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Knowing the Unknown

Irregular Migration in Germany

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Knowing the Unknown

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› Introduction

This discussion paper aims at presenting the state of affairs on the study of irregular migration in Germany. The research presented in this document received funding from the project “The Challenges of Migration, Integration and Exclusion. Wissenschaftsinitiative Migration der Max-Planck-Gesellschaft (WiMi Project)”, financed by the Max Planck Society. The project is a three-year research initiative (2017-2020) led by Prof. Dr Marie-Claire Foblets (Max Planck Institute for Social Anthropology, Halle/Saale) and Prof. Dr Ayelet Shachar (Max Planck Institute for the Study of Religious and Ethnic Diversity, Göttingen), and involves scholars from six Max Planck Institutes: Max Planck Institute for Comparative Public Law and International Law (Heidelberg), Max Planck Institute for Demographic Research (Rostock), Max Planck Institute for Social Law and Social Policy (Munich), Max Planck Institute for Human Development (Berlin), Max Planck Institute for Social Anthropology (Halle) and Max Planck Institute for the Study of Religious and Ethnic Diversity (Göttingen).

Irregularity¹ is one of the most important factors that enforces the social exclusion of immigrants within receiving countries because defining an individual or their legal status as irregular is, per se, an act of exclusion (Bommes and Sciortino 2011). According to the International Organisation for Migration (IOM), irregular migration involves individuals who enter, stay or work in a country without the necessary authorisation or documents required under immigration regulations. In practice, to define this concrete status in Germany is rather complex, as irregular individuals may be subject to different laws depending on their migration trajectory (for example, students overstaying after their visa has expired versus victims of trafficking). In addition, data captured by official authorities are fragmented and refer to specific groups of populations, who are irregular in Germany.

It is extremely difficult, if not impossible, to conduct an accurate assessment of the dimensions

of irregular migration as a social phenomenon, the characteristics and challenges faced by this population, and the extent to which their rights are protected with the data currently available. The lack of data on irregular migration is a matter of serious concern among scholars and the international community. Both international organisations and academic researchers have been requesting better data in the last decades (GMDAC 2017; Laczko 2016; Méndez and Font 2013; Koser 2010), but very little progress has been observed so far. According to Laczko (2017), there is a lack of political will to collect and share data on the topic.

Not accidentally, tackling irregular migration is also one of the most challenging aspects of migration policies (PICUM 2009; Tryandafyllidou 2010; Vogel 2002). Even if it is an issue addressed and regulated through legal instruments, current debates still highlight the importance of creating or re-defining policies to better respond to irregular migration and to guarantee minimum rights to individuals lacking a valid residence permit. Claims for better data go in the same direction.

This report aims at contributing to the advancement of research on irregular migration in Germany by describing how irregular migration is defined by German law, which data is available to study this phenomenon as well as its limitations, what researchers have explored so far, and how to move forward. Therefore, the document is organised as follows: First, the pathways in and out of irregular status in Germany are introduced. This is of key importance to understand the data available and the gaps that have been identified. Second, the main data sources containing information on irregular migrants are described. Then, an overview of the literature on the characteristics of this population – both in terms of labour market participation and their living conditions – is presented. The final section of the document is devoted to explore future prospects for the study of irregular migration from a quantitative perspective. Finally, conclusions are presented.

¹ Individuals not entitled to reside in a country have been the object of study of different disciplines, and plenty of terms have been used to name this population, for example: “undocumented”, “sans-papiers”, “illegal”, “clandestine”, “unauthorized”, “unlawful”, “aliens without residence status” and “illegalised people”, among others (Vollmer 2011). This paper adopts the term “irregular”, as it is a neutral term used by most researchers of international migration and by non-governmental and international organisations working on the topic. “Illegal” is by far the most avoided term by researchers, as it carries a criminal connotation, however it is the term used by most of the German authorities. To use the term “undocumented” would have been problematic for the German case, as individuals may hold documents, but still be “illegal” for official authorities, which is the case of people holding a toleration certificate (*Duldung*).

The author of this study is very grateful for the comments and suggestions received from Tim Rohmann and Constantin Hruschka (Max Planck Institute for Social Law and Social Policy), and from Miriam Schader (Max Planck Institute for the Study of Religious and Ethnic Diversity).

› Pathways in and out of irregular status as an immigrant in Germany

Clearly defining and identifying irregular migrants as a population group in Germany is a complex task. This is because the characterisation of an irregular migrant entangles a multiplicity of possible cases (or hybrid forms) depending on the legal status at entry, when and why an individual's stay became irregular, and if he or she works illicitly. It also is because regulations and definitions of regular statuses are subject to changes over time. Finally, it is complex because irregular migrants themselves are often not interested in being identified (Tapinos et al. 1998) or fear disclosure of their status and its consequences (Sinn et al. 2005).

In Germany, irregular migration is a politically unwanted and widely unregulated phenomenon. There is no legal definition of an "irregular migrant" as the law only regulates entry and residence procedures (§§ 3-38 Aufenthaltsgesetz (AufenthG), the Residence Act). An entry is understood as being unlawful when foreign nationals enter the country without the obligatory passport or travel documents, and/or without the obligatory residence documents (§ 14 para. 1 AufenthG). A foreigner is obliged to leave the Federal territory if he or she does not possess or no longer possesses the necessary residence title, and a right of residence does not exist or no longer exists under the EEC/Turkey Association Agreement (§ 50 para. 1 Residence Act). After a person is enforceable required to leave the Federal territory, received a final return decision and a previously granted period for voluntary departure has expired, the residence becomes "illegal" (§ 95 para. 1 no. 2 Residence Act).

Individuals can also become irregular by obtaining his or her first residence permit or a settlement permit and then losing it due to a variety of reasons, or due to expiration. In the following section, different paths towards irregularity are listed. This is based on typologies by Lederer and Nicker (1997) and Schneider (2012), and on the Residence Act. These paths reflect the fact that "irregular migrant" is not a

homogeneous group and the reasons for irregularity are closely connected to individual migration trajectories. Categories may also overlap in some cases. It is central to note that individuals falling into specific paths are known by authorities and are part of the population covered by official statistics presented in the following sections, while those who are not known are not included in the databases.

1. Individuals entering the German territory without the obligatory travel documents:

This includes individuals who are arrested by the Federal Border Police after trying to enter the country with forged or altered travel documents.

