

Some Guidelines for Assisting Undocumented Migrants

The meaning of these guidelines is to be instrumental for a discussion within the framework of PICUM. This discussion could lead to a degree of consensus between the different organizations within PICUM, and give clearness about the position of the various organizations. PICUM being a Platform, is not the forum to establish any enforceable ethical code for its participants. However, organizations could eventually use these guidelines as a basis on which they could develop their own ethical code.

These guidelines aim to address social workers, aid workers, advisors, advocates and supporters. In the following we will use the term 'social worker', referring to all these roles and professions.

General Principles

- Social workers are committed to principles of social justice and inclusion and recognize, promote and protect the human dignity of any individual.
- Social workers neither discriminate, disadvantage nor prejudice clients.
- Social workers and others come into contact with undocumented migrants either by purpose of their organization or by accident. However, their principle task remains to provide social work, advise or support to their clients in the first instance and in conjunction with their professional ethics.
- Social workers therefore include undocumented migrants into their work.
- Forced migration is a derived problem from the lack of political and economical balance in the world. Therefore, solutions on the level of individuals or groups will always have a pragmatic character.
- Passing the buck by the authorities and their increasing use of tactics of starving out individual undocumented migrants put these and voluntary agencies trying to assist them, in an extremely difficult position: in many situations there is no longer term solution and mostly the choice is between the bad and the worse.
- Undocumented migrants find themselves in an extremely dependent position towards their environment. Therefore they are vulnerable to exploitation, maltreatment and misuse: forced prostitution, forced criminality, work without any protection of their rights, exploitation in the housing-sector, blackmail, exploitation by traffickers etc.

The relation between the client and the help-provider

1. At any time it should be made clear what assistance can be provided and where the limits are and why. The obligations of both the provider of assistance and of the client should constantly be clarified as a part of the process of reaching or upholding consensus regarding the assistance. In this sense the relation should get the character of an unwritten contract, in a way that the client knows what he/she can expect and what is expected from him/her.

Amongst many other things the process of giving assistance is also one of negotiating. That is why a careful and thorough intake is of utmost importance, as it is at this time and place the tone and the main aims and limits of the contract will be put on the agenda.

During this phase of the process and for that matter during the whole process, the worker should be aware that he/she is the stronger, even the dominating partner in the relation. This requires respect and a reserved, self-critical attitude from the side of the worker.

Organizations offering assistance to undocumented migrants have to define clear instructions for their workers regarding the acceptance and refusing of help, working methods, peer-control, pointing out structural problems both within the organization and in a broader context, the (legal) position of workers (insurance, accounting for their work). This to protect both the workers and the clients. Both workers and clients should have the opportunity to appeal to someone else within the organization.

2. The relation of providers of assistance should not be different whether the worker is paid or not. This should be guaranteed by a written agreement between the organization and its volunteers.
3. The circumstances under which the relationship can be discontinued completely or temporarily by the worker should be clarified, e.g.
 - if the client remains passive, whatever the social worker tries to do, if he/she is not willing to seek and create a situation in which he/she can survive (temporarily) in an ethically acceptable way.
 - If it appears that the client is intentionally providing false information, seriously frustrating the trust put in him and by this harming the organization or rendering the assistance impossible.
 - in case a client abuses or attacks staff, volunteers or other clients.
 - If it appears that the client committed serious crimes (e.g. crimes against humanity, offences against human rights, serious common crimes), either in the country of origin or in the country of actual residence without having had a fair trial.
4. All workers should see that they keep their professional distance from clients for their own and the clients' protection. As soon as the character of the relationship changes to a personal one, the providing of formal assistance by this person should stop. Peers-control should play a decisive role in this kind of situations.

Aims of providing assistance

5. The aim of providing assistance is to efficiently deliver a particular service or to find a solution, that is a situation in which the client can survive in an ethically acceptable way. This situation can be temporary or durable. It is essential that the client in some way or another is able to support him/herself.

6. The seeking of this “acceptable situation of survival” constitutes the core in the “unwritten contract” between the provider of assistance and his/her client.
7. Possible solutions are:
 - a. Legalization of the residence status. Note on unfounded requests concerning residence procedures: It is not advisable to sustain a totally unfounded request for a residence procedure whenever it in the short-/long term could provoke a more strict procedure, and could harm the credibility of the organization, which in the end could render impossible the providing of assistance.
 - b. Voluntary return. Organizations and workers should hold on to the “Guidelines for NGO’s in relation to government repatriation projects”.(See annex)
 - c. Continued illegal residence and work. In this case the main task of the provider of assistance is to minimize as much as possible the chances for marginalization, exploitation, discrimination and misuse.
8. Any essential step in the process will be discussed with the client and will not be taken without his/her consent. If the worker (preferably after consulting colleagues or a supervisor) has no alternatives to offer, acceptable to the client and cannot meet the options or wishes of the client, he/she can terminate the relation, because there is no definable aim to the process.
9. In the course of the process, the aim can change: the workers should adjust their methods and aims in a flexible and creative way: they should be able “to make the impossible possible”. E.g. the organization can offer a limited time of rest to an undocumented migrant to make up his/her mind. After this period of time, fixed in advance, it has to be considered if a new “contract” can be negotiated.

