

Discussing approaches to address irregular migration: what works? What doesn't?

Background paper for roundtable 5, GFMD 2020

Introduction

Irregular migration is one of the most contentious migration-related issues in international relations. There are genuine differences of opinion among states and other stakeholders about the most effective approaches to irregular migration, differences that are particularly acute between national authorities in countries of origin and countries of destination. The GFMD is a good platform for exploring this difficult subject, as it has always been a forum in which honest debate on controversial issues could take place without animosity. In this context, countries of origin and destination, and the communities within them, can work toward understanding what each has at stake in different approaches to irregular migration and reach for common ground.

The debate about approaches to addressing irregular migration is quite polarized. At one extreme, irregular migration is seen almost entirely as a humanitarian issue, driven by desperation and “choicelessness,”¹ where the vulnerabilities of migrants in transit and at destination should be given priority over all other considerations. In this view, enjoyment of a full spectrum of rights should never depend on migration status and the responsibility for addressing irregular migration lies primarily with countries of destination using policy measures such as regularization and expanded regular pathways for migration. At the other extreme, irregular migration is seen primarily as a rule-of-law and security issue, with a focus on border management and enforcement of restrictions. In this view, countries of origin have the main responsibility to address irregular migration by cracking down on smugglers, accepting the return of unauthorized migrants and addressing the “push factors” that impel people to migrate. Destination countries may encourage countries of origin to take these steps by linking them to concessions (or penalties) in trade, visa policy and development assistance. Few governments take positions at the two extremes; along the spectrum between them there is room for accommodation.

Behind these policy debates lies the reality that irregular status puts migrant and migrant communities at risk of suffering from exploitation, violence and discrimination, and directly

¹ Nigerian writer Chimayama Ngozi Adichie’s formulation of one of the major factors driving young Africans to emigrate, discussed in the UNDP report *Scaling Fences*:
Africa.undp.org/content/rba/en/home/library/reports/ScalingFences.html

affects their access to health care, education and other services. At the same time, it undermines the rule of law and shakes the public's faith in the competence of government. Another correlate of irregularity is employment in the informal sector, which inhibits governments' ability to tax, regulate and promote domestic businesses, while putting migrants employed in the informal sector out of reach of many government protections. The COVID-19 pandemic has further increased the harsh conditions and rights violations to which migrants in an irregular situation are subject. For example, migrants lacking regular status in many countries have found it difficult to access health care amidst the government-enforced lockdowns, due to lack of information, limited access and the fear of being reported. Governments at the local level have no choice but to address the problems facing irregular-status migrants if they are to keep their entire populations safe. And many municipal governments have taken action to give migrants without legal regular access to health care and other safety-net programs during the pandemic.

Irregular migration takes place through four major mechanisms: unauthorized entry at or between ports of entry; overstay of legally obtained visas and/or violation of their terms and conditions; non-compliance with orders to depart after a failed attempt to claim asylum; or use of fraudulent documents.² In addition, children of irregular-status migrants born in countries that do not have birthright citizenship may be born into irregular status. Each of these mechanisms requires a different kind of approach to addressing the problem.

Better data and analysis are needed for better policymaking

Basic data on irregular migration are scarce in many countries and are often disputed. The United Nations Department of Economic and Social Affairs does not categorize migrants by legal status. Collecting data on irregular migration is difficult. Migrants without legal status often try to avoid being identified in census tabulations, surveys and compilations of administrative data. People may slip in and out of legal status as their situations change—for example, if they lose a job to which their visa is tied (as has happened to many migrants as a result of restrictions linked to the COVID-19 pandemic), moreover, laws or regulations in the country of destination may change. While credible estimates exist for certain countries and regions, they are not systematically collected, and are seldom comparable across areas. Data disaggregated by sub-national states/provinces and municipalities is needed to pinpoint which regional and local authorities are at the forefront of dealing with the needs of native-born as well as migrants in regular or irregular status, all interacting in the complex urban environment. In the popular imagination, the void of solid evidence is often filled by exaggeration of the magnitude of irregular migration. As in other policy domains, a strong evidence base and solid analysis are the foundations of good policymaking on irregular migration.

² A rarely used fifth mechanism, unacceptable under international law, is the exclusion by a government of a long-settled sub-set of its population from citizenship, labeling them as irregular migrants. This is sufficiently rare that it will not be discussed in this paper.

