POLICY BRIEFING

Law, order and irregularity: Undocumented migrants and UK immigration policy

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SUMMARY
The position of undocumented migrants in the UK is increasingly insecure, with ongoing legislative and policy efforts to step up enforcement against this group. A recent mapping exercise carried out by the Centre for Criminology and Criminal Justice at The University of Manchester, in collaboration with the Migrants Rights Network, reviews the current position for undocumented migrants in the UK, supplementing legal analysis with perspectives drawn from engagement meetings with Manchester-based migrant community organisations, support workers, local government workers and the probation service. This briefing summarises the findings, arguing that the current ‘law and order’ approach to irregular migration is not an effective policy response but instead relies upon measures experienced by many undocumented migrants and wider community members as divisive, ill-managed and unfair. It calls for a restructuring of the immigration system in order to uphold core principles of justice and fairness that conform to those used within the Criminal Justice System.

CURRENT STATUS AND BACKGROUND
- Research conducted by the London School of Economics in 2009 suggests that there are currently approximately 618,000 undocumented migrants in the UK. This number fluctuates considerably due to changes in immigration law and policy.
- Undocumented migrants are those who do not have permission to be resident in the UK, and are alternatively referred to in the media as “illegal migrants” or “irregular migrants”. Migrants may become undocumented in two distinct ways: (1) when they enter the UK without the permission required by law or (2) even when they have such permission to enter, that permission expires or is altered by a change in circumstances. Children born to undocumented migrant parents are also considered to be undocumented migrants.
- Previous studies (e.g. Bloch, 2013) into the experiences of undocumented migrants in the UK report the vulnerability of this group to exploitation. Irregular migrants may be the victims of crime, but have little access to the criminal justice system (Migrants Rights Network, 2009).
- Successive governments have taken a punitive approach towards tackling irregular migration in the UK, with the leadership of all three mainstream political parties sharing the view that irregular migrants should be criminalised and the subject of ongoing enforcement activity.
- Under the coalition government, irregular migrants are a key target for policy action. The recent Immigration Act 2014 (IA 2014) presents undocumented migrants as criminals and increases in-country enforcement measures to create a ‘hostile environment’ for them.
- Having undocumented status prevents migrants from accessing local authority housing, employment protections or social security benefits, restrictions which are extended by the IA 2014. The IA 2014 will shortly require private landlords to confirm the immigration status of their tenants prior to signing a tenancy agreement, with fines of up to £3,000 for those found not to have properly done so. The Immigration, Asylum and Nationality Act 2006 imposes civil penalties on employers who hire undocumented migrants.
- Undocumented migrants are entitled to free access to education and primary and emergency healthcare, although further healthcare charges will be introduced over the coming year.
- Becoming documented is difficult, and requires the undocumented migrant to make an application for citizenship, asylum, other form of protection, residence based on long-term residence or to demonstrate a particular status (e.g. parenthood or partner). These applications often require the individual to demonstrate that they are embedded in the UK through assessment of, for example, their local participation, employment or education here.
KEY CONSIDERATIONS

This scoping research builds on previous investigations in this area in close collaboration with community and campaigning organisations and is innovative in that it brings a criminological lens to the issue.

Key findings from the project included the following:

- **Irregular migration status is not just a law and order issue and cannot be solely tackled by criminalising undocumented migrants.** Some undocumented migrants become irregular because changes to the Immigration Rules have reduced options for legal stay or resulted in unintended irregularity. For others, compelling factors such as family life, employment or health problems lead to their becoming undocumented in the UK.

- **A significant proportion of the UK’s undocumented migrants have been refused asylum status, before becoming undocumented.** The close relationship between the asylum system and the creation of irregular status appears related to the ‘culture of disbelief’ within the asylum system, extended timescales for decision-making and lack of transparency.

- **There are concerns about the use of immigration detention to accommodate undocumented migrants.** In particular Yarl’s Wood detention centre was mentioned, where limited healthcare access and mental health issues had been problematic for some detainees.

- **In-country enforcement measures are having a divisive impact in local communities.** Restrictions on undocumented migrants’ access to housing, healthcare and employment require some public service providers to make difficult assessments about immigration status, and create conflict of interests over whether to deny needed services to vulnerable individuals.

- **The routes for regularising immigration status have become more restrictive in recent years.** For example, although regularisation of undocumented children resident in the UK for seven years may be possible under the rules, an overly high burden of proof is placed on applicants and their families.

- **Overall, the current policy approach appears to be resulting in a system frequently experienced as unjust and capable of making apparently arbitrary decisions.**

RECOMMENDATIONS

This project recommends that significant reforms are needed within the UK immigration system, in order to deal justly and properly with irregularity:

- **Reforms should be made to the asylum system in order to ensure that migrants coming to the UK as asylum seekers are treated fairly and are therefore less likely to become undocumented in the UK.** Asylum decision-making should allow for higher levels of scrutiny.

- **A full and independent assessment should be conducted into the impacts of in-country immigration enforcement measures.** This should consider the implications of this approach for individual undocumented migrants and for wider communities.

- **A public inquiry should be established into the operation of the UK’s detention estate, to ensure that they conform to minimum standards elsewhere in the criminal justice system.** In particular, there should be the introduction of a maximum time limit for immigration detention, proper access to medical care, and an end to the use of force during detention and removals.

- **The current rules affecting the regularization of migrant status should be reviewed to increase transparency, and adequately enable undocumented migrants in the UK to gain legal status.**
REFERENCES AND ADDITIONAL READING


For more information, visit: www.manchester.ac.uk/undocumented-migrants/

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