocumented* or *unauthorised* and is also used by the Council of Europe, International Labour Organization (ILO), the International Organization for Migration (IOM), the Organization for Security and Co-operation in Europe (OSCE) and the United Nations High Commissioner for Refugees (UNHCR). The UK-based Institute for Public Policy Research defines irregular migrants as people who are liable to be deported for matters related to immigration status, including those who: enter by avoiding immigration inspection (often using smugglers); enter using false documents (wittingly or unwittingly); overstay visas or violate visa conditions (including students working more hours than permitted); have a

³ C. Lucifora, *Economia sommersa e lavoro nero*, paper, 2004.

⁴ Censis, *Promuovere regolarità e trasparenze nel mercato di lavoro*, paper, 2003.

rejected asylum claim but remain in the country; have no papers (i.e. their passport has been destroyed or taken by an employer); have applied for asylum elsewhere, described as 'irregular secondary movements'.

In this regard the status is temporary and the degree to which it is irregular or regular can change in different contexts and over time.

The use of the term can, in the context of undocumented work, serve the specific dominant political or public discourse, distinguishing between regular - good - and irregular - bad – immigrants. The term, on the other hand, is widely used in many European countries (Spain etc.), without necessarily having a negative connotation.

(See also *Compliant/semi-compliant/non-compliant, Illegal migrants, Undocumented migrants*)

Migrant pathways

Migrant pathways refer to the geographical routes used by migrants to reach a host country, which may involve travelling through, or remaining for a period of time in, other countries. While the term can also be used to describe other transitions made by migrants, for example, into regular migration status, or into employment (see also *Status transitions*), for the sake of clarity, this project will use migrant pathways only in the geographical sense.

Migrant worker

The term 'migrant worker' is used to describe individuals who have left their countries of origin primarily to seek work in a destination country. While there is no set period after which such a worker is no longer categorised as a migrant, we use the term to describe individuals for whom migration is a relatively recent experience. The reason for this is because we do not subscribe to the view that individuals who have migrated and who have settled in the destination country should continue throughout their working lives to be automatically identified within the destination country as migrants. In our view an association with a new country carries with it the right to be seen as an integral member of the new society, regardless of whether or not citizenship is acquired. Equally we would reject the definition of

migrant (or immigrant) being attached to the children of migrants born in the destination country.

Migration management/flows and stocks

Migration management is commonly used to describe a system that gives rights of entry to certain categories of migrant for certain periods of time. Migration management recognises the need for migrants within the labour force but does not permit open migration. The term may also be used to describe the numbers of migrants entering or leaving the country (*flows*) in a given period, and the numbers residing in the country at a given time (*stocks*).

Migration management can be understood as a variable that is dependent on global processes, on the dynamics and forces of the market (labour market included), on the resistance and struggles of migrants, on the political priorities at any given time, and on the global inequalities, and inefficient political and economic systems that lead populations to emigrate. This means that migration management is to be understood as the adaptation of migration movements to the demands imposed by the world and by specific sectors of the national economy.

Migration management by states and/or supranational organizations intends to control and direct migration flows and migration stocks in accordance with national requirements for migrants and/or migrant labour.

Migration regime

The migration regime refers to the system of rules, procedures or practice, norms, principles, political and public discourse and policies that formally and informally regulate entry into the country and which also determine the rights and duties of migrants in relation to the various spheres of social life (education, health, etc.), as well as participation in public life, in the procedures for citizenship and for social inclusion. The migration regime can include the system of work permits, the points system for entry, the sector specific schemes etc. It may also encompass more widely the public debate within which migration takes place.

Regularisation/amnesty

An immigration amnesty is normally a one-off process of regularisation, changing the formal status of irregular immigrants. However the term regularisation is preferable to amnesty as it recognises that irregularity in immigration status is created by regulations - that frequently change - and not a criminal activity that requires absolution. The word amnesty, of medical derivation, could implicitly identify the status of irregular immigration as a social ill to be "cured" only with the intervention of the state, rather than a phenomenon that responds to the precise economic and political necessities of the neo-liberal labour market.

In many European countries the term immigration amnesty is hardly ever used. On the other hand there has been a debate on the right of residence for 'integrated' migrants without permanent residence permits in countries such as Austria. In other countries the term 'humanitarian residence', usually manifested in addressing an extraordinary situation, is used as a synonym for amnesty, not necessarily, however, resulting in substantial change of status for those individual and groups concerned.

In other European countries, such as Italy or Spain, "amnesties" are legislative procedures for the regularisation of migrant workers without "residence contracts" already present in those countries, from the administrative (residence permit) and contractual (employment contract) standpoints. In Spain, a distinction is made between 'extraordinary regularisation' – an amnesty granted during a certain period by virtue of a special law – and 'ordinary regularisation', which is applied to individuals meeting the ongoing requirements established by the relevant laws.

While *regularisation* can also be used to refer to individual changes of status, by marriage for example, we use regularisation in this project to refer only to statutory processes, and refer to individual changes as *status transitions*.

Status transitions

Describes the movement or transition between different *immigration/migration statuses*, either from a 'regular' or 'legal' status to an *irregular* one, or from an irregular one to a regular one, for

example by means of a *regularisation* process or marriage.

