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Why Countries Continue to Consider Regularization

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Of all the schemes that countries have devised to manage undocumented immigration, perhaps none are as controversial as regularization programs. Also referred to as "amnesty," "normalization," or "legalization," few immigration policies inspire such fervent debate in the media, among lawmakers, and within civil society.

Detractors argue that such programs reward lawbreakers and encourage further unauthorized immigration; supporters point to their importance in increasing tax revenues, integrating migrants, regulating the underground economy, and "wiping the slate clean" for future immigration enforcement.

Whatever side of the controversy lawmakers and the public fall, regularization is a crucible for many of the debates surrounding illegal migration: labor, national security, border enforcement, access to social services, future immigration flows, citizenship, and national identity. Despite their volatile nature, however, over the past 25 years regularization programs have become more common as a tool for managing migration.

Defining Regularization

Regularization programs have been one response to the global growth of unauthorized immigration in recent years. In their broadest sense, regularization programs offer those migrants who are in a country without authorization the opportunity to legalize their status.

Irregular migrants, also referred to as "undocumented," "unauthorized," or "illegal," are defined by most states as those migrants who have either entered a country legally and then fallen out of legal status — such as students, temporary workers, rejected asylum seekers, or tourists — or those who have entered illegally, either by crossing a border undetected or with false documents. In either case, irregular migrants do not have a legal right to residence in the state to which they have migrated.

Most regularization programs fall into one of two categories: *de facto* or "one-shot" regularization programs. *e factoregularization* programs automatically grant permanent residency to migrants after they have lived in a country for a certain number of years, and are implemented on a rolling basis. For example, unauthorized migrants in the UK are eligible for permanent residency if they can prove they have been in the country for 14 continuous years.

These *de facto* programs are less common, though, than what are commonly referred to as "one-shot" regularizations, which target a finite number of migrants who have specific residency and work requirements; such programs also have deadlines for applications. Since 1980, the US and eight European Union (EU) countries have implemented 22 one-shot programs.

As seen from the table below, different countries have divergent ideas as to what constitutes "regularization," ranging from the bestowal of temporary legal residence to the

permanent right of residency in a country (see Table 1).

Country	Year of program	Number Applied	Number Regularized	Approval rate	Type of permit offered
France	1981-82	150,000	130,000	87%	Permanent residence
	1997-98	150,000	87,000	-	Permanent residence
Belgium	2000	50,000	Unknown	-	Long-term residence
Greece*	1998 - "White card"	370,000	370,000	100%	Six-month residence
	1998 - "Green card"	228,000	220,000	96%	One to five-year work and residence
	2001	368,000	228,000	62%	Two-year work and residence
Italy	1986	unknown	118,700	-	Temporary work permit
	1990	unknown	235,000	-	Two-year residence
	1995	256,000	238,000	93%	One or two-year residence
	1998	308,323	193,200	63%	Temporary work permit
	2002	700,000	634,728	91%	Temporary one-year permit
Luxembourg	2001	2,894	1,839	64%	Six-month residence permit to allow applicant to find employment, after which there is a possibility of longer-term residence permits
Portugal	1992-93	80,000	38,364	48%	Temporary residence
	1996	35,000	31,000	89%	Temporary residence
	2001	unknown	170,000	-	One-year residence permit, with possibility of renewing up to four times. After five years, applicant becomes eligible automatically for permanent residence.
Spain	1985	44,000	23,000	52%	One-year renewable residence and work permit
	1991	135,393	109,135	81%	Three-year residence
	1996	25,000	21,300	85%	Five-year residence
	2000	247,598	153,463	62%	One-year temporary residence/work
	2001	350,000	221,083	63%	One-year temporary residence
	2005	unknown	unknown	-	One-year renewable residence
United Kingdom	1998	unknown	200	-	One-year temporary work permit
United States	1986 - General legalization program	1.7 million	1.6 million	94%	Permanent legal residence
	Special Agricultural Workers	1.3 million	1.1 million	85%	Permanent legal residence

*Greece's "white card" provided a six-month residence permit, and was a prerequisite for obtaining a "green card," which provided a one- to five-year residence permit.