2. Overstayers who entered the country regularly, but never obtained a residence permit:

Individuals may enter Germany as tourists (with or without a visa depending on requirements for the country of origin), and do not leave the country after the permitted length of stay (usually three months).

3. Victims of trafficking:

There are also individuals in this category who belong to one of the two previous categories, but once their situation as victim of a criminal offence is verified, they can apply for a special temporary residence permit (§ 25 para. 4a AufenthG) for the duration of the criminal proceedings against their traffickers. Trafficking for the purposes of exploitation of workers is a criminal offence since 2005.

4. Overstayers after losing the right of residence:

Under this category, these are all individuals who obtained a residence permit, but it expired or it was revoked due to no longer complying with the requirements for their residence in Germany. Students with an expired visa and foreign workers who, before their stay became irregular, had a temporary residence status, are part of this group. These may also be contractors and seasonal workers, or individuals with a general employment visa who didn't leave the country after the end of their contract. It also includes citizens of a third country who overstay after having lost the right of residence in the case of divorce if the marriage lasted for less than three years. Once a residence permit expires, individuals are required to leave the country.

5. Individuals whose applications have been rejected

in a final decision and who have been ordered to leave the country, but remain in Germany

and do not comply with the return decision. German return policies do not distinguish between individuals holding a rejected asylum application and those holding a rejected application due to other reasons (Federal Office for Migration and Refugees 2016).

6. Asylum seekers or third-country nationals who are no longer pursuing their application procedure, but are still in Germany.

7. EU-citizens who have no right to or lost their right of residence because they would require social benefits to make ends meet.

Once the irregular stay of a foreigner is uncovered by the State, individuals are registered by authorities and generally obliged to leave the country. If the person does not leave on a voluntary basis, removal and/or expulsion procedures are applied. Forcible removals are not straightforward procedures due to practical impediments. For example, to establish the person's identity, to obtain a travel document from the country of origin and their willingness to re-admit their own nationals, cases of sudden illness, unavailability of transport, lack of funding and organisational difficulties, among others.

If the supreme authority of Federal States, namely the Ministries of the Interior, order the suspension of a removal – for different reasons² – individuals receive a toleration certificate attesting a specific status, namely Duldung. The suspension of a removal does not imply individuals are entitled to reside in the country, and the obligation to leave Germany still applies³ (§50 I AufenthG). A toleration certificate is valid for a maximum of three months. If the Federal State authority wants to extend the time period over six months, they need the approval the Federal Ministry of the Interior (§ 60^a para 3, § 23 para. 1). According to the Federal Office for Migration and Refugees (BAMF) (2011, pp. 34), "Illegal migration also includes the treatment of third-country nationals who do not have a right to reside in Germany, but whose deportation has been suspended because the obligation to leave the country or the deportation cannot be enforced" (however, these individuals are registered and known to the authorities (Schneider 2012)).

Overall, the chances for an irregular migrant obtaining a residence permit in Germany are very low. There have been no regularisation programmes in the country. However, a number of status adjustment programmes – the so-called "resolutions on the right to stay" – for long-term tolerated immigrants in the 1990's have been implemented (Cyrus and Vogel 2007). In addition, the Residence Act foresees specific situations where a residence title can be granted. Specifically, it states that in accordance to international law, on humanitarian grounds or in order to uphold political interests of the Federal Republic of Germany, a residence permit may be granted to foreigners from specific states or to certain groups of foreigners (§ 23 para. 1 AufenthG). Concretely, six pathways are foreseen:

1. Granting of residence in cases of hardship (§ 23a AufenthG);
2. Granting of residence for temporary protection (§ 24 para. 1 AufenthG);
3. Granting of residence on humanitarian grounds (§ 25 AufenthG);
4. Granting of residence in the case of well integrated young people and adolescents whose removal has been suspended for many years, who attend or have completed education, and whose prospects for integration are positive (Effective on July 2011, § 25a AufenthG);
5. Granting of residence in the case of sustainable integration (§ 25b AufenthG);
6. Granting a temporary residence permit "for the purpose of taking up employment commensurate with his or her vocational qualification if the Federal Employment Agency has granted approval" (§ 18a AufenthG).

Individuals may also obtain legal residence status by marrying a German partner or a non-German partner with a long-term residence entitlement, and by parenthood. The last case implies that a German citizen must legally accept the parenthood and the personal custody of a child born out of wedlock. According to the Federal Office for Migration and Refugees, the

² For example, countries of origin may refuse to receive their citizens back, or it may be impossible to prove the origin of an irregular migrant due to the lack of any identification document.

³ § 60a para. 3 AufenthG: "Suspension of deportation shall not affect the foreigner's obligation to leave the Federal territory".

most common case is German men accepting parenthood for a child born to a mother in an irregular residence situation (Sinn et al. 2005). Finally, if individuals fulfil all of the strict requirements for specific pathways out of irregularity, a residence title might be issued for a limited period of time (Probationary Residence Permit) to replace an expired permit until a new residence permit is issued.

The complexity of ways in and out of irregularity reflects the importance of framing and discussing irregularity in the context of a specific space and for a specific time. It is also fundamental to frame it as a dynamic condition, as ethnographic research shows that individuals change status through a variety of pathways (Bommers and Sciortino 2011). Finally, it is key to keep in mind that those specific paths are the basis to understanding the contents of the data collected and reported by official authorities, which is presented below.

› Data on irregular migration

The complexity around the definition of irregular migration results, in statistical terms, in what Cyrus and Kovacheva (2009) called “many figures, little comprehension”. According to the authors, it was only in the mid-1990’s that awareness of the quantitative dimension of irregular migration started. As for today, it can be said that apart from studies produced by BAMF (Tangermann and Grote 2017; Grote 2015; Sinn et al. 2005), where general figures from official institutions are presented and described, few researchers have devoted efforts to studying irregular migration quantitatively (Vogel 2016; Kuehne et al. 2015; Vogel and Aßner 2011; Cyrus and Kovacheva 2009; Vogel et al. 2009; Vogel and Kovacheva 2008; Lederer and Nickel 1997).

The main source of information on official statistics related to stocks of irregular migrants are BAMF, the Federal Border Policy, the Police Crime Statistics and the Statistics of the Federal Labour Agency. None of them provide reliable data on the size and composition of this population as a whole (Grote 2015; Sinn et al. 2005), and neither provide open access to anonymised microdata. Since 2008, BAMF publishes an annual report on developments related to migration, integration and asylum in Germany, in the framework of the European Migration Network. These reports include a chapter devoted to irregular migration (also referred to as “illegal migration and

unauthorized residence”), however, its focus is on legal developments rather than presenting data and figures. It has to be noted that all numbers provided by official institutions only refer to individuals that are known and have been registered by the authorities.

