

How to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants

Background

Migration can bring positive and empowering experiences to migrants themselves, their families, and communities in countries of origin and destination. Yet, many undocumented migrants continue to struggle due to lack of regular migration status. Migrants in irregular situations live and work in critical circumstances and may be disproportionately subjected to discrimination, abuse, exploitation and marginalization. Undocumented migrant women may be more exposed to abuse and exploitative conducts or gender-based violence and harassment, or intersecting forms of discrimination. Irregular migration status associated with restrictive legislative and policy responses may drive migrants into situations of vulnerability, which equally reduce development benefits of migration for migrants themselves, their families and communities involved.

There are multi-layered factors in which migrants find themselves in irregular situations. Migrants may fall into irregularity when entering the country irregularly seeking protection or in search of safety and dignity; bureaucratic and lengthy asylum and/or immigration procedures may also lead to limbo situations; some migrants lose their regular status due to the change of employers and/or restrictive migration labor policies in place; in some cases, migrant victims of crime or abusive conduct may find themselves in irregular situations when fighting for justice. Regardless of the circumstances which led migrants into irregularity, the enjoyment of their rights to health, housing, decent work, access to justice, education, etc., is often negatively affected. The denial of migrants' rights is often closely linked to discriminatory laws and to the expression of prejudice in practice, including intolerance or xenophobia.

Undocumented migrants have human rights and many of them have international protection needs, including those who cannot return to their countries of origin for a wide range of reasons. Considering most migrants in irregular situations do not have access to social benefits, it is likely that a high proportion of them work in order to survive, and thus may be having a significant impact on the economy through their contribution to the labor market. Irregular migration is often a consequence of limited regular pathways through which to migrate for work, safety, family reunification, or inadequate information about other options. Policies that focus solely on returns may also risk generating cycles of repeated migration in more critical conditions.

The regularization of migrants in an irregular situation granting them a regular migration status to legalize their stay in the country, can be an effective measure to ensure the protection of the human rights of migrants in vulnerable situations, especially those who have experienced or encountered human rights violations and abuses in their home countries, or during the migration journey, namely in countries of transit and destination. Such implementation of regularization mechanisms may contribute both to human development and countries development.

Objectives

Pursuant to Human Rights Council Resolution 43/6, the Special Rapporteur on the human rights of migrants is mandated "to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation" (paragraph 1 (a), A/HRC/RES/43/6). In carrying out his mandate, the Special Rapporteur has decided to dedicate his forthcoming report to the 53rd session of the Human Rights Council to discuss how to expand and diversify regularization mechanisms and programs to enhance the protection the human rights of migrants in irregular situations. Throughout the report, the Special Rapporteur particularly wishes to:

- Highlight the experiences of migrants in irregular situations, including pre-migration vulnerabilities experienced in countries of origin compelling individuals to move and resort to irregular migration and new vulnerabilities developed in countries of transit and/or destination;
- Advance the understanding of the human rights challenges faced by migrants in an irregular situation by providing an analysis on how irregularity increases vulnerability to human rights violations;
- Discuss how to address situations of vulnerabilities of migrants due to lack of regular migration status through creating and strengthening regularization mechanisms;
- Identify promising practices at the national and regional levels regarding regularization of migrants in irregular situations, including programs and initiatives based on human rights, humanitarian, and other grounds. Such promising practices should also include pathways available to migrants already on the territory, as well as COVID-19 pandemic-related legislative and policy measures providing regular status to migrants in irregular situations;
- Provide recommendations on how to expand and diversify pathways to regular migration in order to prevent and address situations of vulnerability in migration. Such recommendations will therefore consider the human rights aspects relating to the availability and accessibility of pathways including stay procedures.

Key questions and types of input/comments sought

The Special Rapporteur welcomes inputs from Member States, inter-governmental organizations, UN entities, civil society organizations, national human rights institutions, academia, business representatives and other stakeholders, on any or all of the following issues, including case studies and specific examples of promising practices and current challenges:

1. Please indicate how can regularization processes facilitate the enjoyment of human rights by migrants as well as their cultural, social and economic integration into the host communities, taking into account that migrants in an irregular situation live in constant fear of detention or deportation, becoming excluded from the social protection system as a result of a change affecting the regularity of their residence in the country;
2. Please share examples of national and regional solutions to legalize the stay for migrants in irregular situations and indicate whether your country has adopted any bilateral, sub-regional, regional, international mechanisms, agreements, frameworks or programs, including in the context of labor migration;
3. Please share examples of promising practices, including ad-hoc programs and permanent regularization mechanisms that your country or region has adopted to promote a human rights-based approach to migration. Please indicate any specific challenges that your country has encountered in regularization processes, with particular attention on how such challenges affect migrant workers, women and girls, children, and other persons and groups;
4. Kindly highlight any contribution of migrants, including migrant workers to the economy and society of the host communities;
5. Engagement with civil society organizations, national human rights institutions, and other stakeholders: Please provide information of concrete initiatives, actions and programs relating to the regularization of migrants in an irregular situation that have been developed, including jointly, by civil society organizations, national human rights institutions, and other stakeholders

in your country. Please explain to what extent the work of civil society organizations and other stakeholders is taken into account to inform national policies;

6. Please provide information on any specific or additional legislative and policy measures as well as challenges in the context of the COVID-19 pandemic in the implementation of regularization programs;
7. Please include any other relevant information relating to the regularization of migrants in an irregular situation.

Responses to the questionnaire can be submitted in English, French or Spanish. Please send your inputs by email to hrc-sr-migrant@un.org by **15 February 2023**. Kindly indicate in the subject: “**Submission regularization report**”. Please limit your responses to a **maximum of 2,000 words**. Legislation, policies and other types of background materials can be attached as annexes to the submission. Please submit your responses in an accessible format, such as MS Word.

If not stated otherwise in your submission, the responses received will be published on the [website](#) of the Special Rapporteur. Unless requested otherwise, the submissions may also be quoted, in part or in full, or referenced in the report of the Special Rapporteur.

For any questions or clarifications, please do not hesitate to contact the Secretariat through the Office of the United Nations High Commissioner for Human Rights (hrc-sr-migrant@un.org).