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Regularization Programs for Undocumented Migrants

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A b s t r a c t

The study describes and analyzes the features and outcomes of regularization programs (also referred to as amnesty or legalization) for undocumented migrants in 16 countries distributed among all continents. It gives a general survey on reasons and expectations of governments conducting regularization drives, the different forms that the programs have taken, features and eligibility requirements most frequently used as well as a summary of the implementation and problems associated with this policy tool. The paper also tries to answer how governments might deal with the undocumented flow of people tomorrow. A country comparison table (53 pages) in the annex contains data on more than 60 regularization programs considered in this study.

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Abbreviations and Acronyms

ACIME	Alto Comissário para a Imigração e Minorias Étnicas (High Commissioner for Immigration and Ethnic Minorities), Portugal
BPB	Bundeszentrale für Politische Bildung (Federal Agency for Civic Education), Germany
CNN	Cable News Network
EU	European Union
GCIM	Global Commission on International Migration
ILO	International Labour Organization
IRCA	United States Immigration Reform and Control Act (1986)
INS	United States Immigration and Naturalization Service
IOM	International Organization for Migration
IPPR	Institute for Public Policy Research, United Kingdom
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
SAW	Special Agricultural Worker (category of the IRCA regularization program, U.S.)
UC	University of California at Davis, U.S.
UK	United Kingdom of Great Britain and Northern Ireland
UN	The United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
U.S.	United States of America
USSR	Union of Soviet Socialist Republics

Introduction

> *We do not know if the twenty-first century will be the century of religion, as Malraux prophesied,*
> *or the century of women, as Mitterand predicted.*
> *For his part, Henry Kissinger proclaimed that the first half of the next century will be American and the other half, Chinese. Who can tell?*
> *However, we have at least one certainty: the beginning of the third millennium will be dominated by problems involving migration flows and refugees. It will be the century of Foreigners.*
>
> Jean Daniel, Director of *Le Nouvel Observateur* [1]

Whatever the debates will be about in years to come, the flow of people *is* already a major topic in our day. International migration[2] is attracting increasing attention: from the public, among governments, within various international agencies and non-governmental organizations.

Each new presidency in the EU emphasizes the need to harmonize admission procedures (Prokop, 2006). The Spanish-Moroccan border incidents prompted the EU to put illegal immigration on its summit agenda (UK Presidency of the EU, 2005). The Bush Administration in the USA has contemplated a major regularization for irregular migrants and the establishment of a guest worker program on an unprecedented scale (CNN, 2005). The East Asia crisis forced the newly industrialized economies to face the growing realities of immigration (Lucas, 2005: 3).

The Group of 77 recognizes the important nexus between international migration and development (Group of 77, 2005: 8), it stresses the need to enhance international cooperation

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[1] As quoted in: International Organization for Migration, 2001.
[2] For a discussion of the different terms and their definitions used in this paper, refer to the next chapter.

on migration issues and has announced that it will make further efforts to ensure that the human rights and dignity of all migrants and their families are respected and protected (Group of 77, 2004: 8).

The United Nations is preparing a high-level dialogue on international migration and development in September 2006 and the current Global Economic Prospects of the Worldbank is focussing on international migration as well.[3]

Why is migration getting more attention? Reasons include the growing scope and scale, the more complex migratory movements in recent decades, the consideration of migration within comprehensive security concepts of states, the link to all major policy areas,[4] greater media attention and the fact that migration is a controversial and emotional topic.

There were nearly 200 million international migrants in 2005 (GCIM, 2005: 83).[5] If assembled in one nation, they would equal the population of the 5th largest country in the world – Brazil. Of all forms of international migration, the undocumented flow of people has been by far the fastest rising during the past 10 years (OECD, 2000: 29-44/BPB, 2001a/UNDESA, 1997: 27).[6] An estimated 2.5 to 4 million migrants cross international borders without authorization each year (GCIM, 2005: 85).[7] A rough estimate of the share of unauthorized immigrants in the world's immigrant stock might put it at between 15 and 20 percent of the total (Papademetriou, 2005b).[8]

Much of today's migration is an unhappy situation for the migrants as well as for the countries

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[3] See Worldbank, 2005, for further details.

[4] During the 2006 pre-election period, US Senator Chuck Hagel put it this way: "[The immigration issue] encompasses societal, economic, security issues that are all woven into one fabric" (Hulse, 2006).

[5] Counting only those who have lived outside their country for more than one year and including 9.2 million refugees.

[6] In recent years, legal ways to immigrate have been limited significantly in many developed countries. As governments become more restrictive on legal migration, illegal migration and claims for asylum increase (Weiner, 1995: 5).

[7] This number does not include *overstayers*, who enter the country legally, for example with a tourist visa, and then overstay their visa or start working without permission.

[8] There are many ways to become a undocumented migrant. Crossing a green or blue border is only one of them. See the definitions in Chapter One for futher details.

they seek to enter (Martin, 1994: 241). For the individual migrants the undocumented stay is often a temporary phenomenon whereas it is a permanent situation for the host countries.

While clandestine migrants continue to pile in, host country governments[9] ponder how to respond to the challenge of clandestine but present immigrants and how to solve the dilemma of promoting the rule-of-law, while respecting human rights and honoring the interests and emotions of their own population at the same time.