Individual status transitions can also be made through the statutory processes that enable irregular migrants to gain authorisation to live and work in the country. It can be both a one-off and an ongoing process (for example in the UK, those who have been in the country continuously for 14 years, regardless of legal status, can be granted Indefinite Leave to Remain). We will use *regularisation* to refer only to statutory processes that allow migrants to formalise their status, and will refer to individual changes as status transitions.

Third-country nationals

The term refers to persons who are not nationals of an EU Member State. Also known as non-EU nationals, they are subject to EU visa and travel rules, which permit travel within the EU subject to the Schengen agreement. Once a third-country national gains nationality of an EU Member State, they become a citizen of the EU and therefore acquire certain fundamental rights.

In certain countries (for example, Denmark) the term “Refugees and immigrants from third countries” has quite a different meaning and refers to individuals who do not originate from western countries. The construction of the term, also used in statistical categorisation, arises from the wish to address problems/challenges of integration that are specifically related to individuals originating from countries other than the western countries.

Similar to the Danish case, the new word in Belgium “allochtone” refers to foreigners or Belgian citizens born in a family of certain foreign origins. The category may (in the Danish case) or may not (in the Belgium case) be used in official documents, but may appear more and more often in the media and political discourses. Implicitly, the consequence of the use of such terms can be social labelling of certain categories among the immigrant population.

Trafficking/smuggling/forced labour

Trafficking presupposes the existence of decisive factors like coercion, deceit, and exploitation, and therefore a victim.

The definition of trafficking contained in the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings⁵ separates the offence into three elements:

- i) The act of trafficking: recruitment or transportation or transfer or harbouring or receipt of persons; and
- ii) The means used to involve the individual in the act: threat or use of force or forms of coercion or abduction or fraud or deception or abuse of power or abuse of a position of vulnerability or the giving and receiving of payments or benefits to achieve the consent of a person who has control over another person; and
- iii) The exploitative purpose of the trafficking, at minimum: the exploitation of the prostitution of others or other similar forms of sexual exploitation or forced labour or services or slavery or practices or servitude or the removal of organs.

Smuggling of persons, in international law, is distinguished from trafficking. Smuggling is defined as the procuring of another person's illegal entry into a country of which he or she is not a national. The distinction assumes that a smuggled person consented to irregular entry, and assumes that in the case of trafficking there is a continued exercise of control over the migrant once they have entered the country, whereas the role of the smuggler is simply to facilitate border crossing. However, the notion of "consent" is very problematic in such cases, as individuals might volunteer to enter the process and then be unable to withdraw later. It has been pointed out that such a distinction perpetuates a division between "deserving" victims of trafficking and "undeserving" partners in smuggling⁶.

⁵ Which entered into force on 1 February 2008, for more details see http://www.coe.int/t/DG2/TRAFFICKING/campaign/default_en.asp

⁶ Anderson, B. and Rogaly, B. (2005) *Forced labour and migration to the UK*, London: Trades Union Congress.

Forced labour is one of the elements of exploitation experienced by trafficking victims, although not all those in situations of forced labour will be victims of trafficking.

Forced labour is defined in the ILO Forced Labour Convention 1930 (No. 29) and the European Court of Human Rights as:

“All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (Art. 2 ILO C. 29).”

The ILO says that the following six elements are indicators that point to a forced labour situation; usually two or more are imposed on a worker in a combined fashion. Each of these acts, when committed intentionally or knowingly by an employer against an employee, is likely to be a criminal offence within existing criminal law of most countries.

- i. Threats or actual physical harm to the worker.
- ii. Restriction of movement and confinement, to the workplace or to a limited area.
- iii. Debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.
- iv. Withholding of wages or excessive wage reductions, that violate previously made agreements.
- v. Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.
- vi. Threat of denunciation to the authorities, where the worker is in an irregular immigration status.⁷

⁷ See also Anderson, B. and Rogaly, B. (2005) *Forced labour and migration to the UK*, London: Trades Union Congress.

See Article 3 Palermo Protocol.

ILO (2004) *Human Trafficking and Forced Labour Exploitation - Guidance for Legislation and Law Enforcement*, pp20-21.

Undocumented migrants

The term describes foreign citizens present on the territory of a state, in violation of the regulations on entry and residence, having crossed the border illicitly or at an unauthorized point: those whose *immigration/migration status* is not regular, and can also include those who have overstayed their visa or work permit, those who are working in violation of some or all of the conditions attached to their immigration status: and failed asylum seekers or immigrants who have no further right to appeal and have not left the country. It has been argued that the term is ambiguous as it refers both to migrants who have not been documented (recorded) and those without documents (passports etc).

“Unauthorised migrant” is used in a similar way to *irregular* and *undocumented*, by the UK Home Office, but is not clear in its usage as not all irregular migrants are necessarily unauthorised.

The terms *compliant/semi-compliant/non-compliant* are considered by this project to be more useful categorisations.

(See also *Compliant/semi-compliant/non-compliant, Illegal migrants, Irregular migration*)

Undocumented work

Undocumented work is undeclared and non-documented economic remunerated activities, which can be carried out by nationals and non-nationals. In the case of migrants, it can refer to compliance not only with regard to economic activity, but also in relation to their residence status.

(See also *Informal/hidden/shadow economy*)