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**Regularization programmes:
an effective instrument of migration policy?**

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Global Commission on International Migration

In his report on the 'Strengthening of the United Nations - an agenda for further change', UN Secretary-General Kofi Annan identified migration as a priority issue for the international community.

Wishing to provide the framework for the formulation of a coherent, comprehensive and global response to migration issues, and acting on the encouragement of the UN Secretary-General, Sweden and Switzerland, together with the governments of Brazil, Morocco, and the Philippines, decided to establish a Global Commission on International Migration (GCIM). Many additional countries subsequently supported this initiative and an open-ended Core Group of Governments established itself to support and follow the work of the Commission.

The Global Commission on International Migration was launched by the United Nations Secretary-General and a number of governments on December 9, 2003 in Geneva. It is comprised of 19 Commissioners.

The mandate of the Commission is to place the issue of international migration on the global policy agenda, to analyze gaps in current approaches to migration, to examine the inter-linkages between migration and other global issues, and to present appropriate recommendations to the Secretary-General and other stakeholders.

The research paper series 'Global Migration Perspectives' is published by the GCIM Secretariat, and is intended to contribute to the current discourse on issues related to international migration. The opinions expressed in these papers are strictly those of the authors and do not represent the views of the Commission or its Secretariat. The series is edited by Dr Jeff Crisp and Dr Khalid Koser and managed by Rebekah Thomas.

Potential contributors to this series of research papers are invited to contact the GCIM Secretariat. Guidelines for authors can be found on the GCIM website.

Introduction

Regularization programmes tend to raise heated political debates in immigration countries. It is perhaps their *a posteriori* character that triggers much of the controversy, the notion of granting legal status to a group of people after they have arrived, begun work and remained undocumented in a country for some time is considered by some as a pragmatic response, by some as a charitable gesture, and by others as a failure to control “criminals”. This paper attempts to explain the rationale, types and outcomes of regularization programmes with a view to shedding light on their meaning and potential.

The first part of the paper provides an overview of the concept and history of regularization programmes in various countries. I then examine the different forms and criteria employed, and evaluate the outcome of these programmes and their impact on the resident migrant populations. The last part of the paper discusses to what extent regularization could be considered a policy option for the future.

Definition

The term “regularization” is used to describe programmes that give migrants already residing in a country in an unauthorized way the ability to secure legal status on a permanent or temporary basis. In Europe, regularization has been usually associated with temporary residence and work permits, while in the Americas the same type of programmes are described by the term “legalization” and have usually facilitated the procurement of permanent residence permits at a later stage. Governments are reluctant to employ the term “amnesty”, a term often used interchangeably with regularization and legalization, because it implies a state’s failure to control illegal entries, or concedes to a previously unwanted legalization of irregular persons. In addition, anti-immigrant groups tend to use the term “amnesty” as a critique of state policies.

History and objectives

Most regularization programmes in Europe, North America and Australia have resulted from the failure of domestic asylum and migration policies to cope with the volume and complexity of irregular migration including undocumented arrivals, long-term overstays and asylum seekers, as from the lack of such policies. The purpose of regularization has been primarily to clear processing queues, to resolve “fait accompli” cases of long-term migrant residence, and to bring migrants back to the formal sector so that they can be protected and taxed. In addition, regularization has aimed to give migrants enhanced opportunity to access the labour market, upward mobility and integration. Regularization programmes have also sought to indirectly reduce the number of irregular arrivals.

Canada undertook regularization programmes as early as in 1967. Visitors were allowed to apply for landed status from within Canada on humanitarian and compassionate grounds. By 1970 a backlog of 45,000 visitors had developed that

applied for landed status from within Canada.¹ In Europe, France (1973), the Netherlands (1975), the UK (1974-8) and Belgium (1974-5) were among the first countries to initiate regularization programmes. In most of these cases, the motive behind the programme was to put an end to immigration. Miller (2002) argues that regularization of some kind took place in France as early as in the mid-1930s and continued between 1946-48, following the failure of Franco-Italian plans to organize the recruitment of migrants. Despite law enforcement efforts, the French government repeatedly resorted to regularization programmes, while at the same time trying to limit their use in the 1960s and 1970s.

The first regularization programme in Belgium was undertaken in 1973. 8,420 applications were submitted, of which 88.4% were granted a work permit in 1974-5. Over the following years, Belgium published a number of circulars for the regularization of mainly long-term resident migrants and cases based on humanitarian grounds. A large scale programme was also undertaken in 2000-1 in the same direction.

France has undertaken four main regularization programmes and has given additional regularization possibilities through a number of circulars. The 1973 programme regularized 40,000 migrants. The following programmes gave regularization possibilities to “fait accompli” cases (1981), as well as rejected asylum seekers (1991). In 1997, the so-called “Chevenement plan” opened the way for the regularization of a number of different groups, such as long-term residents with family, family members of regularized migrants, refugees or French citizens, foreign parents of children, and persons running a health or other risk if returned to their country of origin. Out of the 150,000 applications, it is estimated that the majority were based on family ties. A follow-up law of 1998 offered the possibility of permanent regularization for migrants resident in the country for over 10 years (Apap *et al*, 2000).

Since the 1970s the EU states regularized a total of 3.5 million, out of which 2.5 million between 1995-2000 (Münz 2004).² Belgium, Greece, Italy, Spain and Portugal have offered quantitatively substantial regularization programmes. Italy, Portugal and Greece alone accounted for more than 1.2 million migrants.³ In total, Italy accounts for 45% of all regularization programmes processed in Europe since 1973. Smaller numbers were regularized in Germany, Luxembourg and the UK.

