

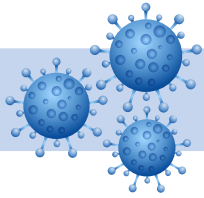
TIME FOR A RESET?

This paper is part of a series of short “think pieces” by IOM’s Migration Research High Level Advisers on the potential changes, impacts and implications for migration and mobility arising from COVID-19. Designed to spark thinking on policy and programmatic responses to COVID-19 as the impacts continue to emerge globally, the papers draw upon existing and new evidence and offer initial exploratory analysis and recommendations.

August 2020

COVID-19 and the transformation
of migration and mobility globally

COVID-19 and rethinking the need for legal pathways to mobility: Taking human security seriously



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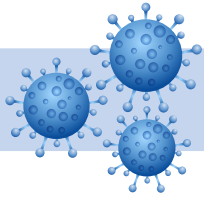
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COVID-19 and the transformation of migration and mobility globally

COVID-19 and rethinking the need for legal pathways to mobility: Taking human security seriously

Luisa Feline Freier¹

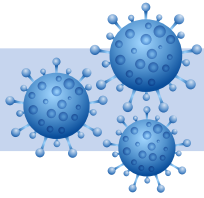
Introduction

The COVID-19 crisis has highlighted the importance of enabling safe, orderly and regular migration, both for migrants themselves and for receiving societies. Migrants with irregular or precarious legal status may be particularly vulnerable to contracting the disease, because their living or working conditions expose them to the virus without necessary protection. They may also fear contacting hospitals or other national authorities should they fall ill. Given the interdependence between all members of a community in terms of public health, policies that maintain immigrants in an irregular status represent a risk not only for migrants themselves, but for the broader public. In this paper we propose that a paradigm shift towards including public health considerations from a human security perspective is needed in the way we conceive the legal pathways to migration and migrant regularization.

While COVID-19-related travel restrictions remain in place, some countries have implemented restrictive immigration policies, limiting legal migration more broadly. Examples include various measures in countries such as the United States of America, Chile and South Africa, in the areas of immigration and asylum, as well as border security. In the United States, restrictive measures include halting naturalization ceremonies and the issuance of many green cards to those outside the country. A newly proposed regulation would further raise the standard of proof for asylum seekers and allow immigration judges to deny applications for protection without giving applicants the opportunity to testify in court.² Chile ruled that foreigners leaving the country on humanitarian flights had to sign an affidavit agreeing not to return to Chile for nine years, as well as renouncing the right to apply for residence or asylum in Chile (along with refugee status). In response, the

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² Kanno-Youngs and Haberman, 2020.



National Immigrant Coordinator filed an appeal with the Santiago Court of Appeals. The Court rescinded the order requiring people to sign this document, a judgement that was confirmed by the Chilean Supreme Court.³ South Africa, on the other hand, announced that it would build a 40 km fence on the border between South Africa and Zimbabwe to fight COVID-19 transmissions from Zimbabwe.⁴

The collateral effects of the COVID-19 crisis will probably lead to new forms of human mobility. Even with the most recent travel bans and immigration restrictions, borders – especially borders in the global South – remain porous. Amid these restrictions, desperate migrants have turned to smugglers and some have fallen into the hands of human traffickers.⁵ This has been observed in the case of Venezuelan return migration across South America. Similarly, evidence in the Niger suggests that smugglers are moving toward more clandestine and thus probably more dangerous routes.⁶

Why is regularization urgent?

Increased barriers to regular migration do not halt human mobility, especially in the case of forced migration. Strict entry requirements do not dissuade people from leaving their countries in emergency situations, when migrating is a matter of survival for themselves or their loved ones. In such contexts, strict migration measures push migrants towards irregularity, which in turn has a negative impact on both the rights of migrants and refugees themselves, as well as on receiving States. Migrants, on the one hand, become more vulnerable to the perils of unofficial crossings, including the possibility of falling victim to exploitative people-smugglers or human trafficking rings. States, on the other hand, miss registering the entry of migrants, along with essential information on them. Paradoxically, in an attempt to gain control over mobility across their borders, States may lose this control.

Even before the COVID-19 pandemic, there was a need to promote the expansion of legal migration channels and the implementation of regularization programmes for migrants who had crossed borders through unofficial points of entry, or whose visas had expired. The arguments that have been presented in the international debate in favour of providing legal pathways to migration have been threefold: first, the need to protect the rights and well-being of migrants; second, the need to honour international commitments in the field of migration and migrants' human rights; and third, States' self-interest in staying informed and "in control" of migrant populations.⁷

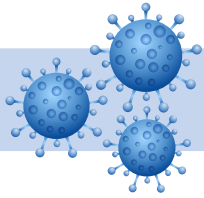
3 *La Tercera*, 2020.

