

## **GFMD 2020 UAE - Thematic Note on Theme 5: Discussing approaches to address irregular migration: what works? What doesn't?**

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Irregular migration is one of the most contentious migration-related issues in international relations. Discussing irregular migration often brings out the differences in what various states hope to achieve through cooperation on irregular migration; forming partnerships can be challenging when common objectives have not been established. Thus, it is important for countries of origin and destination to work toward understanding what each has at stake in a potential partnership and to find productive approaches to address this issue.

Irregular migration takes place through four major mechanisms: unauthorized entry, avoiding detection by authorities; overstay of legally obtained visas and/or violation of their terms and conditions; non-compliance with orders to depart after a failed attempt to claim asylum; or use of fraudulent documents.<sup>1</sup> In addition, children of irregular migrants born in countries that do not have birthright citizenship may be born into irregular status. Each of these means requires a different kind of response from states but each can lead to compulsory removal.

Basic data on irregular migration are scarce in many countries and are often disputed. The United Nations Department of Economic and Social Affairs does not categorize migrants by legal status. Collecting data on irregular migration is difficult. Migrants without legal status often try to avoid being identified in census tabulations, surveys and compilations of administrative data. People may slip in and out of legal status as their situations change (for example, if they lose a job to which their visa is tied), or laws or regulations in the country of destination may change. While credible estimates exist for certain countries and regions, they are not systematically collected, and are seldom comparable across areas.

*Return of irregular migrants is highly contentious.*

For most states receiving irregular migrants, return to the country of origin is the preferred outcome. This requires the cooperation of the country of origin and has frequently led to tensions between countries of origin and destination. Compulsory returns of irregular migrants have financial, humanitarian, security and development implications for countries of origin; and political, legal and sometimes economic implications for countries of destination. Partnerships should take into account the capacity of the country of origin to absorb returned migrants, the negative effects of lost remittances, the separation of families and the dangers deported migrants might face upon return, as well as migrants' length of stay and degree of integration in the destination (in the United States, for example, of about 11 million irregular migrants, 62 percent have lived in

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<sup>1</sup> A rarely used fifth mechanism, unacceptable under international law, is the exclusion by a government of a long-settled sub-set of its population from citizenship, labeling them as irregular migrants, as the Myanmar government has done with the Rohingya. This is sufficiently rare that it will not be discussed in this paper.

the US for 10 years or more). Countries of transit are often put in difficult situations, under pressure to accept the return of irregular migrants who are not their own nationals.

For many destination countries, return of migrants with no legal right to remain has become a high political priority, to the extent that development cooperation, trade relations and security cooperation with origin countries have been subordinated to cooperation on returns. The pressures put on both countries of origin and countries of transit to accept the return of irregular migrants are sometimes accompanied by incentives, such as the massive aid package included in the EU-Turkey agreement, or by disincentives such as the threat by the United States to cut trade links with Mexico in case of non-cooperation. It is imperative to find more productive approaches that can accommodate the priorities of both sets of states while offering better outcomes for migrants who lack authorization to remain but have lived otherwise lawfully and have built substantial equities in the country of destination. As with most problems, prevention—of unauthorized entry or situations in which migrants slide into irregular status—is better than cure.

#### *Commitments on irregular migration from the Global Compact for Migration*

The most comprehensive negotiated framework for cooperation on international migration, the Global Compact for Safe, Orderly and Regular Migration treats irregular migration as a necessary corollary of its central goal of achieving regular migration. Among the “shared responsibilities” recognized in the compact is this: “...we aim to facilitate safe, orderly and regular migration while reducing the incidence and negative effects of irregular migration through international cooperation...”. One of the guiding principles of the compact is that “Within their sovereign jurisdiction, states may distinguish between regular and irregular migration”, while they also pledge to “ensure effective respect, protection and fulfillment of the human rights of all migrants, regardless of their migration status...”. The specific commitments bearing on irregularity under the compact include:

- Ensure that “desperation and deteriorating environments do not compel them [migrants] to seek a livelihood elsewhere through irregular migration.” (Objective 2)
- “Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters or other precarious situations...while adaptation in or return to their country of origin is not possible”.... and to “cooperate to identify, develop, and strengthen solutions” for such migrants. (Objective 3, actions g and h).
- “Develop accessible and expedient procedure that facilitate transitions from one status to another... so as to prevent migrants from falling into irregular status in the country of destination” and “build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status... especially where cases of children, youth and families are involved...” (Objective 7, actions h and i)
- “Manage our borders in a coordinated manner, promoting bilateral and regional cooperation, ensuring security for States, communities and migrants, and facilitating safe and regular cross-border movements while preventing irregular migration,” and “review and revise relevant laws and regulations to determine whether sanctions are appropriate to address irregular entry or stay...” (Objective 11 and action f)
- “Ensure that cooperation between immigration authorities and service providers does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services.” (Objective 15, action b)
- “Ensure that the return of migrants who do not have the legal right to stay on another State’s territory is safe and dignified, follows an individual assessment, is carried out by competent authorities

through prompt and effective cooperation between countries of origin and destination, and allows all applicable legal remedies to be exhausted, in accordance with due process and other obligations under international human rights law.” (Objective 21, action e).