1. Population Register

The German Population Register (GPR) has the most comprehensive sampling frame and the best data available on the size of the population living in the country, as residence registration is compulsory for all individuals. All individuals staying in Germany for longer than three months for stay, work or study need to register. Not registering as a resident leads to a fine and the document proving registration is requested to access all social services and to sign contracts, including opening a bank account. According to Salentin and Schmeets (2017), a significant part of irregular migrants are registered in the GPR.

A valid visa or a residence permit are not a requirement for registration, but it leads to the identification of individuals and their place of residence as it is mandatory to present a form filled by the landlord confirming that individuals live at a specific address. Consequently, those aiming at staying “invisible” in the country will not register. In turn, overstayers are in principle included in the register as far as they do not deregister from the system after losing their residence status. The database derived from the GPR contains no information on age, date of arrival in Germany, residence permits, asylum status or migration motives of the population. This makes it impossible to calculate country-representative samples for the quantitative study of irregular migrants (Salentin and Schmeets 2017).

2. Stocks of foreigners not holding a residence status from the Central Register of Foreigners

The National Statistics Office provides the number of individuals not holding residence status (*ohne Aufenthaltsstatus*) (Destatis, 2016), disaggregated into three categories: 1 – individuals in possession of a toleration allowance (*Duldung*); 2 – Asylum applicants with permission to reside in Germany, and who are still in the asylum proceedings⁴ (*Aufenthaltsgestattung*); and, 3 – individuals not holding a residence status who are not part of the two previous groups, namely *ohne Aufenthaltstitel, Duldung* or *Gestattung*.

Numbers come from the Central Register of Foreigners (*Ausländerzentralregister* – AZR, managed by BAMF), an automated register of the public administration used by more than 6,000 partner authorities on foreigners who either are in Germany for more than 90 days, have filed an asylum application, were expelled or where reservations apply with regard to their entering the country (www.bamf.de). Institutions providing information to AZR are BAMF and the Federal Police, but mostly local foreigners authorities working at a district level. Until the 31st of December 2015, the third category – *Ohne Aufenthaltstitel, Duldung oder Gestattung* also included all EU-citizens fully entitled to freedom of movement. Since the reporting year 2016, the number of EU citizens is presented in a separate category. Consequently, this third category now includes:

1. Individuals without a residence permit who are obliged to leave the country after refusal, expiration or measures to terminate their stay. These include foreigners whose application for a residence permit has been refused, whose residence permit has expired as a result of non-renewal; or cases where an administrative act ending the stay has been carried out.
2. Persons without a registered residence permit who have been identified by authorities.
3. Incomplete individual registers containing missing information on the status of the residence permit and duplicates.

BAMF have announced that great efforts are currently being made to clarify the actual status of foreigners without a residence status in the AZR data: Those cases are being identified and officers are asking local foreigners authorities for further clarification. As for the time being, the single number displayed under the category *Ohne Aufenthaltstitel, Duldung oder Gestattung* should be taken with caution as it serves as a residual category to all that cannot be classified as individuals holding a tolerance allowance or asylum applicants holding a permit to stay in Germany.

This data reveals that in 2016 there were 1,160,110 individuals without a residence permit in Germany, among them 154,780 individuals were in possession

of a toleration allowance (*Duldung*), 522,915 were asylum seekers (*Aufenthaltsgestattung*), and 482,415 cases were reported outside of these two groups (namely *Ohne Aufenthaltstitel, Duldung oder Gestattung*). Importantly, cases of absconders are registered at the AZR. However, it is not possible to know if the person has absconded intentionally and permanently within the country or if the person simply did not inform the authorities when leaving the country permanently. So far, it is not possible to access microdata from the AZR for the purpose of academic research (Salentin and Schmeets 2017).

3. Third-country nationals found to be irregularly present in Germany: Data from the Police Crime Statistics

The German Federal Ministry of the Interior provides public and comparable numbers on the stock of specific groups of irregular migrants, which is available on the Eurostat website. This data comes originally from the Police Crime Statistics (PCS) provided by the police authorities of the German Länder, which is then collated by the Federal Criminal Police Office (BKA) and transferred to the Ministry of the Interior. At a national level, the data is available online on the website of the BKA and is disaggregated by gender in Table 61, Item 972500. Criminal offenses are not recorded until the police investigations have been concluded. Table 1 shows statistical registers of entries without travel documents and entries with forged or altered travel documents from 2008 to 2016. It must be noted that those irregular entries are only registered when individuals are arrested by the Federal Border Police. According to the values presented in this data source, the number of irregular entries in Germany is relatively low on a comparative perspective, and tend to be a rather stable phenomenon in the last five years.

The second and last comparative table from Eurostat on irregular migrants that includes numbers for Germany refers to third-country nationals found by authorities to be irregularly present in German territory (Table 2). It refers to individuals apprehended or who otherwise come to the attention of national immigration authorities. It also includes the values presented in the previous table on refusals, individuals found to be irregularly present, individuals ordered to leave, and individuals who had

⁴ This entitles them to live in Germany until the asylum proceedings have been completed, that is until the decision has been taken on the asylum application, and to work subject to specific conditions (www.bamf.de).

returned to the country of origin either by following an order to leave or on a voluntary basis.

Disaggregated numbers by sex shows that the vast majority of individuals are men (73% in 2016). This distribution has to be interpreted very cautiously as an important bias is at play, leading to an underestimation of the stock of irregular women in the country. According to the literature (for example, Satola 2015; Gottschall and Schwarzkopf 2010; Alscher et al. 2001), irregular women usually find a job in the care sector, inside private homes, and are much less visible and at risk of being identified by authorities in comparison to men, particularly those working in construction or agricultural sectors. Microdata from the PCS is also not available for the purpose of academic research.

4. IAB-BAMF-SOEP Survey of Refugees

In 2016, the Institute for Employment Research (IAB), BAMF and the German Institute for Economic Research in Berlin (DIW) initiated a new survey on recently arrived refugees. This was done by adding a sample with a focus on migration to the German Socio-Economic Panel (SOEP). The target population of the sample includes: Individuals who arrived in Germany between January 2013 and January 2016 and applied for asylum, or were hosted as part of

specific programmes of the Federal government or of the Federal States, irrespective of the outcome of their asylum procedure and their current legal status. This data allows for the study of a specific group of irregular migrants in Germany, namely individuals holding a toleration certificate (*Duldung*). This is the only case of datasets produced by authorities where microdata is available for the purposes of scientific research. The questionnaire includes questions on the date of arrival, country of origin, socio-demographic characteristics in general, household characteristics, access to education and employment characteristics, among others (Kroh et al. 2016).