4 Zanker and Moyo, 2020.

5 UNODC, 2020.

6 IOM, 2020a.

7 Freier, 2020a.



Additionally, the economic and social benefits of including regular migrants in the formal labour market have been highlighted by diverse authors and organizations. For instance, a joint report by the Organisation for Economic Co-operation and Development, the International Labour Organization, the World Bank and the International Monetary Fund identified effective labour market integration as a key factor in enhancing the benefits of migration to G20 States for both origin and destination countries, as well as for migrants themselves.⁸ Turning to countries in the Global South, the Migration Policy Institute warns about the negative effects of increased criminalization of irregular migrant workers in Thailand and argues in favour of pathways towards regular labour migration and greater freedom of movement in South-East Asia.⁹ Similarly, the World Bank stresses the need for sustainable regularization in light of the potential contribution of Venezuelan migrants to South American receiving economies.¹⁰

The health emergency generated by COVID-19 emphasizes that the provision of regular migration and regularization mechanisms is a vital need worldwide. Not only does the pandemic increase the perils of daily life for irregular migrants, but denying migrants legal pathways to mobility poses a global public health risk. Migrants who cross borders through unofficial points of entry are not registered and do not go through sanitary controls.

Here, it is important to point out that COVID-19 is not the only public health risk in the context of irregular migration, especially in the Global South. For instance, the Democratic Republic of the Congo is struggling with measles, Ebola and COVID-19 at the same time.¹¹ In South America, the Bolivarian Republic of Venezuela has long interrupted vaccination programmes and treatments for controllable diseases such as measles, malaria, diphtheria, tuberculosis and HIV/AIDS due to the collapse of its public health system.¹²

Most of the aforementioned diseases are communicable. Therefore, in a context of large-scale migration, health risks are stark for irregular migrants, many of whom travel by bus or on foot in large groups.¹³ Irregularity is also an obstacle for accessing services such as vaccines and information on diseases, which States and humanitarian organizations provide at official points of entry. For example, in Latin America, increasingly restrictive access policies have pushed Venezuelan migrants towards irregular border crossings, thus undermining the good practice of a regional vaccination passport.¹⁴

8 OECD et al., 2016.

9 Bylander and Reid, 2017.

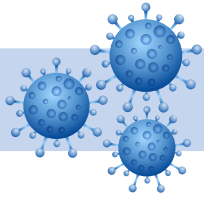
10 World Bank Group, 2019.

11 BBC News, 2020.

12 Freier, 2020b.

13 For an example of health risks on the border between the Bolivarian Republic of Venezuela and Colombia, see Freier, 2020b.

14 CIUP, 2019.



Once in the host country, life as an irregular migrant is precarious due to the lack of the documentation needed to access public services and formal employment. This adverse reality preceded the COVID-19 pandemic, but its negative effects are more visible in the current context. Importantly, irregular migrants often lack access to health-care services,¹⁵ with obstacles including the lack of proper documentation, discrimination and fear of being reported to the authorities due to their irregular status.¹⁶

Irregular migrants also tend to be employed in the informal sector, which results in low wages, violations of labour rights and, in some cases, living conditions that make it impossible for them to take the necessary hygiene measures to avoid becoming infected. Furthermore, irregular migrants are usually excluded from subsidies and other assistance programmes aimed at mitigating the economic impact of long-lasting lockdowns due to the COVID-19 pandemic.

Good practices

There are some positive examples of countries that have taken a creative approach to migrant regularization in the context of the COVID-19 pandemic, such as temporary regularization programmes:

- Over 20 countries have automatically extended the validity of temporary visas.¹⁷ France, the Russian Federation and the United Arab Emirates have extended or simplified extension procedures for visas in order to prevent irregularity.¹⁸ Most South American countries have also been flexible in relation to the expiration dates of visas and other residence permits to prevent irregularity in cases of tourists or other visitors who were left stranded due to restrictions in commercial flights.
- In Portugal, all foreigners with pending applications were granted permanent residency status from 30 March 2020 until at least 1 July. This policy aimed at ensuring that migrants have access to health care and other public services, as well as to welfare benefits granted by the government during lockdown.¹⁹
- The Italian Government decided on 13 May to temporarily regularize migrants working in the agricultural sector or as domestic workers in order to provide them access to health care and to protect them against labour exploitation.²⁰

15 Guadagno, 2020.

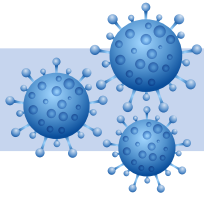
16 Vearey et al., 2020.