More specifically, in Italy during 1982, 1987-8, 1990 and 1995-6, 600,000 workers were regularized, while in 1998-9 a campaign meant to regularize 38,000 migrants actually registered 250,000. The last regularization of 2002-3 granted residence permits to almost 700,000 people.⁴ Similarly in Spain in 1985-86, 1991 and 1996 180,000 irregular migrants were regularized, whilst in 2000, another 135,000 were

¹ STATUS Coalition, Amuchastegui M., (2004), *Amnesty for illegals makes sense*, also published in *The Globe and Mail*, 12 January 2004.

² Others estimate the same group to be 4 million, see MPI and Weil P., (2004), *Managing Irregular Migration*, Dutch Presidency of the European Union Conference on Asylum, Migration and Frontiers, Policy Brief No 4, Amsterdam, September 2004.

³ Reuters, 29 April 2002, <http://www.reuters.com>

⁴ Ministero dell'Interno, *Immigrazione: nel 2003 gli scarchi di clandestine diminuiti del 40% - 634.728 i lavoratori extracomunitari regolarizzati*, Comunicato Stampa de la 29/01/2004, http://www.interno.it/salastampa/comunicati/pages/2004/200401/c_000000465.htm

granted permits, and 300,000 more applied during the 2001 campaign. On 7 February 2005, Spain launched another 3-month regularization programme expected to attract hundreds of thousands of migrants (other estimations place the expected number at one million). In Portugal, in 1992-93, 1996 and 2001 around 180,000 people were regularized. In 1998, Greece gave 220,000 migrants the opportunity to obtain legal status, whilst in 2001 another 350,000 applied for regularization.⁵ In these countries, regularization has been the primary policy tool. The repetition of regularization programmes signifies a reluctance to grant permanent or long-term permits and the inability to control irregular employment.

The 1986 Immigration Reform and Control Act (IRCA) in the US provided residence permits (“green cards”) to 2.7 million people.⁶ The IRCA is the largest and most studied regularization programme. About 3 million decisions were administered over the course of two years, two thirds of which were from Mexico (Orrenius, 2001). In fact, there was no limit to the number of people that could be granted permits. As will be analysed in the next section, the IRCA was a complex process that aimed to support certain migrant groups, combat illegal border crossings and irregular employment. The programme continued in a minor way for the next two decades.

In the US, debates on “legalised” immigration, particularly in relation to Mexico, remained on the agenda during the 1990’s. Precisely prior to 9/11, the US and Mexico seemed to be moving towards an agreement to manage Mexican migration by expanding the quota for legal migrants, creating a temporary worker programme, facilitating the return of migrants and investment at home, and regularizing the undocumented. However, the events of September 11, 2001 brought things to a halt. In January 2004, President Bush submitted a new proposal for a combined regularization and guest worker programme, which did not meet with much enthusiasm in Congress. A year later, the proposal is now back on the table, shifting the emphasis from regularization to temporary recruitment of workers that are expected to eventually return home.⁷

Criteria and types of regularization programmes

Regularization programmes have taken various forms. In some cases, they have been proclaimed as one-off processes aiming to “legalise” a large number of resident irregular migrants by granting them short-term permits. However, these programmes have usually been repeated after a number of years. In other cases governments have given continuous possibilities for regularization.

⁵ ECRE, <http://www.ecre.org/factfile/realfacts.shtml>

⁶ Center for Immigration Studies, “New INS Report: 1986 Amnesty Increased Illegal Immigration,” <http://www.cis.org/ins1986amnesty.html>, 12 October 2000

⁷ President Bush’s State of the Union Address on 2 February 2005 clearly reflects this change of strategy: “*It is time for an immigration policy that permits temporary guest workers to fill jobs Americans will not take, that rejects amnesty, that tells us who is entering and leaving our country, and that closes the border to drug dealers and terrorists.*” see <http://www.whitehouse.gov/news/releases/2005/02/20050202-11.html>

In a study of eight EU member states, Apap *et al* (2000) identified the following variations of regularization: a) permanent versus one-off, b) “fait accompli” versus regularization for protection, c) individual versus collective, d) out of expedience versus out of obligation, and e) organised versus informal procedures. Individual regularization is a process that leaves a fairly large amount of discretion to the authorities, and are usually related to protection. Most of the time, regularization is a result of state expedience or state concession, yet sometimes regularization can be a result of state obligation (e.g. the result of court decisions or international regulations). Finally, informal procedures essentially mean the constant possibility for individuals to contact the authorities and register, which may gradually lead to a form of organised collective processes.

The design and implementation of regularization programmes is based on a number of eligibility criteria. It is possible to identify the following more or less common criteria used in various processes:

- a) The presence of the applicant in the country for a particular amount of time, after a cut-off date, or on a particular date
- b) The existence of a labour contract at the time of the programme that displays regular employment, or in some cases, a job offer
- c) Evidence of integration efforts
- d) Evidence of payment of contributions to a social insurance fund, or payment of a set amount to the fund upon the regularization application
- e) The existence of family ties in the host country (regularization of relatives of the legal resident or citizen, or the parents of a child born to a host country)
- f) The need for complementary protection (humanitarian) to rejected asylum seekers who are unable to return to their country of origin, or to persons that have been waiting too long for the determination of their asylum application
- g) Health reasons (inability to return due to ill health)
- h) Nationality-based quota (permits granted to migrants originating from specific countries)

As a general rule, regularization has been based on a combination of these criteria. It seems that the most common criteria are the length and quality of stay (by “quality” is meant here the degree of integration, and participation through social insurance contributions), worker status, health, and refugee status. The “integration” criterion largely depend on how integration is perceived in the host country; for instance, in the British conceptualisation of integration the migrant is also expected to be part of an ethnic community, a notion that is not necessarily shared by other host countries. Some criteria may be essential qualifications, while others are used to simply enhance the application.

