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Irregular Migration and Global Justice

politically undesirable,
economically indispensable

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Executive summary

Most migration stakeholders clearly recognize that irregularity is undesirable and a continuous source of concern for many governments and the international community. The issue, which has barely been acknowledged, is that continuous demand for cheap labor in destination states is a catalyst for irregular migration, both stimulating and sustaining the phenomenon. It is within this complex and paradoxical context of undesirability and indispensability that policymakers and irregular migrants find themselves.

At a roundtable on the subject in December 2013, The Hague Institute convened a group of director-level officials from government, international organizations, and civil society to discuss the links between irregular migration and global justice. This policy brief draws extensively on the ideas generated during the discussions to provide policy recommendations to government officials and relevant NGOs as to what fair and effective irregular migration governance might entail in light of the complexity, and how a balance can be struck between national security concerns and respecting irregular migrants rights while taking into account the economic contributions these migrants bring. Throughout the brief, we use a global justice framework as a guide for developing a comprehensive approach to irregular migration.

After outlining the multifarious aspects of irregular migration, the brief proposes four concrete policy recommendations. The first reassesses the concept of irregular migration and how it can be adapted to promote comprehensive migration policies. The second addresses security concerns. The third and fourth discuss how stakeholders could use in-depth dialogues and partnerships in developing and adopting migration governance reforms. The recommendations are geared toward the needs of contemporary migration stakeholders as well as to the “usual suspects” of international migration governance.

The Economically Indispensable and Politically Undesirable

The ongoing tragedy on the shores of Lampedusa involving the drowning of an estimated twenty-five thousand migrants from Africa over the last twenty years¹ and increasing security threats stemming from terrorism and transnational organized crime are matters of daily concern and a source of controversy for migration stakeholders. The phenomenon of international migration creates a sense of urgency with policymakers, who are constantly struggling to address the global challenge and to develop adequate responses.² The 2011 World Population Policies report reveals that 75 percent of governments are concerned about irregular migration and believe that it leads to more problems than opportunities.³ These concerns—illegal border crossing undermining the rule of law, unfair labor competition, and so on—about irregular migration are valid, and government measures to contain it are often in line with the concerns. Nevertheless, the measures fall short in enabling migration stakeholders—countries of origin, transit and destination, migrants themselves, and the private sector—to optimally benefit from irregular migration. The inadequacy of these measures lies in the fact that they are usually solely linked to national security and hence focus on halting and sanctioning irregularity and on deporting migrants. Moreover, pull factors, including the demand for cheap labor and the indispensable contributions irregular migrants provide to destination country economies as well as to the global economy as a whole—are frequently overlooked. Altogether, this leads to unfair and ineffective governance of irregular migration. We recommend operationalizing a global justice framework for better balanced governance.

Irregularity in a nutshell

Irregular migration covers various forms of international movement of people, including international border crossing without legal

authorization, overstay of visas, and failure to leave a host state after a request for asylum is denied. In 2012, an estimated 5.5 million irregular migrants were present in the European Union (EU)⁴ and 11.7 million in the United States,⁵ approximately 1 percent and 3.5 percent of the respective total populations. Of the total flow of migrants to Asia and Latin America, about 30 to 40 percent takes place through irregular channels.⁶

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Concerns

For many governments, irregular migration is a security concern in that it undermines their ability to control their borders. This is particularly pressing in the context of terrorism and transnational organized crime. Additionally, fundamental public policy questions arise about who can claim public social services, particularly in advanced welfare states with well-established welfare systems aimed at promoting equal rights and opportunities for citizens and noncitizens.⁷ Moreover, irregular migrant workers often take jobs that pay far less than local minimum wage, which unfairly prevents regular workers from getting access to these jobs and contributes to overexploitation and abuse of the irregular workers.

Policy responses

Political opponents of irregular migration admonish governments to refrain from any act that might

encourage irregular migration. Over the last few decades in the United States, Australia, and some EU member states,⁸ governments have adopted policies criminalizing migrants without legal status and resorted to extreme physical border control measures to dissuade illegal entry. In January 2014, thousands of irregular migrants protested in Tel Aviv against an amendment of Israel’s Prevention of Infiltration Law, which allows irregular migrants to be subjected to detention for three years or more before deportation.⁹ This is but a tip of the iceberg of irregular migration policies across the globe.

The economy

The influence of existing labor demands on mobility is barely recognized in irregular migration governance. Compared with regular migrants, irregular immigrants contribute to divergent labor markets, in particular those in demand for scarce, inexpensive, or flexible labor, and operate in both formal and informal markets.¹⁰ The Council on Foreign Relations in the United States reports that irregular migrant labor accounts for 5 percent of the U.S. labor force, and that losing that labor supply is likely to have detrimental effects on the U.S. economy.¹¹ Irregular migration also contributes to the fiscal system.¹² The United States, for instance, has a system in place that allows irregular migrants to pay taxes. In other countries, irregular migrants pay direct taxes by using falsified labor documents—for example through “borrowed” Social Fiscal numbers—and indirect taxes such as the Value Added Tax (VAT).

Migration Policies and Human Rights

In governance, the human rights of irregular migrants are often overlooked. All persons—including migrants—are entitled to the rights to health, to education, to fair remuneration, to safe working conditions, and to freedom of association.¹³ Nonetheless, some migrant workers work long hours in substandard conditions for low wages.