5. Data from non-governmental sources and estimations on the size of the irregular population

From the side of non-governmental bodies, no large-scale surveys have been conducted so far, and the vast majority of studies are based on ethnographic fieldwork. However, some interesting initiatives have been identified and are presented below.

The IOM assists migrants who are unable or unwilling to remain in Germany to voluntarily return to their country of origin by providing administrative, logistical, financial and reintegration support. The biggest national programmes are the Reintegration

Country	2008	2009	2010	2011	2012	2013	2014	2015	2016
EU28	634,975	499,640	394,800	344,440	317,170	326,320	286,805	297,860	388,280
Spain	510,010	387,015	290,045	227,655	199,830	192,775	172,185	168,345	192,135
France	16,695	14,280	9,840	11,100	11,310	11,745	11,365	15,745	63,390
Poland	16,850	26,890	23,015	20,225	29,705	40,385	20,125	30,245	34,485
Greece	2,055	3,000	3,805	11,160	9,415	6,995	6,445	6,890	18,145
United Kingdom	23,640	20,460	16,365	16,150	14,455	14,910	15,905	14,950	14,480
Hungary	5,530	7,700	10,475	11,790	9,240	11,055	13,325	11,505	9,905
Italy	6,405	3,700	4,215	8,635	7,350	7,370	7,005	7,425	9,715
Germany	7,215	2,980	3,550	3,365	3,820	3,845	3,605	3,670	3,775

Table 1: Third-country nationals refused entry at the external borders, selected countries 2008-2016. Source: Eurostat

Country	2008	2009	2010	2011	2012	2013	2014	2015	2016
EU28	579,825	563,990	505,130	468,850	433,325	452,270	672,215	2,154,675	983,860
Germany	53,695	49,555	50,250	56,345	64,815	86,305	128,290	376,435	370,555
Greece	106,715	108,315	115,630	88,840	72,420	42,615	73,670	911,470	204,820
France	111,690	76,355	56,220	57,975	49,760	48,965	96,375	109,720	91,985
United Kingdom	69,840	69,745	53,700	54,150	49,365	57,415	65,365	70,020	59,895
Austria	14,500	17,145	15,220	20,080	23,135	25,960	33,055	86,220	49,810
Hungary	1,875	3,255	2,305	3,810	6,420	28,755	56,365	424,055	41,560
Spain	92,730	90,500	70,315	68,825	52,485	46,195	47,885	42,605	37,295
Italy	68,175	53,440	46,955	29,505	29,345	23,845	25,300	27,305	32,365

Table 2: Third-country nationals found to be irregularly present, selected countries 2008-2016. Source: Eurostat

and Emigration Programme for Asylum-Seekers in Germany (REAG) and the Government Assisted Repatriation Programme (GARP), which are financed by the Ministry of the Interior and the German Federal States, as well as the StarthilfePlus programme, which is financed by the Ministry of the Interior. The type of assistance depends on the migrant's nationality as well as residence status. Migrants can apply for the programme via more than 1,000 counselling centres in Germany. Based on the information provided in the application, IOM registers the individual cases of returnees in an anonymised data file. Microdata is ultimately owned by BAMF, and is not publicly available.

Nonetheless, BAMF shares some figures showing the numbers of users and its characteristics over time on its website. Trends are also described in the BAMF's Annual Policy Reports. Figure 1 shows the number of voluntary departures that have been funded by the REAG/GARP programme since 1990. The peak between 1997 and 2000 refers to returnees after the end of the Balkan conflict. The increase since 2014 is mostly due to returns of nationals from Albania, Serbia, Kosovo, Macedonia and Bosnia & Herzegovina (Table 3).

Destination Country	2014	2015	2016 (approved)
Albania	1,010	11,268	16,887
Serbia	3,972	6,122	6,138
Kosovo	369	8,122	5,402
Macedonia	2,103	2,895	4,571
Montenegro	147	645	1,889
Bosnia & Herzegovina	1,251	1,705	1,450

Table 3: Beneficiaries of the REAG/GARP Programme, by nationality and year of approval of the grant to return to the country of origin. Source: Federal Office for Migration and Refugees, www.bamf.de.

As part of an initiative led by the Belgian King Baudouin Foundation and the Migration Policy Group, the Immigrant Citizens Survey focused on the integration process of third-country nationals in selected European cities, including Berlin and Stuttgart⁵ in Germany. Although the sample size is relatively small and data only includes "non-EU-born legal immigrants", the survey conducted in 2011 is still relevant for the purposes of this paper as it allows for the study of a specific group of migrants who at one point in time were irregular residents, but have regularised their stay afterwards, and hold a regular status at the moment of the interview.

Sinn et al. (2005) reported two surveys conducted by Caritas and Diakonisches Werk. Caritas conducted a survey in 1995 on the national level covering 310 organisations for refugees and foreign workers, support centres at train stations, homeless shelters, pregnancy advice centres and lawyers with expertise in immigration law, among others. Results have been published in a three-page report (Schäfers 1995). The survey conducted by the Diakonisches Werk was restricted to church-based organisations affiliated with it, and aimed at investigating the support provided by these organisations to irregular migrants in North-Rhine Westphalia. The survey was part of the project "Illegality" and results were published by Sextro (2003). Both surveys focused on the extent to which organisations provided services to irregular migrants, and which type of assistance they were looking for, more than focusing on the characteristics of individuals.

In 2007, a survey on subjective health was carried at the Medibüro, an NGO based in Hamburg

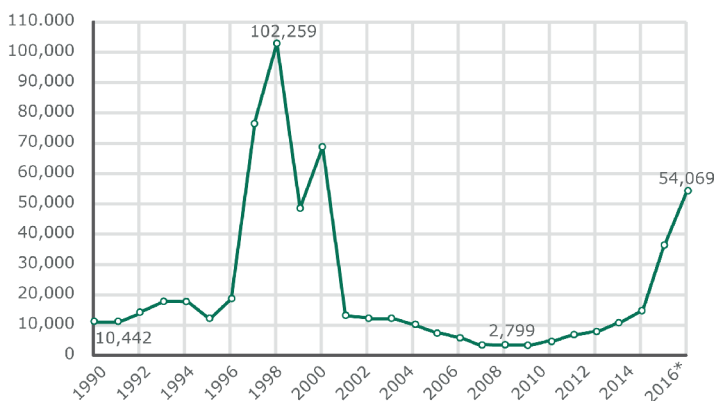


Figure 1: Voluntary returns supported by the REAG/GARP programme since 1991 until 31.12.2016. Source: Federal Office for Migration and Refugees, www.bamf.de.