Regularization programmes have been implemented in tandem with, or either preceding or following the introduction of new migration and asylum laws. In fact, in some “new” immigration countries the regularization programme together with the migration act was the first government attempt to address migration issues.

In Greece, for example, the first regularization to handle recent irregular migrations was introduced as late as 1997 with two presidential decrees that aimed at the implementation of Law 1975/1991 on the entry, residence and employment of foreigners and the asylum determination procedure. Up to that time, migration issues had not been addressed in Greece. In 2001, the government passed the new migration law 2910/2001, combined with a second regularization programme.

France, the UK and the Netherlands on the other hand, have usually produced administrative circulars rather than laws for this purpose, while Belgium displays a gradual move from informal registration possibilities to circulars, decrees, and finally to laws.

The authorities responsible for organising and conducting the regularization programmes are usually the police, a specialised governmental body or a combination of existing bodies.

Continuous regularization possibilities are given through recurrent processes which are generally quite flexible – they involve a smaller number of people, decisions are usually taken at local level following a case by case examination, and are related to labour market needs and/or humanitarian circumstances, while the date of entry or duration of stay is not taken into consideration. Usually this type of registration option does not receive much public attention and is not seen as “regularization” or “amnesty”.

Different country programmes display variations in the type and combination of criteria and the degree of flexibility. France is an example of a relatively flexible regularization programme. As some employers were unwilling to “register” their migrant employees, the French 1981 programme accepted applications with third-party verification of the applicant’s employment status. Even migrants who were dismissed by their employer for requesting legalisation were accepted to join the procedures. At the 1998 regularization most permits were granted to applicants on family-related grounds to applicants with ten years of residence in the country. Permits were also granted to asylum seekers and sick persons whose removal would pose a health risk; according to a Paris study, some of the regularization applicants had been asylum seekers (and hence legally resident) who held jobs before applying. Others held regular jobs but were residing in the country illegally (as a result of forged documents). Again, these processes sought primarily to finalize pending cases for migrant settlement (Reyneri, 2001).

In Greece, regularization programmes have been more restrictive and have maintained a distinction between residence and work permits as two separate but interconnected documents. During the first regularization process in 1998, migrants who had resided in Greece for at least one year and had paid a set amount of social insurance contributions were granted a temporary residence permit (“white card”) until the relevant documents were submitted in order to be eligible for a work and residence

permit (“green card”). For the green card, the total of social insurance contributions required was higher. By the end of the regularization, 371,641 immigrants had registered for the white card, two thirds of which received a green card.

The 2001 regularization was similar to the 1998 one, with the only difference being that the work permit became a prerequisite for obtaining a residence permit. The required proof was a job contract (contract that was employer-specific, occupation-specific and location-specific) and payment of social insurance contributions for a minimum of 200 working days, which could be also paid by the migrants themselves.

A registration fee was also requested at this time.⁸ The second regularization was far more restrictive than the first in terms of eligibility. The permits were valid for one year and renewable for a yearly fee. It is estimated that 351,110 migrants applied, many of whom were applicants for a second time. Another regularization programme seems to be planned for 2005/6. The Greek regularization pattern reveals a reluctance to grant permanent residence and work permits.⁹

In Italy, the 1986 regularization programme allowed participation to migrants who held irregular jobs but the employer was willing to register them, as well as to job seekers. Less than 45% out of the 120,000 applicants held a labour contract. For the second regularization (1990) the sole requirement was residence in the country for more than one year. The third regularization programme (1995-6) however had rigid requirements – long term residence, existence of contract or offer and payment to a social security fund by the employer or the migrant. Many migrants registered this time (256,000 applications), out of which 93% were accepted. Only 3% of the applicants had permanent jobs, whereas 86% had job offers. How many of these offers were real is in fact uncertain. Housekeeping and part-time were the jobs mostly used fictitiously. Self-employed migrants also registered with fake employers, as they did not have the documents, but they had the money to pay. It is estimated that 15% of the applications were false (Reyneri, 2001).

The latest regularization programme of 2002-3 was the largest ever conducted in Europe and the second in the world after IRCA (Pastore, 2004). This was also the first regularization in Europe where migrants could denounce their employers. Permit holders were also given a 6-month ‘grace’ period to find a new job so as to renew their permits after they expired. Regularization programmes in Italy have displayed a gradual increase in the percentage of acceptance: from 40% in 1986, to 56% in 1990, to 81% in 1998 (Giacca, 2004) to 91% in 2003.

The Spanish regularization of 2005, currently on the way, is based on the following criteria: proof of registration with the municipal register for at least six months before the start of the process,¹⁰ a labour contract (not a job offer) proven through registration with a social security office, and finally, a certificate proving a clean criminal record. In addition, employers will be fined 60,000 euros per employee for illegal hiring, while irregular migrants who denounce their employers with proof of

⁸ No registration fee was required in the first regularization programme. The amount of social insurance contributions was also lower (40 working days for a white card and 150 working days for the green card), see Kasimis and Kassimi, 2004

⁹ The recent law 3202/2003 extended the permit duration to two years, *ibid.*

¹⁰ In Spain irregular migrants can also be registered in the municipal register.

fraud will be regularized immediately.¹¹ Finally, in an effort to boost the country's agriculture, migrants working in this sector are also allowed to register following a shorter length of stay (three months). Residence and work permits will be granted for one year and will give beneficiaries the possibility of family reunification.