These commitments point the way toward potential partnerships among States to discuss ways of addressing irregular migration, particularly between countries of origin and destination—although disagreements also exist within these two groups as well as with countries of transit. The commitments that states agreed in the Global Compact frame cooperation in terms of reducing the underlying causes of irregular migration, applying national laws and regulations flexibly, seeking practical solutions for migrants in an irregular situation (including through adjustments of status) and cooperating at borders. Providing accurate and timely information to migrants about the legal pathways that are available and the dangers—and penalties—of irregular migration is also essential. A partnership approach that takes into account the interests of origin, destination and transit countries—and the motivations of migrants—is likely to be more durable and successful than those based on threats or on financial incentives (which may never reach the migrants affected).

### *Questions for discussion*

1. What actions or processes lead to a decline in irregular migration? What role does policy play?  
*For example, Mexicans, mostly men traveling alone, used to be the most common irregular entrants to the United States. By 2015, net migration from Mexico to the United States was negative and significant numbers of irregular Mexican migrants had returned to Mexico. What changed—in Mexico, the United States or both?*
  - a. In your experience, what are the major barriers that prevent a decline in irregular migration in your region?
  - b. How effective can policy be in addressing these barriers and which—if any—policies have been effective in reducing irregular migration in your region?
  - c. What initiatives, partnerships or approaches would you like to see develop to help reduce irregular migration? How easily could policy changes be implemented and what resources would be needed to bring them into effect?
2. What is the relationship between increased opportunities to migrate through regular channels and the prevalence of irregular migration?
  - a. Is there adequate data to draw conclusions about this? How big a challenge is data collection and analysis on the relationship between irregular and regular pathways? Have you seen specific effects of increases or reductions in pathways for regular entry for work, study and family reunification/formation on irregular migration?
  - b. How can countries of origin and destination work together to divert irregular migration into legal pathways?
3. What characteristics of national migration laws and practices encourage irregular migration? How can these be changed?  
*For example, asylum systems that are very slow to adjudicate claims may encourage irregular entry of people who do not have valid protection needs. Inability to return migrants who are found, after due process, to have no legal right to remain in a country may encourage unauthorized entry and stay. Unpublished or unclear immigration laws and regulations may result in irregular status for migrants who are not aware that they are not following the rules of entry and stay. Similarly, extremely cumbersome requirements for entry may lead both employers and migrants to*

*circumvent legal channels. Criminalization of irregular entry may simply drive it further underground.*

- a. What are the major constraints you see in developing a migration system that effectively discourages irregular migration while respecting the human rights of migrants and meeting humanitarian obligations?
  - b. Have you seen changes in law and/or practice in your country or region that have had an effect on the direction or magnitude of irregular migration?
  - c. Do you think it would be useful for countries to work together, and through international organizations, to develop templates of the elements of effective migration systems, along with cooperative initiatives to help governments put them into practice?
4. What kinds of actions to disrupt the business models of migrant smugglers have proven to be effective?

*Research suggests that opening legal pathways for migrants can reduce the need to use smugglers' services for irregular migration, if coupled with vigorous enforcement efforts. But without enforcement of new rules, new opportunities for legal entry may result in more irregular migration.*

- a. How difficult is it to understand how the smuggling industry works in your region and, in particular, how smugglers adapt to changes in law enforcement?
  - b. What have you learned from the experience in your own or in other countries about effective ways of addressing the roles of middlemen in irregular migration?
  - c. What needs to be done to make cooperation among origin, transit and destination countries more effective in suppressing the exploitation of smuggled migrants?
5. How do potential irregular migrants gain and assess information about routes, middlemen and prospects in the country of destination? What are their most (and least) trusted sources? How do they assess risks?
- a. Are information campaigns mounted by governments or International organizations effective in discouraging irregular migration? What are the challenges of providing accurate and believable information about migration processes and outcomes?
  - b. Is the testimony of "failed" migrants an effective deterrent to people who are thinking about making an unauthorized journey?
  - c. How can governments and regional bodies work with trusted sources of information in civil society (including migrant and diaspora organizations), faith-based communities and private employers to address irregular migration?