Source: Levinson (2005)

How and Who to Regularize

Regularization programs have risen in concert with the growth of unauthorized immigration; however, there is no consensus among states on the way to regularize migrants, and which migrants should be eligible.

Countries like the UK, France, and the Netherlands have steadily received immigrants from their former colonies over the past 50 years or so, and since the late 1980s and throughout the 1990s, they and other northern European nations such as Germany and Belgium have become primary destinations for asylum seekers fleeing the post-cold war political and economic turmoil in Africa and the former Soviet bloc.

Nonetheless, only the UK, France, Belgium, and Luxembourg have organized one-shot legalization programs in the past 10 years, the latter three only after large demonstrations by migrant groups protesting the treatment of *sans papiers* (unauthorized migrants) spurred their governments into action.

While the Northern European approach to legalizing migrants has been cautious, the Southern European countries of Greece, Italy, and Spain have been at the vanguard of one-shot regularization programs, which they have implemented once every few years. Over the past 15 years, these largely monocultural, traditionally migrant-exporting countries have experienced large influxes of migrants fleeing political and economic deterioration in their countries of origin. In Spain's case, migrants have increasingly come from the Latin American countries of Colombia, Peru, and Ecuador.

At the same time, the growing informal economies in these destination countries have fueled their need for foreign workers. Seemingly overnight, they have had to grapple with the economic, cultural, and social realities the newcomers posed. By 2001, Greece had a foreign population of over seven percent, compared with 1.6 percent in 1991. In Italy, the foreign population jumped from 0.6 percent in 1991 to 3.4 percent in 2004. With the media inflaming xenophobic attitudes and fears about job displacement and unemployment, these governments have marketed regularization as essential for reining in the informal economy and controlling the illegal employment of workers.

In the US, the slow but steady increase in the number of undocumented migrants since the 1960s — mostly from Mexico — intensified in the 1980s, when civil wars in Central America and economic crises throughout the rest of Latin America pushed large numbers of migrants northward.

The Immigration Reform and Control Act (IRCA) of 1986 sought to restrict this and other undocumented immigration through employer sanctions, increased appropriations for immigration enforcement, and a two-tier amnesty program that permanently legalized approximately 2.8 million undocumented immigrants in the United States. Legalization gained support primarily because the public and lawmakers believed it would be a one-time necessity that would stem the tide of undocumented workers.

States argue for these extraordinary measures based on a variety of social, economic, political, and/or informational reasons:

Social. One of the arguments made in favor of regularization programs is that they can improve the social conditions of migrants by reducing exploitative living and working situations to which they are subjected. Although countries rarely remedy abusive social conditions of migrants entirely on their own initiative, France, Luxembourg, Belgium, and

the UK each implemented one-shot regularization programs largely in response to massive protests or sustained pressure by migrant groups and a concerned public over the living and/or working conditions of irregular migrants.

Economic. When migrants are employed irregularly, whether in the black market or legitimate businesses, countries lose their ability to understand and regulate the labor market, and to collect social security and tax revenues. Thus, although regularization was a very unpopular idea in Greece, public opposition was outweighed by the country's need to control the estimated 16 to 20 percent of its population working in the informal economy.

Similar arguments have also been made in favor of the programs that were implemented in the United States, Italy, Spain, Portugal, and France. Small and large businesses are also at the forefront of immigrant legalization debates in the US, sometimes arguing that their very existence depends on foreign labor.

Political. A country may decide to regularize its migrants as a response to foreign policy goals, such as entering into trade or other agreements with another country. For example, as a prerequisite for joining the EU in 1986, Portugal agreed to try to manage its undocumented population by implementing a regularization program.

Informational. Regularization programs can yield valuable information about the demographics and labor market participation of migrants, which might theoretically assist countries in planning how to control future irregular migration. Information gleaned from the 1986 program in the US, for example, has been used to analyze everything from the education levels and job mobility of migrants to the likelihood that the program increased irregular migration.