⁵ Antwerp, Brussels, Liège, Lyon, Paris, Budapest, Milan, Naples, Faro, Lisbon, Setubal, Barcelona and Madrid complete the list of cities.

providing healthcare for irregular migrants. The sample consisted of 96 persons who approached the organisation for treatment, and data have been analysed by Kuehne et al. (2015). In the field of education, a remarkable initiative has been a study conducted by Funck and colleagues (2015) for the Gewerkschaft Erziehung und Wissenschaft (GEW), with the support of the Max-Träger-Foundation. Researchers conducted a nationwide, telephone-based survey in 100 elementary schools during 2015, aiming at investigating the bureaucratic barriers faced by irregular children and their families when trying to attend school in Germany.

Finally, Vogel and colleagues, in the framework of the EU-Project Clandestino, have attempted to elaborate an estimation of the total stock of irregular third-country nationals living in Germany based on the data provided by the Criminal Police Office (Police Crime Statistics) from 2010 to 2014 (results are presented in Table 4. Further references are available at www.irregular-migration.net). Due to the poor data quality, Vogel decided not to continue with this exercise from 2015 onwards (Vogel 2016). Importantly, this is the only estimation of total stocks of irregular migrants available in the country.

2010	2011	2012	2013	2014
136,000 - 337,000	139,000 - 381,000	151,000 - 414,000	160,000 - 443,000	180,000 - 520,000

Table 4: Irregularly-staying third-country nationals in Germany (absconders and persons without prior contact with the authorities; estimates for 2010-2014).

Source: Grote 2015; based on Vogel 2015 and Vogel and ABner 2011.

More data is needed, but for which purposes?

The few quantitative scholars with a research agenda on irregular migration in the country agree that more and better quality data is needed. In addition, access to microdata produced by public authorities for the purpose of academic research is still inexistent. The reasons to produce and provide access to high-quality data on immigrants, disaggregated by residence status, go beyond the aim of quantifying the stock of individuals not holding a valid residence document, and are of key importance for evidence-based policymaking.

First, from an ethical perspective, Düvell and colleagues (2010) inquired to what extent

quantitative research on irregular migration should be done at all, as it constitutes a sensitive topic and it relates to a vulnerable group of population. Are the potential social benefits that can be derived from research still relevant when looking at the potential and unintended negative consequences for irregular migrants?

The authors conclude that quantitative research on the topic should be conducted, as far as confidentiality and data protection safeguards are guaranteed. It is central for policymakers to know the dimensions of any social phenomenon before designing policy instruments, to understand the urgency of the issue, its consequences on individuals and on societies, and the solutions that need to be discussed to address the needs of this population. From the side of researchers, the authors stress the need to clearly identify what are the potential risks of data collection for individuals, and keep them to minimal levels through an anonymisation of data, safe data storage, safe meeting places and types of questions asked.

Second, researchers and international organisations agree on the fact that little is known on the scale of irregular migration in general, and more should be done in order to produce better data (IOM and McKinsey & Company 2018; Global Migration Group 2017; Laczko 2015; Koser 2010). It is also acknowledged that there are still strong barriers for researchers to access data produced by governmental institutions (Koser 2010). In Germany, BAMF indicated that it is impossible to discern a pattern of irregular migration and the living conditions of irregular individuals with the data available, as well as the heterogeneity inside this group (Sinn et al. 2005).

The absence of disaggregated data on this population by socio-demographic characteristics, living/working conditions and access to services and justice compromises the assessment of the enjoyment of human rights by migrants and their families in an irregular situation, and the provision of evidence-based policy responses (Global Migration Group 2017). Producing and accessing data on the degree to which individuals' human rights are secured is particularly challenging as irregularity leads individuals to avoid contact with public authorities to report abuses or to access public services. For the time being, it is virtually impossible to elaborate on any rigorous quantitative analysis on the irregular

› Irregular Employment

population in Germany with the data available, hampering research on this topic and leading to the fact that policies and public debate are based on a very limited amount of evidence. Ideally, a dataset containing the anonymised administrative registers of individuals, with detailed information on their migratory status and the changes over time using a unique identification number per individual is recommended for creation (Mateos et al. 2017).

However, even more urgent is that authorities improve the quality of existing data, particularly exit from the registers, and develop ways of promoting a more transparent and user-friendly infrastructure for accessing data. Mateos and colleagues (2017) remind us that data on similarly sensitive areas like health and income have been collected by governments. In the case of Germany, the Research Data Centre of the German Pension Insurance (FDZ-RV) is a remarkable example of how to provide open access to sensitive microdata to researchers in form of Scientific Use Files.⁶

On a regional level, it must be noted that the scenario of data availability in Germany is not an exceptional case. Legal trajectories of overstayers in France, Spain, Italy and the UK have been the object of study in the framework of the EU-Project TEMPER (Mateos et al. 2017). In none of these countries, access to microdata from population registers is provided by State organisations for the purpose of academic research, and most of the surveys available do not include irregular migrants. Important exceptions are 1 - the 2008 MAFE-Survey, that collected legal trajectories (including entry, residence and work permits) of Senegalese immigrants based in France, Spain and Italy⁷; and 2 - the 2009 French Longitudinal Survey on the Integration of Newly Arrived Migrants (ELIPA), focused on legal trajectories of migrants admitted to permanent stay. With ELIPA, it is possible to identify cases of individuals who entered the country without a valid document or who were in possession of a expired document before applying for a residence permit (Mateos et al. 2017).

The following two sections of this contribution are devoted to explore the literature on the socio-economic characteristics of irregular migrants in Germany. As has been showed in the previous sections, the status "irregular migrant" encompasses a variety of pathways, which are so far poorly understood and under-researched. Quantitative data in Germany is not fine-tuned enough to allow for distinguishing individuals' trajectories towards irregularity, and the specific consequences of it on individuals' lives. Consequently, most of the literature on irregular employment and access to services, on the one hand, and the wellbeing of irregular migrants, on the other, has a descriptive nature and is based on small-scale case studies. Due to the nature of this methodological approach, these valuable analyses explore the life conditions and survival strategies of irregular migrants based on a small number of interviews and highly selective samples.