With regards to family ties, Spain introduced in 1994 a special regularization procedure on the grounds of family reunification. The programme covered family members living abroad and wishing to join their family in the host country, as well as unauthorized immigrants with family members legally residing in Spain (Perez, 2003).

Finally, with regards to country-specific preferential treatment, Portugal applied different regularization rules for migrants originating from its former colonies in its 1995 programme. For those applicants the deadline was 31 December 1995, while for applicants from all other countries it was nine months earlier. Human rights and immigrant organizations strongly objected to this preferential treatment as discriminatory and in breach of the Constitution. Similarly, in 1996 Italy gave priority to Albanians, Moroccans and Tunisians.

Apap *et al* (2000) have observed that the average number of years between regularization for the states concerned was 6.5. Without being able to argue for the existence of "regularization cycles", this frequency indicates that regularization has been used in Europe as a common policy response.

According to the same study, one could possibly argue that a regularization "model" exists in Europe from the North to the South: the states of the North (Germany, Netherlands, France, UK, Belgium) tend to regularise "fait accompli" cases of migration on a selective basis accompanied by further, often complicated requirements (protection, integration). Germany is an exceptional case of a country that refuses "fait accompli" reasons for regularization and only grants permits on protection grounds. In the South, regularization tends to be one-off, with relatively straightforward criteria, and stresses economic aspects (migrant workers). These countries are not very keen to regularize migrants for protection reasons. Essentially, the state position vis à vis regularization depends on the type of irregular migrants in the country (Germany, for example, has more rejected asylum seekers, whereas Italy has more visa overstayers) as well as the extent of public debate and the degree of social mobilisation for migration issues.

The Immigration Reform and Control Act introduced in the United States in 1986 was a package of measures combining regularization, intensification of border controls and tighter sanctions on employers. This programme targeted four groups of migrants: a) those who had been in the country continuously for four years, b) those who had worked in agriculture for at least 90 days (called the Special Agricultural Workers Programme, or SAW), c) those who had been in the country (illegally) since 1972, i.e. for 14 years and d) migrants from Cuba and Haiti (North, 2005).

¹¹ *Madrid lance un processus exceptionnel de régularisation d'immigrés clandestins*, Le Temps (Suisse), 8 February 2005, <http://www.letemps.ch/template/international.asp?page=4&article=149855>

The programme attracted many more applicants than expected, particularly from among the first two categories. Most were granted temporary residence permits, with a fairly easy path to permanent status and from there to citizenship. The SAW programme was the most flexible, as it gave migrants more time to apply (18 months as opposed to one year for the others) and had less requirements. SAW led to the H-2A agricultural guest worker programme. As Rosenblum (2000) rightly points out, IRCA combined the stick (border enforcement) with the carrot (temporary permits and schemes for agricultural workers). It is worth noting that applicants did not need an employer in order to apply. Pending cases were later accepted as eligible. It was also observed, that people who qualified for one programme or the other chose the one that suited them most, while those with few qualifications went to SAW (North, 2005).

Yet, IRCA failed to stem immigration in the long run, in part because employer sanctions were rarely enforced and the guest worker programme was too small and narrow to fill employers' and migrant workers' needs (Orrenius, 2001).

The 2004 and 2005 Bush proposals essentially draw from the IRCA and the H-2A guest worker programme, yet they shift the focus from regularization to migration as a source of temporary labour. The idea is to grant irregular migrants already in the US a permit of up to 6 years (a 3 year temporary permit, possibly extended for another 3 years), after which they are expected to return to their home countries; for this, financial "incentives" in the form of return of social security taxes have been proposed as part of a "U.S.-Mexico pact on Social Security".¹² The "Agricultural Jobs, Benefits and Security Act" for agricultural guest workers is another important part of the immigration reform package currently being debated in Congress.¹³

Outcome and consequences

Given the scale of the problem of irregular migration, the degree to which some governments have adopted regularization programmes as the main policy response to migration and the resources consumed for these processes, it is quite surprising that little work has been done on their evaluation.

It is hard to say clearly whether regularization programmes have been successful or not. While temporarily bringing legal status to large numbers of migrants, most of these processes have faced a number of problems and had relatively insignificant impact on pulling migrants out of irregular employment in the long run.

First of all, even in countries where regularization programmes have been broad, such as Italy, Spain and Greece, many migrants have been unable to apply. This is due to a number of reasons: the inability to present proof such as stable work and contributions to social insurance funds; the reluctance of employers to adopt formal employment procedures and pay social insurance contributions; the inability to meet the costs of

¹² *Bush vows to push plan through this time; after fading out last year, proposal for temporary work permits is back*, The Austin Statesman, 17 January 2005, <http://www.statesman.com/content/metro/01/17immigration.html>

¹³ *Bill seeks legal avenue for farmworkers*, The San Francisco Chronicle, 10 February, 2005, <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/02/10/MNG7QB8O4H1.DTL>

the procedure; and discrimination by the authorities. The 1986 regularization in Spain, for example, due to its stringent criteria, gave only half the expected number the chance to apply and less than half had the opportunity to obtain permits (OECD, 2000).

With regards to agricultural workers in particular, it is often more favourable not to apply for regularization, because the seasonal nature of their work makes it particularly difficult to prove that they have worked the expected days (an average seasonal worker works 176 days per year); it is also hard to obtain documentation as proof of having worked (Rosenblum, 2000). It may sometimes be easier for migrants to look for better wages and conditions in other sectors, rather than stay in the same sector or enter a guest worker programme.

Second, a large proportion of migrants are unable to renew their permits and consequently return to irregular status. This is usually due to the limited term of the permit granted, the constant need to renew the permits, the cost of this process and the inability to provide new proof of stable work (especially in case the migrant has in the meantime become unemployed). It is also due to the delays in the implementation of the programme.