Standard of Services

10. Any undocumented immigrant is morally equal to any other individual. Therefore it should be ensured that the client get access to the usual services available and that the service given is as close to the standard as possible.

Prioritizing

11. The overall aspiration should be to serve all those in need. If that is impossible, for example because of lack of resources clear criteria and mechanisms of prioritizing should be applied. From the beginning the provider of assistance and his/her organization should make clear what criteria they apply for providing or denying assistance. And whether a denial is based on reasons of shortage of means, on reasons of limited working methods and/or on reasons of principle.

12. Preferably clients should not be accepted without any form of selection if the limited means of the organization will at some moment force it to close the doors.
13. The urgency of the need for assistance is defined in different ways by different organizations:
 - Urgent humanitarian need, great vulnerability: e.g. families with (small) children, medical or psychiatric needs, other severe situations...
 - Perspective on a (durable/temporary) solution (asylum, staying permit on humanitarian grounds, further migration, repatriation, "black work" without to much exploitation).
14. In case the organization is unable to provide the assistance required the social workers should try to suggest alternatives or refer to other agencies that could help. No client should be sent away without all channels having been tried.

Secrecy

15. It should be identified first what kind of information and how much information is required to solve the problem the client is coming with and for the purpose of the service the organization offers. Data that is not relevant to the case should not be collected.
16. All information given by a client in the context of providing assistance is guaranteed to remain secret. Other workers under the code of the organization however have access to the information as long as this has a clear function (e.g. continuity of the assisting process, control by authorized persons within the organization). In that sense and within these limits information is not given to this individual worker, but to the organization. There is one exception however: if the social worker happens to obtain information on actual, ongoing or planned acts of heavy criminality, the civic responsibility overrules the professional duty of confidentiality. This should be made clear to all clients during the intake.
17. If and when the provider in the exercise of his/her duties obtains information on crimes by third parties (e.g. trade of women and children, exploitation, misuse, forced prostitution, domestic violence, blackmailing of undocumented migrants), he/she should try to find ways and means to put an end to these practices. Problem solving strategies could be a hierarchy of informing the public and informing the authorities, without doing any harm to the client(s) who provided the information.
18. No information should be provided to third parties without the clear consent of the client, except for the one case mentioned in article 16.
19. At any moment the client has the right to see his or her complete file. When the relationship comes to an end, the client has the right to take along his/her file. The organization however is entitled to keep his/her essential personal data. If the client

requests assistance another time, he/she has to make the whole file available to the organization again.

Political and social action. Transparency

20. Providing individual assistance without active openness to the surrounding society is like swimming against the tide.
21. Organizations assisting undocumented migrants should be open and transparent regarding their finances, their working methods, the number of clients they are able to help, their contacts with authorities and with other organizations.
22. It is an essential task of organizations assisting undocumented migrants to inform society on the problems their clients meet. The organizations and/or their networks or umbrella-organizations (regional, national, European) should invest in informing media and in lobbying politicians on the issue. This presupposes a focus on signals, coming from the field, instruments (time, well equipped persons) to incorporate and handle these data and to develop a common strategy.
23. Possible involvement of clients in public actions should be considered with great caution (e.g. demonstrations, church-asylum). Clients should be fully informed on the possible scenario's and their consequences. It should be clear what to do if the action fails in one way or the other. The publication of photographs and of personal testimonies of clients should be avoided without their explicit consent.

Legitimacy and its limits

24. In the EU member states, there is a relatively high degree of democracy. Under these circumstances, the legitimacy of disobeying laws is far more remote than under a clearly undemocratic regime. However if a state excludes its inhabitants from the essential means of surviving, these residents have the right to disobey laws in order to survive. Their actions should be in proportion to this aim and should do as little harm to others as possible.
25. This does not legitimize the breaking of the law by those who assist the undocumented migrants. However they have to defend, situate and explain the behavior of their clients in this respect. When they are involved in a situation that is not strictly legal, it should be agreed upon with the client that his or her illegal action in which he is assisted is completely on the client's responsibility. If a worker is him/herself in the situation that only a breach of the law could lead to the most efficient assistance for the client, this should always be discussed and agreed upon with a team. The consequences of this illegal action on the rest of the undocumented migrant, the society at large, the perception,... should be taken in consideration. In no case shall a worker working in an organization decide individually on such a case.