One of the most controversial aspects of regularization programs is deciding who will be eligible. Programs rarely encompass all unauthorized migrants, preferring to legalize only certain categories of migrants in the case of humanitarian programs, or, more commonly, those who have been in the country and/or working for a certain length of time.

The first step is the setting of an initial date before which a migrant has to establish presence in a country. From there, countries usually add further requirements, such as proof of employment or a work contract, knowledge of the local language, employer sponsorship, verification of social security contributions, family ties with a citizen, or a clean criminal record.

Finally, application dates vary. Under IRCA, undocumented immigrants in the US had nearly a year to apply for legalization, while in EU countries the application period has ranged from three to nine months (see Table 2).

United States	
1986 Immigration Reform and Control Act (IRCA) and Amnesty provisions	<ul style="list-style-type: none"> • Continuous residence in country before Jan. 1, 1982.
1986 Special Agricultural Workers (SAW)	<ul style="list-style-type: none"> • Residence in the US and agricultural work for 90 days before May 1, 1986.
United Kingdom	
1998 Domestic Worker Regularisation Programme	<ul style="list-style-type: none"> • Continuous residence in country before Jan. 1, 1982.

1986 Special Agricultural Workers (SAW)	<ul style="list-style-type: none"> • Entrance before July 23, 1998 • Valid passport • current employment as domestic worker • proof of ability to support oneself
Greece	
1998: White Card	<ul style="list-style-type: none"> • Presence in Greece since Nov. 27, 1997.
Green Card (Presidential decrees 358/2997; 359/1997)	<ul style="list-style-type: none"> • White card. • Legal employment since Jan. 1, 1998; • Employment for 40 days at minimum wage with social security contribution.
2001 Regularization Program (L. no. 2910/2001)	<ul style="list-style-type: none"> • Proof of legal status or continuous residence in the country for one year.
Italy	
1986 Regularization Program	<ul style="list-style-type: none"> • Employer sponsor. • Presence in Italy prior to Jan. 27, 1987.
1990 Martelli Law and regularization program	<ul style="list-style-type: none"> • Workers and students present before Dec. 31, 1989.
1995 Government Decree	<ul style="list-style-type: none"> • Residence in Italy; • Employed during past six months or job offer from employer; • Have paid three months of social security.
1998 Immigration Act	<ul style="list-style-type: none"> • Presence in country prior to 27 March 1998; • Proof of housing; • Employers must pay taxes on wages.
2002 Bossi-Fini Law	<ul style="list-style-type: none"> • Proof of three months of pension contribution; • Proof of continued employment.
France	
1981-82 Ministerial Order followed by other orders and decrees	<ul style="list-style-type: none"> • Presence before Jan. 1, 1981. • Proof of stable employment or work contract - eventually expanded to include many other categories
1997-1998 Chevenement Laws and regularization program	<ul style="list-style-type: none"> • Continuous residence in France for seven years and real family ties; OR • Letter with employer's intention to hire, real family ties and five years residence in France.
Spain	
1985 Law on the Rights and Freedoms of Foreigners	<ul style="list-style-type: none"> • Presence in country before July 24, 1985; • Applicants must have job offer.