Governments of countries of origin and countries of destination should work together and with other stakeholders to develop an in-depth understanding of irregular migration. Who benefits? Who are the movers? Why do people take the risks associated with irregular migration? The need to examine the underlying reasons for irregular migration—and how various drivers interact with each other—is acute, so that policy can focus attention and resources where they are likely to produce an effect. Reliable and insightful data will play a vital role in enabling stakeholders (including donors) to truly understand the drivers of irregular migration, and thereby effectively target support toward achieving the GCM objectives to "Minimize the adverse drivers and structural factors that compel people to leave their country of origin", and "Facilitate [...] sustained reintegration".

In several parts of the world, migration observatories have been established to get trustworthy data. One regional observatory conducted a census of returnees and their families, revealing that the chief motivations for irregular migration are the lack of jobs or economic prospects at home, the desire to join family in another country and fear springing from widespread criminal violence at home. These findings, which are not surprising, highlight the need to design policies and programs that are not solely focused on unemployment and labor recruitment. If there are legal pathways for workers but no way (especially in the case of low-skilled workers) for their families to join them, for example, the temptation to engage in irregular migration to reunite the family may be strong.

Careful research can help to illuminate what factors persuade people to return home or to abandon the idea of migrating irregularly. It may be a decline in labour demand in traditional countries of destination, as after the onset of the Great Recession in 2008 and now in the pandemic-induced recession; it may be harsh enforcement or unease at apparent rising xenophobia. But there may be more positive factors at work, such as rising economic prospects in the country of origin, optimism around political developments or a more favourable demographic situation.

Potential migrants need accurate information to assess the with the likely outcomes of irregular migration

Providing accurate and timely information to migrants about the regular pathways that are available and the dangers—and penalties—of irregular migration is essential. Only on this basis can they make sound decisions on whether and how to migrate. To do this effectively, it is important to understand how migrants who are considering irregular migration gain and assess information about routes, intermediaries and prospects in the country of destination. What are their most (and least) trusted sources? How do they assess risks? Are information campaigns mounted by governments or International organizations effective in discouraging irregular migration?

Different stakeholders—governments, local authorities, civil society organizations and international organizations among others—can form alliances to provide accurate, timely information to migrants through many channels and in local languages to counter the

misinformation that migrants may receive from smugglers, unscrupulous recruiters and others. Such alliances are also key to assessing the impact (or lack thereof) of information campaigns to deter irregular migration, identifying what works and why.

Return of irregular-status migrants is an important, and highly contentious, policy arena

Many policymakers in countries of destination see return of unauthorized migrants who have no legal right to remain as an essential part of a safe, orderly and regular migration system. The public, it is thought, will only accept more and better opportunities for regular migration if they can be assured that those who have no right to stay will leave or be sent back. But compulsory return is extremely difficult; in major European countries of destination, removal procedures result in only about one-third of those ordered to leave actually departing. Return requires the cooperation of the country of origin and has frequently led to tensions between countries of origin and destination. Countries of transit are often put in difficult situations, under pressure to accept the return of migrants who are not their own nationals.

Compulsory returns of migrants in irregular situations have financial, humanitarian, security and development implications for countries of origin; and political, legal and sometimes economic implications for countries of destination. Partnerships to address irregular migration should take account of the sovereign right of states to determine their national migration policy and their obligation to readmit their own nationals, as well as the importance of rule of law, due process and access to justice. They also should consider the capacity of the country of origin to absorb returned migrants, the negative effects of lost remittances, the separation of families, the needs of specific groups of returning migrants such as children and young people and the dangers deported migrants might face upon return, as well as migrants' length of stay and degree of integration in the destination country. It also makes sense for countries implementing compulsory returns to assess the costs and risks of re-migration on the part of those returned.

The pressures put on both countries of origin and countries of transit to accept the return of migrants who have no right to remain in a country of destination are sometimes accompanied by incentives, such as aid packages or visa liberalization, or by disincentives such as threats to cut trade links or economic assistance in case of non-cooperation. It is imperative to find more productive approaches that can accommodate the priorities and political imperatives of both sets of states while offering better outcomes for migrants. Some states may conclude that it makes sense to offer a path to regular status for migrants who lack authorization to remain but have lived otherwise lawfully and have built substantial equities in the country of destination. Others remain firm in the conviction that regularization incentivizes further irregular migration. As with most problems, prevention – of unauthorized entry or situations in which migrants slide into irregular status – is better than cure.