26. In some countries it is forbidden by law to assist undocumented migrants. These types of law are subordinated to principle ethics that therefore have priority.

27. Actions undertaken, working methods and rules like these guidelines, used by organizations assisting undocumented migrants should be open and transparent. This appears to be a condition to win the cooperation and support of other organizations, of the public and sometimes of (local) authorities.

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ANNEX: Guidelines for NGOs in relation to government repatriation projects

1. Introduction

This note is restricted to the repatriation policy relating to people whose request for asylum has been turned down and/or those who, having been given exceptional leave to remain, subsequently have to return to their own countries. In the terminology of some governments, they will be given the choice of returning "voluntarily"- which means that they will be able to make use of support services when they go back ~ or of being forcibly deported. The premises and guidelines contained in this document were formulated and endorsed by a group of 25 Dutch NGO's. The initiative was coordinated by the Working Group on International Refugee Policy¹. In general, governments see it as desirable that NGOs which undertake activities on behalf of asylum-seekers or carry out and/or finance activities in countries of origin should be involved in repatriation projects organized by the government. Depending on the work done by the NGOs concerned and their level of expertise, they could be deployed in phase 1 (preparation and reorientation in the country of asylum for return to the receiving country), phase 2 (the actual repatriation process and the initial reception in the receiving country), or phase 3 (reintegration in the receiving country).

Before the NGOs that qualify for participation in repatriation projects take a decision about taking part in them, they want the government to provide clear details of the repatriation policy and what the repatriation projects will involve in concrete terms. These NGOs also regard it as essential to arrive jointly at the formulation of a number of fundamental conditions on which they would be able to take part in repatriation projects. These fundamental conditions serve not only as a frame of reference on which NGOs can base their decisions as to whether or not to take part, but also as a signal to the government to take these fundamental conditions into account when framing government policy.

There are two key factors in these fundamental conditions.

1. Repatriation projects must be in the interests of the receiving country;
2. NGOs will handle the repatriate's interests, with the concepts of safety, dignity and prospects for the future playing a crucial role.

There follows a definition of the three concepts referred to above. The document then examines the possible involvement of NGOs in repatriation projects, considering methods and basic premises. Finally, there is a discussion of a number of basic premises concerning the evaluation of and accountability for activities undertaken by NGOs in respect of repatriation projects.

2. Repatriation in safety, with dignity and with prospects for the future

2.1 Safety

The UNHCR Handbook on Voluntary Repatriation² says that repatriation in safety exists if the following conditions are met:

- a. safety guaranteed by the law (for example by means of granting amnesties, or through government statements that personal safety will be guaranteed, the embodying in the law of and compliance with the principle of non-discrimination, freedom from the fear of persecution or punishment upon repatriation);
- b. physical safety (including protection against armed attack and mine explosions);
- c. material security (access to land and opportunities to acquire the means of living).

¹ Members of the Working Group are: Amnesty International (Dutch section), the Dutch Red Cross, Médecins sans Frontières (Netherlands), the Refugee Foundation, the Dutch Refugee Council, Caritas Netherlands, Dutch Interchurch Aid

² UNHCR, Handbook on Voluntary Repatriation: International Protection, Geneva 1996. This book contains guidelines for the voluntary repatriation of refugees.

The NGOs that qualify for participation in repatriation projects take the view that the above definition of safety should also apply to the repatriation of asylum-seekers whose applications have been refused and those who have received temporary protection and subsequently have to go back. They also stress the fact that accurate and verifiable information about the receiving country must be available in order to make a judgment about the safety aspect. There is a joint role here for central government and the (relevant) NGOs. A favorable decision with regard to safety that has been taken some considerable time before the actual repatriation will have to be reassessed.

2.2 Dignity

With regard to repatriation with dignity, the UNHCR Handbook on Voluntary Repatriation states that:

- a. repatriates must be treated by the authorities in the receiving country with respect and without any form of violence;
- b. their rights must be recognized in full by the receiving country;
- c. the authorities in the receiving country may not impose any conditions on their repatriation;
- d. they must be allowed sufficient time in which to return;
- e. they may not be separated arbitrarily from family members.

The NGOs that have signed the present document are of the opinion that the above definition of dignity should also apply to the repatriation of asylum-seekers whose applications have been refused and those who have received temporary protection and subsequently have to go back.

In respect of point c under heading 2.2, it should also be noted that the basic premise here must be the universal right for an individual to return to his or her own country.³ The NGOs that have signed the present document state, in addition to the above, that no conditions which limit fundamental rights may be imposed. Furthermore, no conditions may be imposed that are not at the same time imposed on the local population.