Regarding irregular work, by law, all third-country nationals residing irregularly in the country have no right to work. Consequently, all forms of employment among this population are also illicit. However, it is also possible for individuals to be irregularly employed even if holding a residence permit. The residence title of third-country nationals contains information on whether and to what extent the owner of the document is entitled to work. All activities that do not respect the limits set by the authorities are framed as irregular. The extent of irregular employment among immigrants or among the total population in Germany is so far unknown⁸ and cannot be estimated on the basis of the existing data (Tangermann and Grote 2017; Sinn et al. 2005). Irregular commuter migration makes it even harder to estimate the size of this population, as it includes EU citizens from nearby foreign countries who commute for a short stay or several times a week in order to work irregularly.

Exclusion from the labour market, on the one side, and the demand of the workforce in specific economic sectors, on the other side, is reported to favour a situation where irregular migrants are often

⁶ Detailed information can be found on the FDZ-RV website: <http://www.fdz-rv.de>

⁷ Vickstrom (2014) analysed the pathways into irregular status based on data from the MAFE-Survey and constitutes a key reference for further details on the scope, limitations and conclusions derived from the data.

⁸ Even if no conclusive data on the extent of overall irregular employment in the country is available, a study by Feld and Larsen (2012), quoted by Tangermann and Grote (2017) from BAMF, estimated that around 10% of the German population aged 18-74-years-old were irregularly employed at some point during the year 2008.

underemployed or working in the informal sector (Düvell 2011). This is the case not only among non-EU migrants, but also among EU citizens, particularly those from less-developed regions (Cyrus and Vogel 2005). These groups are reported as often being exposed to higher risks of discrimination, social exclusion and poverty, while simultaneously facing insufficient social insurance protection, healthcare and old-age provision (Razum and Bozorgmehr 2016; Triandafyllidou 2013; Vidal-Coso and Vono de Vilhena 2015).

The existing literature has extensively documented and highlighted the situations of vulnerability individuals are subjected to when working on the basis of verbal working contracts. These studies tend to focus on irregular migrants working in the domestic/care sectors of the economy (Gottschall and Schwarzkopf 2010; Ignatzi 2014), construction and services sector in specific German cities (for example, Wilmes 2011 for Cologne; Krieger et al. 2006 for Frankfurt; Alscher et al. 2001 or Fleischer 2007 for Berlin). According to the BAMF's Policy Report 2008 (Federal Office for Migration and Refugees 2010), most offences reported by the BKA take place in hotels, restaurants and private households.

As Tangermann and Grote (2017) note, the employment situation is usually determined by a high fluctuation of workers and constantly changing locations of the workplace. Working conditions are usually described as being shaped by temporal or seasonal work that does not require language skills, such as agricultural and care work, which bare the risk of financial and physical exploitation by employers (Alscher et al. 2001). For example, Agnieszka Satola (2015) highlights the case of care workers working irregularly in live-in arrangements to provide 24-hour care due to the rising demand for nursing care in Germany. Similar perspectives are given by Stefan Arend (2016), Helene Ignatzi (2014) and Hanneli Döhner and colleagues (2010). In contrast to looking at the perspective of the workers that these cases portray, Helma Lutz (2007) focused on the alleged relationship of trust that domestic workers and their employers share, illustrating their disappearance from the public sphere.

Studies on irregular work from an ethnographic perspective often highlight the importance of social networks in obtaining a job (Fleischer 2007). The organisation within the migrant communities is equally important to obtain information about

irregular work, legal status and social rights that employers and the German government do not provide. An example is the case of former Vietnamese contract workers. After German reunification, many workers were left in uncertainty about their residency and employment status, and turned to street trading to secure their living. Although a right to self-employment was granted, the German government failed to communicate the existence and access to the licences needed. Voluntary advisors, churches and other social networks within the Vietnamese community had to step in to spread information not only about working conditions, but also about access to housing and financial support. In the early 90s, this informal support system led to the foundation of Vietnamese associations (Kolinsky 2004).

On a related matter, the vulnerability of irregular workers also extends to their chances of obtaining the right to reside in the country, and bears the threat of deportation, detention and ban on re-entry (Tangelmann et al. 2017). In the case of the Vietnamese contract workers, illicit cigarette trading often led to fines that would later directly affect the individuals perspective of obtaining a residence permit, as one of the requirements is to have a clean criminal record. Oberndörfer (2001) illustrates the criminalisation of irregular workers, and its consequences for their integration.

The German Institute for Human Rights has said that despite the fact that Germany has ratified the most important international human rights conventions on labour standards valid for all migrants, independent of their residential status, individuals face many problems enforcing these rights and appealing for help from the State. Among others, and under German law, irregular migrants have the right to receive adequate wages and to work under decent conditions. Those rights are barely claimed by migrants due to fear of deportation. The German Institute for Human Rights has suggested that authorities must ensure that all residents, regardless of their migration status, are informed about their rights and are able to claim them (Spieß 2007).

› Living as an irregular resident in Germany: Access to information and services

Similar to what has been described in this document about the role played by networks in obtaining a job, studies often describe the key role of social networks in accessing information on rights and obligations in Germany (Grote 2015; Schneider 2012; Kohlhagen 2006; Krieger et al. 2006). The role of networks – particularly of family relatives – in attracting flows of irregular migrants has also been mentioned in the literature as one of the factors contributing to the emergence and perseverance of irregular stay, even if no concrete evidence is provided (Sinn et al. 2005).

Most studies on access to services are focused on access to health and education. Regarding access to education, studies point to the existing complexity of the educational system. According to human rights regulations, all children and persons of school age, irrespective of their residence status, have the right to access school. As the country has ratified the international conventions, German institutions should secure that children attend school safely and without fear. In addition, the §87 of the German Residence Act states that pupils should not be reported as an irregular migrant to authorities: "On request, public bodies with the exception of schools and other educational and care establishments for young people shall notify circumstances of which they obtain knowledge to the bodies specified in Section 86, sentence 1, insofar as this is necessary for the purposes stated in said Section."