17 IOM, 2020a.

18 IOM, 2020b.

19 Reuters, 2020.

20 *Inquirer.net*, 2020.



- Argentina, Chile, France, Germany and Peru have taken measures to temporarily incorporate foreign professionals in their national health-care services.²¹

The problem with the practices discussed above is that they are temporary and selective, in that they consider only some economic sectors. From a public health perspective, regularization should cover all migrant workers, irrespective of the sector in which they are employed, and should not be limited in time. Indeed, some countries have implemented permanent flexibility with a view to regularization:

- The Spanish Government has relaxed the requirements for migrant regularization, particularly regarding the extension of residence permits and family reunification. A job contract will no longer be required for the extension of residence permits in the case of migrants who receive monetary assistance from the Government, and in all cases in which contracts ended after 1 March (due to the COVID-19 crisis). For the purpose of family reunification, the minimum required income has been lowered by 20 per cent.²²

Policy innovations

The COVID-19 crisis underscores the need for legal pathways to migration and regularization mechanisms from a public health perspective beyond the current pandemic. Profound migration policy reforms are needed to develop safe and legal entry routes, and to modify current requirements for regularization. Rather than short-term and sector-specific regularization programmes, States should implement sustainable regularization mechanisms. Furthermore, not only irregular, but precarious legal conditions for migrants and refugees also need to be avoided. For example, in Peru, fewer than 100,000 of the close to 500,000 asylum seekers have received an identification document.²³

Regularization **programmes** run for a limited period of time and target specific categories of non-nationals living in an unauthorized situation. By contrast, regularization **mechanisms** and **procedures** are enshrined in law without a time limit and in ways from which any non-national in an irregular situation may benefit.²⁴

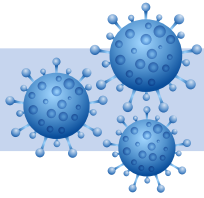
Such reforms should shift attention from trying to protect the national security of countries – understood as the defence of the citizens, economy and institutions of a country from a “foreign threat” – to a more general conception of human

21 Tres and Rodriguez Chatruc, 2020.

22 Villarino, 2020.

23 R4V, n.d.

24 Baldwin-Edwards and Kraller, 2009.



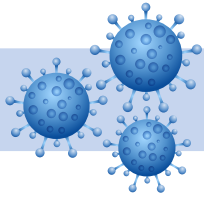
security, the protection and well-being of people. Pandemics cannot be defeated by closed borders, or by military, political or economic power. There is thus a need to reframe policies that maintain irregular migrants as a serious global public health vulnerability, and provide legal pathways to mobility and regularization mechanisms as a key instrument to fight and prevent pandemics.

Conclusion

The COVID-19 pandemic has highlighted the role of migrants in the workforce worldwide. Migrants contribute to host societies in the health-care sector and in agriculture, transport, and care work, among others. Perhaps the most symbolic case was that of the immigrant nurses Jenny McGee and Luis Pitarma, who cared for British Prime Minister Boris Johnson when he fell ill with the coronavirus. After he left hospital, his message of gratitude to them made headlines in the international press and was widely shared in social media. Beyond declarations, however, concrete policies are urgently needed to ensure that migrants across the world are adequately protected and have access to basic rights and regular status. As Marta Foresti, Director of the Overseas Development Institute Europe, wrote in a recent article for the Brookings Institution, we need “to turn gratitude into policy and practice change”; it is not only about “them” (the migrants), but about all of “us” (in the best interest of our States and societies).²⁵

In this policy paper we have outlined that, so far, legal pathways to migration and migration regularization have been promoted mostly in terms of economic and rights-based arguments. This framing urgently needs to be reconsidered in light of the COVID-19 global health crisis. Although counter-intuitive in the context of the pandemic, legal pathways to migration and regularization programmes are urgently needed worldwide, not only to protect the rights of migrants and refugees and facilitate their socioeconomic integration, but as a public health necessity. Human mobility cannot be prevented. Policy innovation is thus needed on the conceptual level to reach an understanding of the need for facilitating – instead of restricting – regular migration from a public health perspective, moving from a focus on national security towards human security.

²⁵ Foresti, 2020.



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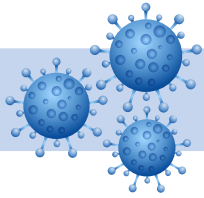
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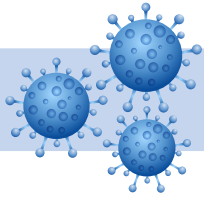
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