In Spain, for example, 50% of the 110,000 immigrants that legalised their status under the 1991 regularization programme had fallen back into irregularity three years later. Additional regularization programmes have taken place in 1996, 2000, and 2001 to compensate for ineffective and restrictive admissions policies. These programmes have granted initial residence permits valid for one year, but the limited duration and the difficulties in renewing such permits have forced many immigrants back into irregularity (Perez, 2003). Similarly in the US, ten years after the 1986 IRCA programme, the number of irregular migrants stood at the same level as before regularization (estimated around 5 million).¹⁴ Yet, some scholars argue that the number of irregular migrants essentially increased because of a strong “pull” effect that stimulated more immigration.

Third, bureaucratic difficulties are a significant obstacle. In Italy, most applications were processed at least a year after they were submitted. As a result, while residence permits were given right after registration, work permits were not granted until the final outcome of the application. Therefore, the number of migrants working irregularly increased. In Greece, bureaucracy and the lack of infrastructure created tremendous problems and delays in the processing of applications in 2001. This forced the government to give temporary residence permits to all applicants for two years with the hope that, by that time, the applications would have been processed (until 2003). Yet, as the process was hard to complete, large numbers of migrants became trapped in an institutional gap between legality and illegality. Some migrants even resorted to lawyers to handle their regularization applications.

¹⁴ Center for Immigration Studies, “New INS Report: 1986 Amnesty *Increased* Illegal Immigration,” <http://www.cis.org/ins1986amnesty.html>, 12 October 2000

Another common problem is the lack of sufficient information about the procedure. In Portugal, the information campaign started very late and made inadequate use of means. For instance, information on the regularization procedure was spread through a radio station which had few listeners among the immigrant population (Malheiros, 2002).

Overly complicated application requirements, ineffective public administration, delays and lack of information usually develop a climate of distrust among migrants and discourage them from applying. Even worse, intensified internal controls have also resulted in discriminatory attitudes by the authorities. In Portugal, the police repeatedly arrested irregular migrants in the reception centres where applicants were supposed to present their applications. In some reception centres, officials received the applicants in police-style, subjecting them to interrogations and placing extraordinary demands upon them over and above those foreseen by the programme. Obviously, these attitudes had a deterrent effect on potential applicants (Malheiros, 2002).

What happens after regularization?

In terms of migrant employment and upward mobility, the outcome of regularization programmes depends on who prepared the registration and paid the social insurance contributions. Judging from Italy, if the social insurance contributions were paid by the employer, then the migrant remained at the same job. The migrant was needed in this post – the reason why s/he had been employed irregularly was more the lack of residence permit and less because the employer wanted to cut down on labour costs. Yet, some employers threatened to fire migrants if they applied for regularization, while others signed the job offer that was requested, but did not recruit the migrant after regularization. In fact, some employers had already fired the migrant workers prior to regularization so as not to face sanctions. Others continued to hire the migrants irregularly. If the social insurance contributions were paid by the migrant, then s/he usually left for a better job. Those migrants who registered with fictitious jobs did so for the purpose of regularization but remained in the informal economy (Reyneri, 2001)

Many migrants continued to work in the informal economy partly because they believed that there were no jobs for them in the formal sector. In some cases the exit from the informal economy was only partial, since full-time jobs were regularised as part-time ones. In these cases, the main advantage was legalised residence and the possibility that migrants now had to visit their country of origin. Those least likely to return to irregularity were migrants employed in elderly care and housekeeping, as well as those most supported by their communities and those with a high degree of integration.

It is commonly argued that regularization programmes have the adverse consequence of attracting more migrants. The pool of migrants applying for regularization programmes is usually a combination of those who failed to register before, those who failed to renew the permits and the newcomers. In the case of Italy, while many migrants entered the country right after the 1996 regularization deadline, they were not allowed to apply. Most probably many among them applied in the next

regularization programme in 1998 (Reyneri, 2001). In the US it is estimated that the IRCA programme increased the flow of undocumented migrants for the following years to 800,000 a year, before eventually dropping back to its pre-IRCA level of 500,000 annually.¹⁵

Hence, regularization creates more irregular migration when the documents required are those that migrants or employers can not obtain. More importantly, regularization induces irregular migration when the informal economy demands and sustains illegal recruitment, since the gaps created by the regularized migrants will be covered by newcomers who remain irregular. In other words, the role of the labour market is perhaps the most determinant factor for the success or failure of regularization. It is therefore important to develop this point a bit further and understand the relationship between irregular migration and irregular employment.

As mentioned, migrants may remain in the informal economy after regularization despite having obtained legal status. This is mostly the case in countries where the informal economy is well established and articulated within formal labour market structures, as in Southern Europe. A comparison between the US and Europe gives a good example.

During the last two decades, the US hosted large numbers of migrants who resided in the country without authorization and yet worked in the formal sector and were integrated in the society in the sense that they could hold regular jobs, own property and have access to education and social benefits. According to Papademetriou *et al* (2004), the reason for this phenomenon is mainly the structure of the labour market that is characterized by high flexibility and a small informal economy, and which gives employers incentives to hire migrants formally.

At the same time, it is also made possible for employers to hire irregular migrants formally: the employer is requested to provide proof of employment eligibility of the migrant before recruitment that is relatively easy to obtain; for example, various kinds of documents would qualify as evidence to fill in the so-called I-9 Form during the IRCA programme (Miller 2001). The employer is not penalized for hiring an irregular migrant, unless “knowingly doing so.”