However, States are responsible for regulating access to education in the country and so far the vast majority of State schooling laws at the Federal State level (Bundesländer) do not mention this right (Federal Office for Migration and Refugees 2012). To date, only a few cities and Federal States have established through ordinances and circulars that the right of admission to school also applies to children without any residency status. This generates significant problems in guaranteeing the right to education since it establishes no clear direction to be followed by school authorities. In addition, there are still important bureaucratic barriers – both administrative procedures and documentation requirements – that make it difficult to enrol an irregular child in school

(Funck et al. 2015).

Even if since 2011, schools are no longer obliged to report to the Foreigners' Office cases of students with an irregular status, many schools still reject irregular children (PICUM 2016), while participation in preschool education was reported to be fairly impossible (Cremer 2009). As regulations related to education are a competence of Federal States, the barriers to school enrolment vary significantly and cannot be described at a national level.

Differences between explicit and practical access to school among irregular children in different Federal States in the country are described by Funck et al. (2015) and by Vogel and Aßner (2011). Vogel et al. (2009) described bureaucratic and legal obstacles preventing irregular children to attend school in Hamburg, while Bommers and Wilmes (2007) explored schooling in Cologne. The most recent study by Funck et al. 2015 is based on a survey conducted in 100 randomly selected primary schools in all State capitals and in all cities with more than half a million inhabitants. Among other issues, schools were asked about the documents parents need to provide to enrol their children. Their results showed that in 79% of cases where schools suspected that a foreign child was irregular, proof of immigration status was required and 62% of those children were denied access to school.

In terms of access to healthcare, and according to the law⁹, irregular migrants are entitled to access public healthcare only in case of acute illness, pregnancy and birth. Social welfare officials are obliged to report individuals if they access medical services that are not considered as emergency care (PICUM 2016). Due to rules related to medical confidentiality, this is not valid in the specific cases of healthcare providers or administrative staff within healthcare institutions. However, when individuals are directed to a specific sector of the hospital other than the emergency department, their identity and migration status must be disclosed by the social welfare office (PICUM 2017).

In practice, both qualitative and quantitative studies suggest that individuals rarely seek healthcare provided by public institutions fearing deportation, and that living as an irregular migrant has a negative

⁹ § 1.5, § 4 and § 6 of the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*).

impact on physical and mental health, as well as on wellbeing due to the levels of stress individuals are exposed to and the time individuals wait until seeking medical assistance. The most used sources of support are informal networks and non-government organisations that provide access to healthcare in an anonymous way. However, those organisations can only provide limited support due to the limited availability of funds and its territorial presence, which is concentrated in big cities (Spieß 2007). Due to the avoidance of accessing healthcare, when irregular migrants search for help, their health status tends to be rather poor (Kuehne et al. 2015).

A variety of studies further illustrate these findings: For example, Susann Hutschke (2009), who described the experiences of irregular Latin American women in Berlin when they become sick, and Sandra Schmidt (2009) who studied access to healthcare among irregular migrants in Bremen. Local experiences in dealing with health needs of irregular migrants (for example, the cases of Berlin: Misbach et al. 2009 and Bremen: Lotze 2009) and the health status of undocumented migrants in Hamburg (Kuehne et al. 2015) have also been an object of study. Analyses on assessments of doctors related to the provision of healthcare for irregular migrants and the experience of non-governmental actors providing care in major German cities also point in the same direction as previously mentioned (German Institute for Human Rights 2008; Mylius et al. 2011). Currently, a three-year pilot project (2016-2019) providing an anonymous medical certificate card to irregular migrants is being implemented in Niedersachsen and Thüringen, and will also be implemented in Berlin. Studies on its results are to be expected in the upcoming years.

In terms of living arrangements, i.e. access to housing and living conditions, overall, studies report precarious conditions in different German cities (Vogel et al. 2009 for Hamburg; Bommers and Wilmes 2007 for Cologne; Anderson 2003 for Munich).

Regarding the obligation of social security authorities to provide information about irregular migrants to immigration authorities, which is true for all types of organisations with the exception of schools, little progress is foreseen. The improvement of migrants' access to services has been a concern of researchers,

civil society organisations working on the issue and the Human Institute for Human Rights in the last decades (for example, PICUM 2016; Spieß 2007), and all studies point at the previously mentioned obligation as a key impediment to securing individuals human rights.

› Future prospects

As has been shown in this study, reliable statistical data on irregular migrants in Germany is extremely limited. Regulations regarding the possibility to survey individuals who are not registered in the country by public institutions are strict, and progress is not expected to happen in this area. However, there is still much to be done by improving the already existing system of data collection in the country, as has been indicated in previous sections of this document. Regarding the pursuance of new sources of information, in ethical terms, irregular migration must be considered a "sensitive and potentially vulnerable" issue (Düvell et al. 2010) and therefore, privacy and ethical issues, such as anonymity and safe data storage, must always be guaranteed. Below, two new pathways to study irregular migration from a quantitative perspective in Germany are presented:

1. Exploring the potential of "Big Data"

International organisations and "Big Data" scholars have started to devote attention to the role of big data for the study of international migration, and the extent to which it can be a good alternative to identify migrants' characteristics, risks, needs and integration into host societies. The IOM is currently one of the most important actors leading the debate on the importance of exploiting the potential of "non-traditional sources of data", particularly big data generated by the use of mobile devices and web-based platforms as an alternative to official data sources on migration issues. However, even if concerns about capturing information on irregular migration is always included in its reports, few concrete initiatives has been reported so far. At its most recent workshop focused on irregular migration in May 2017¹⁰, contributions highlighted the key role played by social media platforms – Facebook, WhatsApp and Viber – on the specific case of communications between smugglers and migrants (GMDAC 2017).

¹⁰ Expert Workshop: Measuring Irregular Migration: Innovative Data Practices, 18-19 May 2007.

From the academic side, no study using big data to study characteristics of irregular migration in destination countries has been identified. However, there are reasons for expecting studies in the near future. Researchers are currently exploring what Ingmar Weber (2017) called the “not-so-obvious online data sources for demographic research” for the study of international migration. A recent publication explored the potential of Facebook’s advertising platform to elaborate population estimates and projections (Zagheni et al. 2017). Even if not addressing irregular migration specifically, the study indicates a great potential to be further investigated in terms of using Facebook Adverts Manager as a sampling frame to target specific difficult-to-reach populations.