In the past, when migration has moved to the top of the political agenda in response to an immediate crisis or an awareness of growing public anxieties, national leaders have often responded in an ad hoc fashion. Few governments sought to develop more coherent policies (Bernstein, 1999: 209). Many countries have used regularization programs as a policy tool for dealing with undocumented migration. In a number of cases, these regularizations were combined with other measures, such as tightened border controls and raids on workplaces.

The growing scale of the phenomenon of clandestine migration, today's and tomorrow's migration policy agenda and the quest for a comprehensive and coherent method of dealing with clandestine migrants – whether through regularization programs or not – requires knowledge that can also be gained from former policy outcomes. Studying the effects of past regularization drives offers considerable examples of experiences that have been largely left out of account. Vogel notes that one of the biggest problems in the context of undocumented migration and policy response is the absence of systematic policy evaluations.[10]

Despite the fact that governments in several countries have implemented regularization drives, there is surprisingly little information on what these programs are, what features they have, how they are implemented, what problems arise and how they might relate to current and future immigration policies. The potential of such past programs to improve migration policies in general and make migration regulation more effective has been largely neglected.

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[9]   At least those in constitutional democracies.
[10] Lecture during the workshop *Migrants without papers – life without rights?* in Loccum, Germany. 24.02.06.

At the same time, it is astonishing to see that regularization policies are not only difficult to implement efficiently but also lead to considerable new problems, one of them being the likely attraction of new undocumented immigrants who fill the gaps left behind by those regularized.

It is the aim of this study to give a general survey of regularization programs in 16 countries distributed among all continents.[11] The paper tries to answer the following questions:

- Why are governments conducting regularization programs?
- What different forms have programs taken and which features and requirements are most frequently used?
- How were the regularizations implemented and what outcomes did they have?
- What problems arise for both migrants and governments?
- Will countries continue to consider regularization programs in the future and if so, how might the drives be designed?
- Given the various obstacles that make migration control difficult if not impossible, how will governments deal with the undocumented flow of people tomorrow?

In a first step, each of the 191 member state files in the database of the United Nations Headquarters in New York was searched for indications of a policy that appeared to be a regularization program. In addition, reliable internet sources and scientific publications were used. The investigation focused on OECD-member states and countries that are more developed or safer than their neighboring states because of the higher likelihood of observing immigration and immigration policy.

In a second step, only those regularization programs that complied with the definition (see 1.1.) were considered. Some regularization schemes were not included due to the lack of significant or reliable information.

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[11] More on variables, sources and countries considered in Table 1 below and in Chapter One.

Table 1: Regularization Programs Considered

in this Study

Country	Year or Period
Argentina	1949
Argentina	1958
Argentina	1964
Argentina	1974
Argentina	1984
Argentina	2004
Argentina	2004[a]
Australia	1973
Australia	1976
Australia	1980
Belgium	1974
Belgium	1995-1998
Belgium	2000
Costa Rica	1990
Costa Rica	1990-1994
Costa Rica	1998
France	1973
France	1979
France	1981-82
France	1991
France	1998
France	1998[b]
Gabon	1985
Gabon	1994
Greece	1998[c]
Greece	1998[d]
Greece	2001
Hungary	2004
Italy	1982
Italy	1986-1987
Italy	1990
Italy	1995
Italy	1998
Italy	2002

(Continued)

Table 1: Regularization Programs Considered

in this Study (Continued)

Country	Year or Period
Netherlands	1964[e]
Netherlands	1975
Netherlands	1978
Netherlands	1979[f]
Netherlands	1996[g]
Portugal	1992-1993
Portugal	1996
Portugal	2001
Republic of Korea	2002
Republic of Korea	2004
Spain	1985-1986
Spain	1991
Spain	1994
Spain	1996
Spain	2000
Spain	2001
Spain	2001[h]
Spain	2005[i]
Spain	2005[j]
United Kingdom	1974
United Kingdom	1977
United Kingdom	1987
United Kingdom	1998
United Kingdom	2004
United States of America	1952
United States of America	1986
Venezuela	1960s
Venezuela	1980
Venezuela	1992
Venezuela	2004

a: Regularization agreement between Argentina and Peru, b: Permanent Regularization Program, c: White Card, d: Green Card I, e: General Pardon, f: Overgangsregeling (transitory regulation), g: Longterm Regularization Program, h: Extraordinary program for Ecuadorians, i: Category 1, j: Category 2

Source: For a complete listing of country references see the country comparison table in the Annex.

Most of the information that could be obtained was entered into the country comparison table (see Annex). Implementation experiences were gathered separately. The results of the research are summarized in this study.

The first chapter deals with the definitions of the most important terms (migrant, undocumented migrant, regularization program) used in this study. In the next chapter, a short introduction into the topic of migration in general, and undocumented migrants in particular is given, followed by an analysis of why countries continue to use regularization drives and how these programs developed. Chapter Three deals with the features and patterns that can be recognized in the study of regularization programs in different parts of the world. The following chapters analyze the eligibility requirements of regularization drives, estimates of undocumented migrants and the authorization rate of the applications for regularization. Finally, Chapter Seven summarizes obstacles and problems that arise for both migrants and governments during the implementation of regularization policies.