

# SURVEY/DATA

## Regularization programs for undocumented migrants

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### Abstract

This paper is a summary of a study that 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.

**Keywords:** migration, population policy, amnesty, regularization, clandestine.

Many countries have used regularization programs<sup>2</sup> as a policy tool for dealing with undocumented migration. But 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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<sup>2</sup> A definition is given below.

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It is the aim of this study to give a general survey of regularization programs in 16 countries distributed among all continents. After a data gathering process, only those regularization programs that complied with the definition (see below) were considered. Some regularization schemes were not included due to the lack of significant or reliable information.

**Table 1: Regularization Programs Considered in this Study**

Country	Year /Period	Country	Year /Period
Argentina	1949	Italy	1986-1987
Argentina	1958	Italy	1990
Argentina	1964	Italy	1995
Argentina	1974	Italy	1998
Argentina	1984	Italy	2002
Argentina	2004	Netherlands	1964 <sup>e</sup>
Argentina	2004 <sup>a</sup>	Netherlands	1975
Australia	1973	Netherlands	1978
Australia	1976	Netherlands	1979 <sup>f</sup>
Australia	1980	Netherlands	1996 <sup>g</sup>
Belgium	1974	Portugal	1992-1993
Belgium	1995-1998	Portugal	1996
Belgium	2000	Portugal	2001
Costa Rica	1990	Rep. of Korea	2002
Costa Rica	1990-1994	Rep. of Korea	2004
Costa Rica	1998	Spain	1985-1986
France	1973	Spain	1991
France	1979	Spain	1994
France	1981-82	Spain	1996
France	1991	Spain	2000
France	1998	Spain	2001
France	1998 <sup>b</sup>	Spain	2001 <sup>h</sup>
Gabon	1985	Spain	2005 <sup>i</sup>
Gabon	1994	Spain	2005 <sup>i</sup>
Greece	1998 <sup>c</sup>	UK	1974
Greece	1998 <sup>d</sup>	UK	1977
Greece	2001	UK	1987
Hungary	2004	UK	1998
Italy	1982	UK	2004

**Table 1: Regularization ... (Continued)**

<b>Country</b>	<b>Year or Period</b>
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: Long-term 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 working paper which due to time and space constraints is only a very brief abstract of the findings.

The terms regularization program, regularization drive, amnesty and legalization are used similarly. They all refer to a process by which a country allows aliens in an irregular situation to obtain legal status in the country.<sup>3</sup> Typical prac-

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<sup>3</sup> In some cases, the applicant had to leave to obtain certain documents his/her consulate could not issue. There are also regularization programs that require the applicant to return to his/her country of origin or country of prior residence first. The programs that explicitly require the applicant to leave are not considered in this study. Furthermore, some countries, such as Malaysia in 2005, started so-called "amnesty" programs and encouraged undocumented migrants to leave the territory ahead of a deadline to avoid punishment but without the prospect of the right to return (BBC, 2005). Since these amnesties are not regularization programs as described above, they are disregarded in this study. Though many programs in less developed countries outside Europe and North America are considered for the first time in a survey, there are

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tices include the granting of a regularization (also known as legalization or amnesty) to aliens who have resided in the country in an irregular situation for a given length of time, fulfill certain requirements (such as employment and no criminal record)<sup>4</sup> and are not otherwise found inadmissible (IOM, 2004: 54).

This study focuses on large-scale regularization programs for undocumented foreigners<sup>5</sup> that are publicly announced by the government with the intention of responsively<sup>6</sup> legalizing the stay of as many eligible persons as possible.<sup>7</sup> Remarks about the limitations of data on undocumented migration<sup>8</sup> and suggestions to improve it<sup>9</sup> are common, so there is no need to present an extensive list here.

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certainly more regularization drives around the world than examined in this paper.

<sup>4</sup> No misdemeanors other than the one associated with the illegal status.

<sup>5</sup> There are cases of relatively rich retirees or dropouts of developed countries who live without permanent visa in less developed regions. One example are the US-American retirees in Baja California (Mexico). These cases – although they are, strictly speaking, undocumented migrants and sometimes even regularized in small numbers as well (for example in Costa Rica) – are not considered in this paper.

<sup>6</sup> Cyrus defines responsive regularization as programs that “offer a legal status to those persons that are already in an illegal status. Pro-active regularization [on the other hand] covers all instruments that enables an immigrant that would immigrate illegally to immigrate with a regular status” (Cyrus, 2005: 3).

<sup>7</sup> This restriction does not occur in any of the few studies dealing with regularization programs. It is nevertheless important because there are other regularization schemes for undocumented migrants, even in countries where the government seems to be particularly reluctant to authorize regularization, such as Japan and Germany. The EU enlargement had a de-facto-regularization program as well.

<sup>8</sup> See for example Reyneri, 2001.