Irregular migration in the Global Compact for Migration

The most comprehensive negotiated framework for cooperation on international migration, the Global Compact for Safe, Orderly and Regular Migration (GCM) treats addressing irregular migration as a necessary complement of its goal of achieving regular migration. Among the concerted global efforts and coordinated, shared actions recognized in the compact is this: “...we aim to facilitate safe, orderly and regular migration while reducing the incidence and negative effects of irregular migration through international cooperation...”. One of the guiding principles of the compact is that “Within their sovereign jurisdiction, states may distinguish between regular and irregular migration”, while they also pledge to “ensure effective respect, protection and fulfillment of the human rights of all migrants, regardless of their migration status.” Four commitments bearing on irregularity are included in the compact:

- Ensure that “desperation and deteriorating environments do not compel them [migrants] to seek a livelihood elsewhere through irregular migration.” (Objective 2)
- “Enhance availability and flexibility of pathways for regular migration.” (Objective 5)
- “Manage our borders in a coordinated manner, promoting bilateral and regional cooperation, ensuring security for States, communities and migrants, and facilitating safe and regular cross-border movements while preventing irregular migration.” (Objective 11)
- “Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration.” (Objective 21)

Each objective of the Global Compact for Migration consists of a commitment and a number of actions that are “considered to be relevant policy instruments and best practices.” (GCM paragraph 16). The states that endorsed the compact agreed to draw from these actions to realize their commitments—not necessarily to implement all of them in their entirety. Actions concerned with irregular migration include:

- “Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters or other precarious situations...while adaptation in or return to their country of origin is not possible” and to “cooperate to identify, develop, and strengthen solutions” for such migrants. (Objective 3, actions g and h).
- “Develop accessible and expedient procedure that facilitate transitions from one status to another... so as to prevent migrants from falling into irregular status in the country of destination” and “build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status... especially where cases of children, youth and families are involved...” (Objective 7, actions h and i)
- “Review and revise relevant laws and regulations to determine whether sanctions are appropriate to address irregular entry or stay...” (Objective 11, action f)
- “Ensure that cooperation between immigration authorities and service providers does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services.” (Objective 15, action b)
- “Ensure that the return of migrants who do not have the legal right to stay on another State’s territory is safe and dignified, follows an individual assessment, is carried out by

competent authorities through prompt and effective cooperation between countries of origin and destination, and allows all applicable legal remedies to be exhausted, in accordance with due process and other obligations under international human rights law.” (Objective 21, action e).

Build strong partnerships

These commitments agreed in the Global Compact for Migration point the way toward potential partnerships among States to discuss ways of addressing irregular migration, particularly between countries of origin and destination—although disagreements also exist within these two groups as well as with countries of transit. Through its 23 commitments and associated menus of action, the Global Compact frames cooperation in terms of reducing the underlying causes of irregular migration, applying national laws and regulations flexibly, seeking practical solutions for migrants in an irregular situation (including through adjustments of status) and cooperating at borders. A partnership approach that takes into account the interests of origin, destination and transit countries—and the motivations of migrants—is likely to be more durable and successful than those based on threats or on financial incentives (which may never reach the migrants affected).

Partnerships come in multiple variations: state-to-state, state and private sector, business and civil society, local and regional governments with national governments and the business community. The existing regional consultation processes are examples of partnerships for mutual learning and cooperation. Partners from different sectors can help each other to identify irregular pathways as well as opportunities for opening additional regular channels.

Bilateral labour agreements are one form of partnership that can have an impact on irregular migration by providing alternatives to unauthorized movement. Bilateral agreements may expand access to regular migration by facilitating access for employment, education, family reunification, or access tailored to the needs of migrants in vulnerable situations. The development of free movement protocols within regional blocs, along with bilateral agreements for visa free travel, are some of the most successful measures against irregular cross-border mobility.

Alliances are especially important in combatting transnational criminal actors, many of whom are involved in trafficking in persons. One country or industry or civil society organization cannot solve the problem of industry modern-day slavery alone. Regional processes to facilitate discussion and information sharing about issues relating to people smuggling and trafficking in persons are particularly important. Smuggling, trafficking and irregular migration are inextricably linked.

Questions for discussion

- 1. What actions or processes lead to a decline in irregular migration? What role does policy play?**

The simple—and simplistic—answer to this question is often “development.” But experience in several countries is much more complex, and research indicates that the relationship between migration and development is far from linear. A widespread increase in economic opportunity, and non-obstruction of the free use of economic resources envisaged by each of the States to promote their economic development, can certainly reduce the pressure to emigrate. Other factors that have been seen to play a role include inclusive political liberalization, better governance, measures to strengthen the social safety net, demographic change (the maturing of a “youth bulge” leaves fewer people in the prime age groups for risky irregular migration) and effective hardening of border controls in a country’s major emigration destinations. Some of these factors are amenable to policy direction while some are less so.