The growth of labour subcontracting has also contributed to formal hiring in the sense that employers are not liaising with the migrants directly (and hence do not risk been penalized for illegal hiring). Yet, subcontracting marginalized migrants is not only socially, but also economically detrimental, since the subcontractor took away part of the wages as payment, which prior to IRCA would have gone to the migrants directly (Massey, 2003).

Another factor has been the lack of consistent efforts from the government side to enforce regulation on employers, conduct workforce inspections and impose sanctions. In fact, it has been argued that the bill included some features which prevented workforce inspection from being enforced aggressively (e.g. INS officials

¹⁵ Center for Immigration Studies, “New INS Report: 1986 Amnesty *Increased* Illegal Immigration,” <http://www.cis.org/ins1986amnesty.html>, 12 October 2000

had to obtain search warrants before inspecting agricultural premises; also, few funds were allocated to workforce inspection, see Rosenblum, 2000).

In this labour market context, the 1986 IRCA regularization programme had the following impacts. With regards to employment, regularization made access to the labour market easier and raised migrant wages. In addition, beneficiaries displayed greater participation in training programmes – even though this did not necessarily lead to better jobs. Education and acquired skills were better rewarded after legalization and occupational upward mobility was made easier. Moreover, migrants gained greater certainty about the ability to stay in the country. Yet, there is no evidence to suggest that regularization had an effect on migrant unemployment and labour force participation.

In Europe, on the contrary, formal employment is expensive for the employer (high wages and social contributions, inflexibility with regard to employee retention decisions, union-negotiated limits on tasks performed by workers). The cost of employment rises much above the salary. Hence employers tend to prefer more informal migrant recruitment. When the informal economy is large, migrants tend to fill in the posts in this sector. According to official estimates, the informal economy in the pre-enlargement EU-15 was around 5%; unofficially, its size must have been much larger, and in Southern Europe more than 17% of the GDP (Papademetriou *et al*, 2004)

In Southern Europe unauthorized status does not seem to be a particularly strong obstacle to employment – since most migrants are recruited informally. This is the reason estimates of the employment rates of migrants may even exceed those of nationals. This of course does not mean that migrants can easily meet the employment requirements for regularization programmes. In countries where the informal economy is well established, regularization programmes may even create incentives against legalisation: for example, the Italian law punishes employers more severely for irregular employment of legal rather than illegal migrants. Therefore regular migrants are found only where there is a demand for regular labour. According to the OECD, the reluctance to grant permanent permits in Greece that was mentioned above is explained by the labour market structure: due to the size of the informal economy and the high participation of Greeks in this area, permanent migrant permits might make the market less flexible and force more Greeks and foreigners to irregularity (OECD, 2000).

In Northern and Western Europe, where the informal economy (particularly the services sector) is smaller and the labour market structures different, migrants experience higher unemployment rates both pre- and post regularization. High taxes on employment of low-cost workers, high minimum wages, rigid firing and hiring rules while protecting the regular workers also have the effect of discouraging employers to recruit migrants legally. Hence, migrants have few chances of finding a job both in the formal economy, because employers refuse to hire them, and in the informal economy, because there is no demand there.

The example of Sweden is telling. Immigrants are employed at a ratio of 15% lower than the natives, and this holds even after migrants have been in the country for twenty years. Migrants who enter the labour market are those who are qualified

enough to participate and earn (Nekby 2002). It seems that language skills and education are far more important qualifications for employment in Northern rather than in Southern Europe. Yet, even qualified migrants face unemployment or employment in menial jobs. In the Netherlands, for example, a study showed that skilled migrants held menial positions even after having spent many years in the country (van der Leun, 2000). This is in contrast with the US, where the most important factor is the time spent in the country. Cultural factors, such as values and the role of ethnicity and race also play a role; in the UK, a 2002 Home Office study suggested that ethnicity affects employment and labour force participation rates.¹⁶

In summary, in countries where the informal economy is large, migrants – both regular and irregular – will continue to work in the same sectors even after regularization. Regularization programmes usually manage to pull migrants out of irregularity only temporarily. In the US, where the labour market structures are different, regularization draws a line between migrant regularity and irregularity.

Regularization and irregular migration?

Regularization is a quite contested topic, with the states usually against it, and pro-immigrant actors and NGOs mostly in favour. Anti-slavery International, the International Catholic Migration Commission (ICMC) and the Platform for International Cooperation on Undocumented Migrants (PICUM) have all campaigned in the past for the introduction of regularization programmes, with particular reference to cases where the labour market has demonstrated the need for foreign workers and the ability to absorb them over the years. In order to assess the potential of regularization in addressing irregular migration, it is important to first outline their advantages and disadvantages.

First of all, a regularization programme is a way to ensure a decent living for migrants who have been in the host country for some years, or those who are unable to return to their country of origin and seek protection but have not been granted asylum. Through regularization, invisible and marginalized groups are included in the host society. This can contribute to a better understanding and approach to migration in the country. Legal status supports greater participation to social and economic life, through access to the formal economy and payment of social insurance contributions and taxes. For countries where access to health care and social services is only given to documented migrants, a residence permit through regularization is sometimes the only way that resident undocumented migrants can obtain it. Regularization allows fair payment, recognition of skills and qualifications and access to training.

Moreover, regularization programmes can be a good source of information about the migrant population resident in the country, the nature of irregular employment and migrant working and living conditions. This kind of information is very useful for the enhancement of migration policies and the intensification of employer sanctions. While not providing data about the number of irregular migrants, this information

¹⁶ *Migrants in the UK: their characteristics and labour market outcomes and impacts*, Home Office, RDS Occasional Paper No 82, December 2002.

gives a good idea of the magnitude. They can also help check the frequency and intensity of discrimination and racism, as witnessed prior, during and after regularization.