<sup>9</sup> See for example Ehling, 2003: 17-32, for an overview on the development and procedures of harmonizing data in official statis-

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A country with undocumented migrants on its territory has basically four choices:<sup>10</sup>

1. to expel the clandestine migrants<sup>11</sup>
2. to regularize them
3. to disregard them (Boehning, 1983: 161)
4. to tolerate their presence.

Governments continue to consider regularization programs as a policy option despite negative outcomes and problems. One of the reasons is the apparent lack of alternatives and the concern over losing control over the labor market and a growing number of persons in their territory.<sup>12</sup> Backlogs of unresolved asylum cases can be cleared. In addition, a program can compensate for some of the negative outcomes of a former policy. Regularization is also used to clear the decks after the introduction of a new policy or a modification in a current policy. Since many democracies feel obliged to honor international protection conventions

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tics. See United Nations Secretariat, 1998, for recommendations on statistics of international migration.

<sup>10</sup> A common pattern is a combination of the four choices.

<sup>11</sup> This does not necessarily imply active eviction. There are also cases where a country tries to aggravate everyday life of undocumented migrants to such an extent that the clandestine migrants leave voluntarily (Boecker, 1995: 13). Hugo argues that the social cost of the distress caused by these measures have been vastly ignored in the debates (Source: Conversation with Prof. Graeme Hugo in the United Nations Headquarters, New York, USA, 7<sup>th</sup> of December 2005). On the other hand, a receiving country can also promote a voluntary return through move-back bonus plans, development cooperation and other means in the country of origin. But given the current welfare differences between the countries concerned, the latter strategy will take years to yield a result. In addition, it initially leads to more immigration in the middle-term since those emigrating are usually not the poorest of the poor.

<sup>12</sup> The introduction of a regularization program can at least *suggest* to the constituency that control has been regained and action has been taken.

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and human rights, deportation at any price is not an option. Lobby groups have an important influence.

Migrants who are legalized augment taxes, social welfare contributions and alleviate the age problem many developed countries have to face. Through regularizations, governments believe they are able to integrate migrants and better protect them from marginalization and exploitation. Access to medical facilities is both beneficial for the migrant and the society, because early treatment is cheaper and infectious diseases are contained. Humanitarian reasons like the protection of migrants from returning to hostile or destroyed regions are other reasons to start a regularization drive. At the same time, programs are conducted to try to help the countries of emigration.

A common feature for those countries that decided to conduct a regularization program is the repetition of these drives, the majority of them being introduced by new governments within a year after taking office.<sup>13</sup>

The survey shows that regularization programs have some features in common. Frequent eligibility requirements are the length of residence, proof of work and social welfare contributions, administrative fees, clean criminal record, and to a lesser degree age and citizenship.

Migrants interested in regularizing their status have to obey application periods. These terms range from three weeks (Belgium 2000) to 79 weeks (Argentina 1949). Analyzing the application periods of regularization programs considered in this study, one pattern is striking: the more persons eligible to apply, the shorter the designated application period of the program.

Those regularized are normally citizens of states geographically close or countries with historic migratory relations with the host state, including former colonies. Usually, the Ministry of the Interior supervises the regularization. In other cases, the Ministry of Labor is responsible. Sometimes

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<sup>13</sup> The median of the list compiling the time in years between general elections and the regularization program is roughly one year (refer to the complete study for details).

a combination of different authorities conducts the programs. On average, 69 per cent of the applicants are regularized, though there are significant differences in authorization rates of the programs considered in this study.

The documents issued to the successful applicants of the regularization are generally temporary residency permits with a validity of up to two years. Sometimes, work permits or the combination of the two are provided. Very seldom is the granting of permanent residency.

The highest estimates of the number of undocumented migrants are usually issued by non-governmental organizations and to a lesser extent by scholars. Low estimations are commonly published by governments.

Many scholars believe that regularization programs attract new immigrants willing to fill the gaps left by those regularized. Politicians are criticized by their constituencies for repeated regularizations. Further problems include the considerable administrative cost of implementing a regularization drive. Depending on the eligibility requirements, incentives are created for fraud, fraudulent testimonies and falsified documents, all of which jeopardize the accuracy necessary for the scientific use of data derived from applications.

Government change in the midst of the implementation period of a new regularization program can result in problems. The same happens if the bureaucracy responsible for the realization of the drive is reluctant. Local governments can also hamper and counter a regularization program introduced by the national decision makers. Important partners for a successful implementation of regularization are non-governmental organizations. But sometimes, these NGOs are as distrustful of the government as the migrants themselves.

On the other hand, migrants also have to solve problems when regularization is enacted. First of all, they have to be aware and informed about the existence of a program. A considerable number of eligible migrants might decide not to apply for a permit for a number of reasons: they cannot

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comply with the requirements, are distrustful of the government or prefer to maintain their competitiveness on the labor market rather than having a legal status. Others might conclude that an application is not worth the effort because they plan to leave soon.