Pöttschke and Braun (2016) reported similar findings. Their study looked at target advertising on Facebook as a way to reach migrants, and showed very positive results. With a total budget of 500 Euros and without using incentives, researchers were able to sample 1,103 individuals from their target population who completed their questionnaire within the field period of eight weeks. Finally, Ojala and colleagues (2017) looked at Google Correlate to explore contexts surrounding different fertility rates across U.S. States. They were interested in making predictions based on linear combinations of search intensity of specific terms, which could be replicable when targeting irregular migrants.

In terms of challenges, concerns on the selection bias of the population included in these type of online platforms have been highlighted, as access and use of technologies vary by age, gender (Laczko 2016) and socio-economic status, just to mention a few characteristics. The definition of what an irregular migrant is, and which kind of definition can be derived from this data considering the multiple pathways towards irregularity is also a challenging issue. Keeping this in mind, it seems particularly relevant to further investigate the scope of data that is generated by users’ activity on social media, which is partially publicly available, and particularly what exactly can be known through Facebook Ads. This type of data would potentially allow for the analysis of migrants’ networks, political mobilisation, community and identity formation, assessment of migrant integration in the host country, analysis of public attitudes towards immigrants and immigration, or the evaluation of public confidence in immigration

policies, among others (Laczko and Rango 2014).

2. Lost potentials: The rights and lives of the excluded

From the perspective of traditional sources of data collection, the Max Planck Institute for Social Law and Social Policy is currently working on the first survey on irregular migrants in Germany with a life-course perspective, specifically in Bavaria. This initiative is also part of the project supporting this discussion paper “The Challenges of Migration, Integration and Exclusion (WiMi Project)”. With an initial sample size of 1000 individuals, and using Respondent Driven Sampling, its overarching research question is how the legally constructed categories of exclusion result in the integration of marginalised migrants.

Topics to be covered in the survey include demographic characteristics, legal trajectories, approximate place of residence, living conditions, motivations and perceived opportunities with respect to dimensions of integration/marginalisation, brief retrospective life histories on selected domains (education, work experience, family formation), prospective life histories (intention to stay, to bring family members etc.), current health status including a traumatisation screening instrument and access to healthcare, educational plans and education of children and abilities (cognitive, non-cognitive). The project is currently at the stage of data collection and first results are expected to be published at the beginning of 2019.

› Conclusions

The initial aim of this discussion paper was to present a literature review on quantitative research and data on irregular migration in Germany. However, during the revision of articles, the author realised it would not be possible to complete this exercise without understanding the multiple pathways towards irregularity in this country from a legal perspective. It was also not possible to evaluate the data available, its scope and limitations, based on the existing literature. For this reason, it was necessary to review legal documents and to consult official authorities from BAMF and the German National Institute of Statistics (Destatis) to be able to clearly define what each pathway towards irregularity encompasses, and what is data really capturing. After this exercise, it

was possible to properly revise the analyses available and to offer a coherent overview of what is known and what can further be done in terms of academic research. Overall, this exercise reflects the poor state of affairs in this field of research, and the little attention that has been given by quantitative researchers to the topic so far.

There are multiple pathways to irregularity in Germany, and each path has its specificities in terms of 1 – whether individuals are identified and registered by authorities, and 2 – whether there are statistical sources included. In other words, while in theory it would be possible to empirically study particular groups defined by German legislation as “irregulars”, this is only true for those who had, at some point in time, contact with the authorities.¹¹ In addition, public authorities producing statistical data on this population do not offer open access to anonymised microdata. The only exception is the 2016 Survey on Refugees, containing information on individuals holding a toleration status (*Duldung*).

Progress related to data collection has been made in the last few years: Public authorities consulted in the course of the elaboration of this discussion paper affirmed that different State agencies are improving the collection of administrative data of immigrants and refugees upon arrival. Nonetheless, there is much to be done, particularly in terms of providing access for academic researchers to work on secured and anonymised data files containing administrative data. Except for the 2016 Survey on Refugees, information on which individual characteristics are registered in each information source and the structure of the data files is not publicly available. It is imperative to create an even closer dialogue between scholars and BAMF in order to improve cooperation, to improve data collection and its quality.

The claim for better data is not an individual claim of the author of this document. It has been present in numerous declarations signed by world leaders, the most recent being the United Nations’ New York Declaration 2016. To improve data availability and its quality is also indirectly part of the agenda of the Sustainable Development Goals (SDG), as one of the target goals is to monitor whether migrants are “left behind”. For these goals, it is necessary to produce official statistics that allow for the measurement of

the relative position of migrants inside societies, and for that, reliable, disaggregated data on work, income, education and health, by migratory status, should be produced (Laczko 2017).

In terms of the existing literature, it must first be noted that it reflects the poor state of data availability and the strictness of regulations. In this sense, there are reasons for optimism: The on-going survey Lost Potentials: The Rights and Lives of the Excluded will bring fresh and high quality data that includes the “invisible” irregular migrants, those who are not identified by national authorities. It will allow to study individual pathways towards an irregular status, which is key to identifying risks and vulnerabilities associated with an irregular status. It will also allow to properly evaluate to what extent individuals’ human rights are guaranteed. At the same time, researchers are encouraged to further evaluate the scope of what can be done with big data sources, as far as confidentiality and respect for individual privacy are guaranteed. Its potential has been highlighted by different voices, nonetheless very little is still known on what can concretely be studied in terms of irregular migration and the lives of irregular migrants based on this type of data source.

Regarding the topics covered by the literature, most studies focus on employment issues and access to health and education from a qualitative perspective. Those important studies point to the multiple situations of vulnerability derived from the lack of a right of residence, and from the insufficient State policies to guarantee the respect of individuals’ rights. The situation of migrant families where one or more members are living irregularly has barely been the subject of study so far in Germany, and it is an urgent issue to be tackled. Even if previous research has documented the importance of social networks as key in supporting irregular migrants, much less is known on the impact of an irregular status on family relations (including transnational relations), on the likelihood of separation, or how it impacts the living conditions and wellbeing of its members as a whole. Previous research suggests that holding an irregular status has a significant impact in family relations, particularly in terms of creating tension due to disempowerment of its members and dependent relationships (Sigona 2012). In addition, more research is needed in order to unveil the relationship between

¹¹ By law, public institutions are forbidden to survey individuals not holding a valid resident status.

family reunification regulations and the legal status individuals end up with in Germany. Would different conditions for family reunification contribute to decreasing numbers of irregular citizens in the country?

Finally, this study shows that much still needs to be done by the authorities in order to guarantee public services, welfare state provisions and the protection irregular migrants are entitled to by law, irrespective of where they live. This central responsibility of the State is a matter of compliance with the law.

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