By minimizing the number of resident irregular migrants in the country, regularization programmes support public acceptance of the migration reality and the possibility of developing legal labour migration channels in the future. In other words, without having sorted out the legal status of resident migrants, the public is highly unlikely to accept any proposal for future labour immigration plans. Thus, regularization programmes meet both public security and social, political, economic and policy development objectives with regards to irregular migration.

On the other hand, many countries are against regularization because they fear that granting legal status to migrants might work as a pull factor, as some might seek to enter the country in order to take advantage of the process, or wait in hope of a future programme. As seen above, this is partly true. Most of the time, however, the applicants in the second round are migrants who have been resident in the country for a number of years (and have applied in the previous regularization too). Another argument against regularization is that it cannot cover the needs of all migrants in the host country and therefore do not solve the problem of irregular migration. Instead, they may sustain and even exacerbate it, because the gaps left by the regularized will be filled in by new irregular migrants.

In Europe, states are also concerned that regularization will induce greater internal mobility, as regular migrants have the right to move and reside (but not work) in any other EU country for up to three months. According to the Directive on the rights of third country nationals who are long term residents, regularized migrants may in the future have more employment and settlement rights in Europe.¹⁷ Therefore, and following the latest regularization launched in Spain in February 2005, member states proposed the Council put in place a mutual information and early warning system for immigration issues.¹⁸ It is true that in the context of the European Union, it is hard to see regularization programmes as being solely a matter of “national” policies.

Another argument against is that regularization seems like an implicit state acknowledgement of policy failure. Opponents of regularization see them as undermining the rule of law, because the persons who entered the country in an illegal manner are allowed to stay and remain unpunished (Krikorian, 2004). They also prevent or delay those migrants who are waiting abroad for legal means to immigrate to the country. Finally, opponents of regularization programmes go so far as to claim that regularization poses a security threat, because they may legalize even foreign terrorist residents in the country (Krikorian, 2004).

For the above mentioned reasons regularization programmes have a tendency to be unpopular with the general public. They often become highly politicized issues, or are debated in the context of broader domestic and foreign policy issues, as in the case

¹⁷ Council Directive 2003/109/EC of 25 November 2003, Official Journal L 016, 23 January 2004.

¹⁸ Luxembourg Presidency of the European Council, *Regularization of illegal immigrants' status: the presidency and the Commission suggest the setting up of a system of mutual information and early warning between those in charge of migration and asylum policies*, Press Release, 11 February 2005, <http://www.eu2005.lu>

of the regularization of Mexicans that was discussed between Mexico and the US in 2001. The political objectives of the two sides were much broader than the scope of the programme. While debating about the rights and obligations of resident Mexican indocumentados, the US President was at the same time seeking to both reaffirm Americans about homeland security and attract Latino votes in the US. From his side, his Mexican counterpart was seeking to gain his own domestic credentials for securing his people's status abroad.¹⁹ The migrant regularization issue has featured central in the foreign policy agenda of the two countries in recent years. Countries of origin have usually pressed the US for regularization, so as to sustain their nationals' work abroad.²⁰

Earned regularization

In the search for possible ways to address the phenomenon of irregular migrants in the country, some have proposed the idea of "earned regularization", or "phase-in earned regularization". The aim is to find a way to solve migration issues and enhance border controls by giving the country of origin an incentive to cooperate, while at the same time avoiding an "amnesty." In the US, for example, this idea has been examined in the form of regular employment and settlement possibilities for Mexican migrants (Papademetriou, 2002).²¹ The proposal was first presented in 2002 and repeated in early 2004. Coupling regularization with a temporary labour programme, the proposal was based on the principle of a points-system and aimed to satisfy states, pro-immigrant groups and the private sector.

In short, the proposal foresaw that migrants residing illegally in the country would be first granted a temporary residence and work permit for three years, during which they were expected to collect "credits" so as to qualify for a permanent residence and work permit. The credits collected would be based on a number of criteria: a stable job; a lawful index (no conviction for illegal act, other than the one related to illegal immigration status); payment of taxes; legal presence of family member (citizen or legal long-term resident spouse can qualify the applicant for full credit; citizen children can earn the applicant full credit); military or other form of governmental service to the country; documented local language fluency; documented volunteerism in various groups; employment in sectors where demand is higher; and continuous residence in the country for at least three years. Those resident over ten years would not need to participate in the programme. There would be a maximum, partial and minimum credit option, according to the points that one gained. Yet, required eligibility should be four fifths of the maximum credits. Unsuccessful candidates would get a final two-year temporary work visa (Papademetriou, 2002; MPI and Weil,

¹⁹ See Leiken R., "Border colleagues: on migration, Bush and Fox belong on the same side", *The Washington Post*, 2 September 2001.

²⁰ *Salvadoran Leader Seeks Legalization of Migrants*, Los Angeles Times, 13 February, 2005, <http://www.latimes.com/news/local/la-me-briefs13.2feb13,1,5989033.story>, *Mexico presses US on Immigration Deal*, The Associated Press, 17 January 2005, <http://www.washingtonpost.com/wp-dyn/articles>

²¹ For this reason, the programme would include a "Mexicans-first" provision, see Papademetriou (2002).