1991	<ul style="list-style-type: none"> • Residence and employment in Spain since May 15, 1991; • Asylum seekers whose applications had been rejected or were pending
1996 Royal Decree	<ul style="list-style-type: none"> • Employment in country since Jan. 1, 1996; OR • Have a working or residence permit issued after May 1996; OR • Be a member of the family of a migrant living in Spain before January 1996.
Immigration Law 2000	<ul style="list-style-type: none"> • Residence before June 1 1999; • Work permit or residence permit in previous three years; OR • Application for work or residence permit.
2001	<ul style="list-style-type: none"> • Presence in Spain before Jan. 23, 2001; • Proof of incorporation into the labor market, family ties with Spanish citizen or foreign residents, no charges pending.
2005 - Decree 2393/2004	<p>For employers:</p> <ul style="list-style-type: none"> • demonstrate that they are enrolled in and paying into Social Security • Proof that they have no history of breaking immigration laws in the previous 12 months, • Proof that they haven't been sanctioned for violating the rights of workers or immigrants. <p>For immigrants:</p> <ul style="list-style-type: none"> • proof of registration with a local municipality in Spain before Aug. 7, 2004 and presence in Spain at the time of application. • Proof of work contract. • No criminal record.
Portugal	
1992-1993	<ul style="list-style-type: none"> • Open to workers and non-workers who had been in the country prior to April 15, 1992.
1996	<ul style="list-style-type: none"> • Proof of involvement in professional activity; • Basic ability to speak Portuguese; • Housing; • Had not committed a crime.
Decree/Law 4/2001	<ul style="list-style-type: none"> • Presence in country; • Valid work permit.
Belgium	
"One-shot" regularization program of 2000	<ul style="list-style-type: none"> • Presence in Belgium prior to Oct. 1, 1999 and : • To have had an asylum application pending for a long time; OR • To not be able to return home for humanitarian reasons;

	<ul style="list-style-type: none"> • Serious illness; • To have lived in the country for six years.
Luxembourg	
"One-shot" regularization program of 2001	<ul style="list-style-type: none"> • Presence in country prior to July 1, 1998; OR • Working illegally prior to Jan. 1, 2000; OR • If refugees, had arrived before Jan. 1, 2000.

Source: Levinson (2005)

Arguments Against Regularization

Many politicians argue that regularizing immigrants is akin to rewarding criminal behavior, and will only increase the burden on public services, such as health care and education, and depress earnings in low-wage sectors of the economy.

However, the main argument against regularization programs is that they encourage further irregular migration. This issue is hotly contested, and most definitive studies on this topic have examined the experience of the US. Almost all show that the large-scale amnesty implemented in 1986 has not reduced, but rather increased, undocumented migration to the US, since it established new migration flows due to networks and family ties.

In Europe, political parties opposed to immigration have argued that regularization programs in Spain and Italy have attracted more undocumented immigration. But without reliable data, it is difficult to say the extent to which this has been the case.

Security concerns also factor considerably in the discussions surrounding regularization. Although Spain went ahead with its 2005 regularization program after the bombings in Madrid in March 2004, in the US and much of Europe, recent debate over regularization has focused heavily on the threat of terrorism.

Challenges

Behind the scenes of any regularization program is a complicated and politically charged set of debates and maneuverings that can lead a country to impose seemingly arbitrary or impossible requirements for applicants. Most programs face challenges in the planning and implementation stage, and the most common reasons for program failure or weakness include:

Reversion to undocumented status. Many regularization programs that only provide temporary work or residence permits have been criticized for the percentage of migrants who fall out of regular status once their permits expire. This creates an endogenous phenomenon of undocumented migration, a vicious cycle that may artificially inflate a country's number of irregular migrants and necessitate future regularization programs.

Almost 60 percent of applications for Spain's 1996 regularization program came from permit holders who had participated in a previous regularization program; Greece and Italy have also failed to define what to do with migrants after their permits expire.

Greece's 2001 regularization program sought to break this cycle by allowing migrants who had consecutively renewed their two-year residence permits over the course of 10 years to apply for permanent residence status. And in Portugal, migrants are eligible for permanent residence after renewing their initial one-year permit four times.

Lack of administrative preparedness. A state may not have the capacity to handle administrative needs that regularization programs create. Large numbers of applicants, combined with staffing shortages, led to backlogs, slow application processing, and, ultimately, weak or ineffective programs in the UK, Greece, Italy, Spain, and Belgium. This also partially explains why Portugal only regularized 38,000 migrants out of 80,000 applications during its regularization program of 1992. In many countries, requirements had to be changed or relaxed during a program.