The aforementioned NGOs also believe that a person's dignity is compromised by:

- a negative, condemnatory interpretation of the concept of refusal' (of asylum application);
- a situation in which there is a constant threat of forced deportation for asylum-seekers whose requests have been refused;
- the failure to recognize and take account of the psychological and social aspects of asylum and repatriation issues. It is the government's job here to achieve a positive approach to asylumseekers whose request for asylum has failed, and a clear, unambiguous repatriation and deportation policy.

2.3 Prospects for the future Prospects for a new life only exist if, in addition to safe and dignified repatriation, realistic material conditions are met. Training and education are important factors in providing repatriates with realistic prospects for the future in the receiving country. Here again, accurate and reliable information is indispensable, particularly with regard to the social and economic situation in the country receiving the repatriates and the opportunities for the individual repatriate to make a living upon his or her return.

3. Participation in repatriation projects

3.1 The period prior to the repatriation project

Basic premises for NGOs in relation to the government

Before counseling and monitoring repatriates, NGOs will:

- a. have free and unimpeded access to the prospective repatriate;
- b. be able to convince themselves that the procedures for obtaining resident status have definitely come to an end;
- c. form an independent judgment about the willingness of the person concerned;
- d. form an independent judgment about the safety situation for the person concerned in the receiving country;
- e. form an independent judgment about the possibility that the person concerned will be able to return with dignity and with realistic prospects for the future; to this end they will have access to such information and

³ Universal Declaration of Human Rights, art. 13(2).

knowledge about the community to which the person concerned is returning as is available to the government and other relevant organizations;

f. be able to familiarize themselves with the repatriation agreement between the country of asylum and the receiving country concerned;

g. support as far as possible any plans the person concerned may have to settle in a third country;

Basic premises for NGOs among themselves

h. in the event of any doubt about the safety and dignity of repatriation, put the matter to the government after consultation among themselves;

i. in the event of any doubt about realistic social and economic prospects, put the matter to the government after consultation among themselves, and make joint efforts to find alternatives;

j. take account of the psychological and social condition of the prospective repatriate and, on this basis, make an assessment of whether repatriation can in fact be considered at all.

3.2 Counseling repatriates during their preparations for repatriation

Basic premises for NGOs in relation to the government

During the preparatory phase, NGOs will:

- a. provide the person concerned with accurate and reliable information about the safety situation in the receiving country, about the social and economic situation in the receiving country and the individual opportunities to make a living upon repatriation, about the opportunities for training and education in the country of asylum and in the receiving country, about the possibilities of financial support, about the possibilities of applying for asylum in a third country or gaining admittance in some other way, about the consequences of living in the country of asylum without a residence permit;
- b. set up a repatriation pathway with the person concerned, taking relevant individual factors into account;
- c. give the person concerned practical assistance in applying for financial support, education, etc., and prepare the person concerned psychologically and socially for his or her future life in the receiving country;
- d. be given sufficient time to prepare the person concerned for repatriation;

Basic premises for NGOs among themselves

e. coordinate their work.

3.3 Reception and reintegration in the country receiving the repatriates

Basic premises for NGOs in relation to the government

NGOs will be able to participate in reception and reintegration activities in countries of origin if:

- a. they have access to such information and knowledge about the communities to which people are returning as is available to the authorities;
- b. they can undertake their activities without political pressure from the country of asylum or from the receiving country;
- c. the repatriation project serves the interests, in a balanced manner, of both the repatriate and the community to which he or she is returning; this is not the case if repatriates are systematically given preference over local population groups;
- d. returning unaccompanied minors or other vulnerable people can be integrated into an appropriate social environment; orphanages and similar institutions are not generally regarded as appropriate;
- e. repatriation areas that have suffered severely from conflicts can (or will be able to) count on support for recovery;
- f. the country of asylum will contribute to the costs incurred by the NGOs.

Basic premises for NGOs among themselves

NGOs will:

- g. guarantee that they have sufficient knowledge of and experience with the receiving country concerned before they take part in reception and reintegration activities; they will preferably not undertake activities for repatriation projects in countries where they were not working previously or where they have no partner organization with which they have worked regularly in the recent past;

- h. make every effort to achieve good cooperation with local NGOs in the receiving country, respecting the local NGOs' own policy and working methods;
- i. coordinate their work as far as possible and endeavor to prevent the overlap of work

4. Evaluation of and accountability for activities undertaken by NGOs

NGOs will:

- a. inform repatriates, the receiving countries and the country of asylum of their fundamental principles, objectives and methods;
- b. be accountable to repatriates, the receiving countries and the country of asylum for the activities they undertake;
- c. carry on an active and ongoing dialogue with all the players involved;
- d. cooperate on public scrutiny by the media, researchers etc.

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If your organization decides to endorse the above guidelines or if you wish to receive additional information please contact

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