Regularization processes, obviously, reduce the number of migrants in irregular status, but their longer-term effect is controversial. Some see regularization as compensating for inadequate legal migration pathways and procedures, some as a practical way of reconciling the situation of specific groups who have been outside the system for too long, while others see it as a moral hazard that is likely to increase irregular migration.³ Where regularization is employed on a limited basis, it makes sense to give priority to migrants who are long settled and well-integrated (including those who lack legal status despite having been born in the country) as well as those who are in vulnerable situations.

- a. In your experience, what are the major barriers that prevent a decline in irregular migration in your region?
- b. How effective can policy be in addressing these barriers and which—if any—policies have been effective in reducing irregular migration in your region?
- c. What initiatives, partnerships or approaches would you like to see develop to help reduce irregular migration? How easily could policy changes be implemented and what resources would be needed to bring them into effect?

2. What is the relationship between increased opportunities to migrate through regular channels and the prevalence of irregular migration?

Access to regular migration is often put forward as the most effective way to address irregular migration. Legal pathways include admission for work, education, family unification and humanitarian purposes (including refugee resettlement). The quality of regular channels needs to be improved as well as the quantity; they are often so narrow, expensive, complex or slow that people (including migrants, employers of migrant workers and migrant families) opt for irregular migration. And some regular migration channels, particularly for low-paid, temporary work, do not protect workers’ rights adequately. But many observers believe that creating more and better regular pathways can only partially address irregular migration, as the number of people wishing to move

³ In economics, moral hazard describes a situation in which a person (or other entity) has an incentive to take on more risk because he/she/it is protected from the consequences of the risk.

to particular countries is likely to exceed the number that these countries are willing to accept. Evidence to support the idea that regular pathways will reduce the use of irregular channels is sparse.

- a. Is there adequate data to draw conclusions about this? How big a challenge is data collection and analysis on the relationship between irregular and regular pathways? Have you seen specific effects of increases or reductions in pathways for regular entry for work, study and family reunification/formation on irregular migration?
- b. How can countries of origin and destination work together to divert irregular migration into legal pathways?

3. What characteristics of national migration laws and practices encourage irregular migration? How can these be changed?

- *Asylum systems that are very slow to adjudicate claims may encourage irregular entry of people who do not have valid protection needs. Speeding up asylum procedures, while still retaining their protection of refugees and respecting the human rights of applicants, is a serious challenge for many states, as abuse of asylum systems by non-refugees is a reality.*
- *Inability to return migrants who are found, after due process, to have no legal right to remain in a country may alter the perception of the risk/reward balance for people considering irregular entry or visa overstay. Lack of cooperation on the part of migrants ordered to leave a country and on the part of their countries of origin is a major source of frustration for governments in destination determined to enforce their immigration laws and regulations. The ability to remain and, often, to work (even if only in the informal economy) is a source of attraction for would-be migrants who cannot access regular migration channels.*
- *Unpublished or unclear immigration laws and regulations, along with misinformation, may result in irregular status for migrants who are not aware that they are not following the rules of entry and stay.*
- *Regular migration pathways that do not accommodate the right to family life, especially in the case of low-skilled workers, may position the desire for family reunification as a key driver of irregular migration.*
- *Overly permissive border management that allows people to enter a country without identification or travel documents may cause confusion about their subsequent legal status, complicating processes of regularization, return, and work authorization. (Of course, international law does not require refugees to present documentation before seeking protection.)*
- *Widespread work in the informal economy and failure to enforce legal requirements for work (including protections for migrant workers) may encourage irregular labour migration.*

- *Extremely cumbersome requirements and application procedures for entry may tempt both employers and migrant workers to circumvent regular migration channels. Similarly, significant backlogs in visa and permit processing that excessively delay their issuance may have a similar impact, leading migrants, including those in vulnerable situations, to opt for irregular entry.*
 - *Criminalization of irregular entry may simply drive it further underground.*
- a. What are the major constraints you see in developing a migration system that effectively discourages irregular migration while respecting the human rights of migrants and meeting humanitarian obligations?

The lack of fair, legal and transparent recruitment processes is a major constraint on the development of safe, orderly and regular migration. It would be a great benefit to migrants and employers alike if governments would actively accredit recruitment agencies after a sound due-diligence process. Employer-facing recruiters often work through intermediaries who identify potential migrants at the local level; these intermediaries also need to have their roles formalized so that they can be held accountable.

- b. Have you seen changes in law and/or practice in your country or region that have had an effect on the direction or magnitude of irregular migration? How can local and regional governments, in cooperation with national authorities and other actors, contribute to amending legal and administrative measures that inadvertently promote or sustain irregularity?
- c. Would it be useful for countries to work together, and through international organizations, to develop templates of the elements of effective migration systems, along with cooperative initiatives to help governments put them into practice?