Lack of publicity. Lack of publicity in migrant communities can mean a low turnout of applicants, as it did in some of Spain's, Italy's, Portugal's and the UK's regularization programs. Alternately, strong publicity and coordination with migrant organizations and media was critical to high turnouts of migrants in the 1981-1982 program in France.

Overly strict requirements and application fraud. Since many migrants work informally and without contracts, requiring proof of employment, long presence in the country, and even identification such as passports have been cited as reasons for program failure or delay in the UK's migrant domestic worker regularization program, as well as in Portugal in 1992-1993, Luxembourg in 2001, and in Greece.

The inability of migrants to meet the requirements of the programs has led to the falsification of applications in several programs. In the US, for example, some estimates put application fraud as high as 73 percent for all applications submitted under IRCA, which only covered undocumented migrants who had been living in the country prior to 1982. Similar application fraud has also been a problem in Italy, Greece, and Portugal, as has corruption of public officials, who reportedly sold illegitimate work permits to migrants with incomplete applications, or to those seeking to expedite the process.

The Impact of Regularization Programs

The explicit goal of some programs (such as those implemented in France, Greece, and Spain) has been to reduce the size of the underground economy. However, several studies have shown that regularization programs may actually increase informal employment.

This trend continues for several reasons, including the unwillingness of employers to pay higher wages for legalized workers; the high demand for irregular labor; and immigrant networks within the informal economy that make it easier to continue to obtain employment in that sector. The persistence of thriving underground economies, particularly in southern Europe, indicates they will not be eliminated so simply.

While well-organized and permanent regularization programs can have a positive impact on the wages, occupational mobility, and integration of migrants, poorly conceived and short-term programs can have little or no impact. The United States' 1986 legalization program improved the wages, job mobility, and labor market opportunities of legalized Mexican and Central American migrants, who became free to search for higher-paying jobs that more closely matched their skill levels.

Studies on Europe's experience with regularization have been less encouraging. According to the International Labor Organization (ILO), a third of migrant workers who obtained a regular job after Italy's 1996 regularization program lost it within a few months. Many migrants had "bought" proof of a job to obtain a permit, but either were unable to find regular work or preferred their informal job. Employers also reportedly fired workers when they applied for regularization, fearful that employees would be in a better bargaining position with respect to wages and working conditions.

In Spain, the ILO reported that its first regularization process in 1985 resulted in widespread discrimination and exploitation of the immigrant labor force as some employers fired workers who asked to be formally hired or continued to employ them irregularly once the regularization process was underway.

In France, where migrants were required to show proof of employment, wages and earnings of migrants did not appear to change substantially after the regularization of 1998, since many migrants kept the same jobs they had before the regularization process. Still, most regularization programs are too recent to reach definitive conclusions about their long-term demographic, economic, or labor impacts.

Conclusion

Although the sheer number of regularization programs gives the impression of a growing trend, in reality these programs are exceptional measures, undertaken only after much national soul-searching and lengthy, passionate debates among lawmakers, migrant organizations, and business interest groups.

Any generalizations made about the current round of regularization programs would have to distinguish between a Southern European model, which is mainly characterized by large-scale, frequent, and temporary legalization programs, and a French-American model of undertaking regularization programs very rarely, but, when they do so, tending to consider permanent residency for the unauthorized population.

The limits of any regularization program, whether in Europe, the US, or Asia, must be recognized. Temporary regularization programs do not provide long-term solutions to the needs of certain sectors of the economy, migrant worker exploitation, or unauthorized migration. Programs providing a path to permanent residency will always be criticized for rewarding those who broke the law, and they can suffer from a lack of administrative infrastructure and little or misdirected publicity.

Nevertheless, such programs can be a useful tool for migration management when used in concert with other policy tools, as well as an alternative to ideas such as the wholesale deportation of migrants or the complete sealing of borders. Therefore, regularization will continue to be an option for governments struggling with unauthorized migration.

This article is based on a report the author wrote for the Center on Migration, Policy and Society (COMPAS) at the University of Oxford. The full report is available at http://www.compas.ox.ac.uk/publications/Regularisation_programmes.shtml.

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