

GFMD January 2021

Roundtable on theme 5, Discussing Approaches to Address Irregular Migration – What Works? What Doesn't?

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1. Re-orientate policy framework concerning irregular migration

- **International standards** outline that UDM have inherent human rights
 - This has been clarified in past 20 years with majority of the UN committees overseeing the implementation of the **core human rights conventions** and Special Procedures issuing specific guidance.
 - General Comment 14, from the Committee on Economic, Social and Cultural Rights (11/8/2000): states should respect the highest attainable standard of physical and mental health by refraining from denying access to UDM
 - **ILO's decent work agenda** and Convention 89 on domestic work key instruments applying to undocumented workers
 - States that adopted the **Global Compact on Migration** committed to addressing irregular migration to achieve the goal of regular migration
- Yet on the national and regional level, **focus is predominantly on securing borders**, on investing large sums of public funding into border management and criminalizing undocumented migrants as well as those who provide them with life-saving and humanitarian assistance
- Countries of destination wield power over countries of origin by **conditioning development aid on readmission agreements**
- When the **highest level of policy making in a country or region** is engaged in a constant "fight" against irregular migration, what is the impact?
 - **Undocumented children** – or those who may be born to undocumented parents, are seen first within the prism of irregularity, and are not seen as children first.
 - **Family unity** is not respected, nor are the different ways in which families can be formed (e.g. same sex families).
 - Multiple layers of **intersectional discrimination** – due to migrants' irregular status; their gender; age; sexual orientation or identity; racial discrimination; disability – not recognized or addressed.
 - **Stigmatizing narrative** - referring to "illegal" migrants or "illegal" migration instead of "irregular" or "UDM" can generate racism and xenophobia.
 - UDM largely remain **invisible** in places where they might find support (e.g. state policies that provide help to the population in need with housing, or other services do not include undocumented migrants)
- To **close the gap** between the standards in the international human rights framework for undocumented migrants, and the laws and practices on the national level, the policy framework should be reoriented:
 - To investigate the causes (and solutions) to irregularity, and
 - To enhance protection for people when they have irregular status.

2. Regular pathways and regularization

- In many contexts the focus on irregular entry overlooks the main ways people become undocumented – **by moving in a regular way but becoming undocumented** when their permit is not renewed, their visa expires, they lose the grounds on which they entered (e.g. women who migrate to join their spouse and suffer from gender-based violence may lose their ability to remain regularly if the spouse threatens them with deportation).
- The **few regular pathways** that exist in many countries are simply **inaccessible** – due to discrimination based on the migrant’s country of origin; gender; inability to prove their relationship to a family member
- **Labor exploitation** is a huge factor in causing irregularity: “wage theft” predates the pandemic and migrants become UDM when their labor contracts are not renewed, their passports confiscated by the employer, they are unable to find a different employer because their contract binds them to the employer.
- **Recruiters** part of this system which needs reform.
- Countries should **move away from temporary migration programs** that the pandemic has shown are failures and overhaul the regular migration framework for labor with decent work as the key priority, addressing the needs in various sectors and not overlooking some sectors (e.g. domestic work) while favoring others (e.g. nursing) in bilateral agreements.
- Policies that support **youth entrepreneurship** could also recognize the key contributions made by young migrants to our societies and economies.
- Some countries in the Middle East have **eliminated the kafala system**, most notably Qatar, which would allow migrants to change employers and adopt non-discriminatory minimum wage policy for all migrant workers to begin in March 2021.
- **Regularization is part of the solution to addressing irregular migration.**
 - Some governments have made temporary programs during the pandemic to address the situation of undocumented migrants and “essential workers” (Portugal, Italy, Thailand)
 - Others have ongoing measures for certain groups of undocumented migrants (e.g. Chile regularization program for medical reasons; Spain “social and labor” integration)
 - Others may have regularized UDM in recent years (e.g. Morocco) but since status was temporary, people find themselves in irregular situations once again
- **It’s not enough just to regularize; regularization programs should also be sustainable and offer possibilities for long-term residence.** Temporary regularization programs may sustain more irregularity, so governments should work with civil society to identify the proper criteria for establishing sustainable regularization programs.

3. Access to services and justice – firewalls

- During the **pandemic**, undocumented workers were seen as “**essential workers**” in many sectors of the economy, but had difficulties accessing health care due to having irregular status.
- **For those who lost their jobs**, although governments helped their populations with unemployment assistance or pandemic payments, undocumented workers were excluded due to their irregular status.

- Having irregular status means that people are afraid to avail of any of these services or protections, because their **personal data** might be transmitted to the immigration authorities.
- It is essential to create **firewalls** to prevent this transfer of personal data.
 - During the Protection Gaps session yesterday: question raised on which governments (at the national, regional or local levels) are establishing protocols to ensure that undocumented migrants can safely be vaccinated?
 - From a public health perspective alone it is seen as a smart policy not to exclude anyone in the population.
 - Civil society can play a key role in ensuring that vaccination outreach programs benefit migrants and that firewalls can be put in place.
- **Inspiration** for firewalls is especially **at the local, or city level**:
 - **Amsterdam** connected 2,500 migrants to NGOs and churches to access services without fear of arrest and deportation during the pandemic
 - The **City Initiative on Irregular Migration in Europe** is a partnership between researchers, civil society and key European cities that has issued guidance for cities on how to address social needs of undocumented populations
 - **Civic rights**: cities in the U.S. allow UDM to vote in school boards and in local elections.
 - **Consulates** also play key roles – Matricula consular card at Mexican consulate in Los Angeles
- **Civil society is a key partner for governments at all levels** – national, regional and local levels - to find solutions to ensure that migration policies are developed from a sustainable point of view, that look at the reasons why people are moving, and why they become UDM, and that uphold the human rights of people whose migration status leaves them vulnerable to exploitation and abuse.

Finally - civil society includes migrants themselves, and to move the discussion about “irregular migration” from the current perspective, migrants themselves need to be at the center of these policies.