Those who do decide to participate can have problems meeting the requirements. A particular obstacle is the high cost associated with applying. Fees, taxes and social welfare contributions have to be paid, often without the option of flexible payment schemes. Additional resources might be needed to obtain fraudulent documents, get advice or offer bribes. A further impediment is proving the presence in the host country prior to a particular date. Applicants might face problems getting documents from their embassies or countries of origin. Participating in a regularization can be denied and result in a subsequent deportation. Even if the status of the migrant is legalized, he or she might fall back into illegality once the temporary permission expires.

The undocumented flow of people has been by far the fastest rising single form of international migration during the past 10 years (OECD, 2000: 29-44/BPB, 2001/UNDESA, 1997: 27). It is becoming more difficult for governments to either ignore or tolerate undocumented migrants as their number grows and the consequences of their presence are far-reaching and concern all major policy areas. Expelling all undocumented migrants is impossible for most of the countries concerned because of ethical, practical and legal obstacles. The only option left is a pragmatic approach ranging from alleviation of the worst side effects, for example by means of medical treatment, to policies that in the end lead to regularization.

There are indications that large-scale regularization programs not only fail to register all clandestine persons, they sometimes even boost the numbers by attracting new undocumented migrants. One response to try to overcome some of these problems would be a deeper analysis of regularization programs and a further elaboration of the imple-

mentation approach. So called “earned regularization programs” could be such a way.

Migrants have to earn their status through a point system that accelerates or slows down the regularization process. The speed would be dependant on the accomplishment of certain criteria such as language skills, integration efforts and other standards. Another suggestion is to offer more legal possibilities for working migrants. More successful and sustainable development cooperation with the places of origin of migrants could reduce the economic incentives to leave in the long run.

A further sophistication of regularization programs and other measures as outlined here would cause additional costs from research necessary to design mature models and administrative expenses for the subsequent implementation – the latter likely to be higher than for “classic” regularization programs. And some of the problems mentioned earlier will probably remain unsolved, not to mention a number of new obstacles that may arise.

Taking into account this and the difficulty, if not impossibility, of controlling migration, it would not be too unlikely to imagine future governments deciding against the effort to dedicate a considerable amount of resources to immigration control and periodical regularization programs. A scenario of “migration without borders” might be conceivable in the remote future under certain circumstances such as welfare approximation, higher internal controls, desperate labor market needs and an ageing society in host countries.

In the beginning of this thought experiment, migrants would overflow a country with open borders. After a time, labor market mechanisms would cause this flow to decrease until a relatively stable relationship is reached. In the country of origin, incoming remittances and possible development would encourage more people to migrate in the first years. It is unclear, however, if the migrants would be willing to return to their country of origin and if the brain drain of the first years would hinder a sustainable development. Conclusions can be inferred to a certain extent from the in-

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ternal migration patterns from rural to urban areas within a country. These do not shed favorable light on the problem-free functioning of this model.

At first, a “migration without borders” scenario seems unthinkable. On the other hand, the European Union has already partly accomplished a “migration without borders” situation despite economic development differences between the member states. One might even argue that the immigration from Latin America to the United States comes close to a “migration without borders” situation due to the narrowly defined responsibility of the U.S. Border Patrol, understaffed law enforcement agencies dealing with undocumented migration and the lack of a fortification for most of the southwestern frontier between Mexico and the United States.

However, as long as unemployment in the developed world and above all the welfare differences between the countries concerned in this scenario remain considerable, the constituency in the democratic host countries is unlikely to accept a rush of immigrants from poorer countries. These impediments might change at some point in the remote future. Until then it is likely that regularization programs (in a broader sense than defined and examined in this paper) continue to be discussed as a policy option because of the lack of alternatives, the increase in undocumented migration, the reasons outlined earlier in this study and a perplexity that politicians are reluctant to admit – as we can witness currently in the United States.

Given the many obstacles associated with this policy tool one of the questions that persists is how the government decides to start a regularization drive. Successful migration management has to deal with several policy areas to be effective. Therefore, other policy areas have to be considered and their interdependency with the regularization program has to be analyzed.

In general, more research and especially more systematic evaluation of the migration policy tools is necessary. Due to time and space constraints, this paper examined only a select group of regularization drives. For a better insight, the defi-

inition of regularization must be broadened to include all policy measures that in the end lead to regularization rather than focusing only on obvious and direct forms of regularization.

One of the structural problems in migration research is the dominating supply-side perspective of analysis and policies. Many studies focus on the networks as the most important actor in undocumented migration. The perspective of the private sector has been largely neglected in the past, as well as the role of intermediaries, smugglers and a new presence: private military companies bidding for a multibillion-dollar contract to build what the U.S. administration calls a “virtual fence” at the U.S.-Mexico border (Lipton, 2006). A careful consideration of all involved is necessary. In addition, migration is often seen as a sole economic phenomenon which is not appropriate.

It also narrows the perspective to focus only on regularization drives in Northern America and Europe, as all prior studies have done. This study attempted the first steps towards a more global perspective on regularization programs.

### *Annex. Country Comparison Table*

For data comparison table, please contact the author:  
[www.sebastian-sunderhaus.de](http://www.sebastian-sunderhaus.de)

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