2004, Appendix 2). The proposal received contradictory comments by the public, seen by some as another form of amnesty and by others as a panacea.²²

A good point in this proposal is the idea of giving migrants temporary legal residence and the possibility to prepare and meet the qualifications required in a three year course as opposed to the standard regularization course. On the other hand, the principle of an “earned regularization” is problematic for two reasons: first, it makes legal status a reward rather than a right to reside and work in a country legally, for somebody who meets the requirements. This could potentially affect host society attitudes towards foreigners by placing the second under the scrutinizing eye of the first. Such a trend would put integration on a different track, based less on equality and participation and more on the foreigners’ “performance”. Second, a credits-system would favour the most skilled and well-connected migrants, with little chances for low-skilled, newcomers and migrants without significant contacts to the host population. A “points-system” would make more sense as a screening of the profile of potential workers waiting abroad to immigrate to the country for labour purposes (here the points would correspond to job skills).

Conclusion and recommendations

The above analysis has shown that occasional regularization programmes do not bring sustainable results in terms of minimizing irregular migrant populations or preventing further irregular arrivals. Nevertheless, the possibility of obtaining legal status for those resident in the country should not be underestimated or prevented. Therefore, ongoing regularization possibilities seem to be a more effective policy option. This would also prevent the creation of pools of irregular migrants who reside in the country waiting for the next regularization date. Ongoing programmes require the development of infrastructure to process and renew applications, carry out information campaigns and relevant research on the needs and skills of the registered migrant population.

In terms of stay, temporary permits are rather unlikely to yield substantial results for all concerned in terms of activating the potential of migrants and preventing irregular employment. A short stay gives migrants and their employees little incentives to invest in payments, training, education and alignment with country-specific skills. Long term permits support upward mobility, taxing and family reunion. For example, a combination of initial three year residence and work permits that are renewed for five years and then become permanent could be more effective.

²² See *Amnesty for all equals jobs for none*, The Boston College Observer, 2 February 2004; Krikorian M., *Amnesty, in English: the debate over amnesty ought to be waged in plain English*, US Border Control, 4 September 2001; Endelman G., (2002), *Time For A Change: Why A Points System Should Replace Family Immigration*, <http://www.ilw.com>; Endelman G., (2002), *Earned Legalization: A Points System for Essential Workers*, <http://www.ilw.com>; *Amnesty, again; this country should learn – apparently it has not*, Center for Immigration Studies, 26 January 2004, <http://www.cis.org/articles/2004/markoped012604.html>

Eligibility needs to be based on clear and flexible criteria, so as to make information, preparation and application procedures feasible. Employment or existence of a job offer should remain an essential requirement for granting legal status to resident migrants; it is also hard to see how public attitudes would not be opposed to granting permits to unemployed migrants. On the other hand, the permits should be flexible when it comes to renewal, even in the absence of employment or job offer at the time of application. This would give migrants who have resided and worked in the country for three-four years the chance to find another job or enhance their skills through training. In addition, residence and work permits need to be granted and renewed simultaneously so as to avoid irregularity during the gaps.

Moreover, family reunification needs to be maintained as a basic criterion of regularization, more or less along the lines upon which that it has been implemented so far. To state the obvious, regularized family members would need to be granted both residence and work permits (yet, the latter based on the same criteria as before, and not merely on the basis of family ties). On this issue, combating fraud and the use of fake documents remains an open question.

More importantly, the regularization process needs to be in conformity with human rights standards and international norms, such as the Universal Declaration of Human Rights, the UN 1990 Convention on the Rights of Migrant Workers and Members of their Families, the European Convention on Human Rights, the European Social Charter, the ILO Migration for Employment Convention 1949 (C97), the Convention on the Rights of the Child etc. Of particularly importance here is the continuation of the residence permit through ill health or unemployment, as foreseen by Article 8 of the ILO Convention and Article 51 of the UN Migrant Workers Convention. This is a reason why migrants have often been unable to renew the permits and have fallen back to irregularity (unemployed as a result of sickness, redundancy, training or simply, change of job).

The possibility of obtaining legal status is a necessary condition to combat irregular migration, but it is not sufficient. Regularization needs to be combined with tighter border controls, employer sanctions and law enforcement. With regards to employer sanctions in particular, an idea that has been put on the table is that employers found to be hiring unauthorized migrants are denied access to migrant workers in the future (MPI and Weil, 2004). Yet, as seen in the analysis, irregular hiring can be combated only as part of a restructuring of the labour market.

In order to address the question of those that do not qualify for legal status, regularization needs to be combined with removal possibilities (voluntary return and removal). Yet, removal should be carefully designed so as not to have the counter-effect of discouraging migrants from applying for regularization. For instance, using the data collected from the applications to identify possible migrants for removal would definitely discourage migrants from registering and raise concerns in pro-immigrant groups and NGOs.

At European level, pro-immigrant groups have voiced the idea of establishing a European regularization policy to counteract “regularization shopping”.²³ From its side, while not clearly proposing a European regularization policy, the European Commission has suggested the consultation between Member States on regularization and the possibility of an agreement on “common criteria”. The need for a common approach is indeed essential and arises from the impact that the free movement of people (including regular migrants) can have on Member States.²⁴

Finally, it is important to bear in mind that policies to address irregular migration need to be based on a sound assessment of local specificities. Countries have different types of irregular migrants – for example, European countries have more newcomers, while the US has more visa overstayers. Furthermore, within each country, there are various types and degrees of irregularity: clandestine entry, tourist visa and legal work, non-work visa and illegal work, overstayers of work permit, rejected asylum seekers etc. Regularization programmes should take into account all these different types and their needs.

²³ PICUM (Platform for International Cooperation of Undocumented Migrants), *Comments on the Communication COMM (2001) 671 final 22, November 2001, on a Common Policy on Illegal Migration*, April 2002, (Ref. RE.05.E.02)

²⁴ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Study on the links between legal and illegal migration*, COM 2004(412 final), Brussels, 4 June 2004

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