Recent news reports reveal a flagrant example, the high level of abuse experienced by migrant workers in Qatar.¹⁴ States around the world tend to exclude irregular migrants from access to civil and labor rights and social benefits,¹⁵ thereby adopting a rhetoric that conflates immigrants and asylum seekers with criminals and terrorists.¹⁶ The conditions in most detention centers for irregular migrants are comparable to prison facilities.

The reality is that irregular migration cannot be halted as long as destination states continue to provide economic opportunities that allow for a life in the shadows.¹⁷ It is therefore important to adopt migration policies that ensure that all stakeholders optimally benefit from the phenomenon. We would like to advance an alternative for existing governance, that is, a comprehensive policy consistent with human rights policy.

A global justice framework

Although the link between migration and human rights or social justice is often made, the context of global justice is still to be explored. The point of departure of a global justice framework is the core principle of human dignity derived from philosophical, historical, and religious reasoning.¹⁸ Respect for dignity of all human beings is a prerequisite for human society¹⁹ and can be linked to different societies regardless of cultural differences, geographical locations, and governance levels. The global justice framework is also (in)directly endorsed in various human rights documents at both national and international levels. Frameworks that incorporate the principle of human dignity include, for example, Article 1 of the Universal Declaration of Human Rights and Article 1 of the Basic Law for the Federal Republic of Germany (*Grundgesetz*). Human dignity is the normative underpinning of a modern understanding of sovereignty and international legal order. Human rights, including those to shelter²⁰ and to nutrition, emerge from dignity as a global value.²¹

Ensuring the protection of the most vulnerable in the society is intrinsic to the concept of human dignity. Irregular migrant workers are part of that group, given their limited access to human rights instruments. The dilemma in irregular migration

governance arises from the tension between stakeholders' duties to respect and promote human rights of all persons, and existing migration policies that explicitly address legitimate or perceived migration-related grievances. Local authorities across the world struggle to enforce the right to shelter, for example, but fail to do so in fear that such a measure would set a precedent for irregular migration and hence contravene existing policies aimed at curbing irregular migration. In this instance, a global justice framework would help in addressing the various thorny legal and political issues, in part by incorporating consideration of fundamental human rights into policy.

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A global justice framework recognizes the need to respect the dignity of irregular migrants to enable them to attain a decent level of self-sufficiency in the absence of a nationally recognized legal status, and where the enforcement of local, national, regional, or international legal instruments is lacking. It provides

a new approach to migration governance by calling for the observance of existing legal obligations with strong emphasis on the moral imperative to respect every individual’s human dignity. This serves as a global common ground for cooperation and coordination, for example, between different regions, cities, businesses, and local authorities.

Fair and Effective Governance

A comprehensive migration policy, as proposed here, would address contemporary challenges associated with irregular migration. Through a global justice framework and in view of the benefits of irregular migration for the economy, policymakers can promote the protection of human rights of irregular migrants while addressing security and other domestic concerns. This policy brief offers the four most relevant recommendations essential for comprehensive migration governance, thereby moving away from traditional methods of migration governance in favor of fairer and more effective policies.

Reassessing the concept

A reassessment of the concept of irregular migration as part of the wider phenomenon of migration is recommended. An important starting point is to look at what makes a person “irregular.” This not only requires an understanding of the mindset of migrants and their motivations leading to the situation they are in, it also means looking at the demand side of their presence. We argue that the global justice framework could be used as a guide when taking this road. Simultaneously, a reassessment of current regular migration schemes is needed to improve their effectiveness. The emphasis should lie on better tailoring migration policies to the dynamic and fluctuating demand of labor, leading indirectly to fewer jobs to be filled by irregular migrants.

Addressing security concerns

Crimes associated with illegal border crossing, such as human trafficking and smuggling, pose

severe security threats and undermine the ability of the government to control the state’s borders. With regard to dealing with irregular migration as a whole, an important distinction is to be made between those who illegally cross a border and those who enter a border legally but later find themselves in an irregular position.²² Although illegal border crossing may very well be curtailed by large-scale and intensive border management, it will do little or nothing to address irregular migration in its most frequent manifestation, that is, persons who cross a border legally but later find themselves in an irregular position.²³ It is important for policymakers and the public alike to be aware of this distinction in implementing policies geared at addressing the various security threats. Such a distinction may provide opportunities to shift prevailing political discourse in a more constructive direction.

Fostering dialogue

Most public grievances about the impact of irregular migration are a result of a lack of objective information on the subject, including its implications for socioeconomic development in the receiving states. A comprehensive migration policy should promote regular multistakeholder dialogue as a forum for sharing ideas and obtaining information about the true impact of the phenomenon, for example, objective data on the contribution of the irregular migration workforce. The stakeholders referred to in this recommendation include representatives of irregular migrants such as trade unions for irregular migrant workers, civil society groups, citizens, and policymakers (both local and national).

Dialogues should have clearly defined goals from the outset. Participants must be willing to address the root causes of the grievances. Additionally, dialogues should aim at long-term solutions. Dialogues provide opportunities for stakeholders to recognize each other’s humanity. Humanizing irregular migrants—by referencing human dignity—is a way of alleviating certain emotional grievances citizens may have against irregular migrants. During dialogues, stakeholders should be encouraged to show mutual understanding, including empathy toward one another, and hence work toward achieving objective

and pragmatic outcomes based on a global justice framework. Introducing integration programs that accommodate the needs of both migrants and citizens could be a topic for a dialogue series. Because the typology of stakeholders may well vary according to the type of grievance under discussion, it is important to identify the right stakeholders and to create a tailor-made program for the dialogue. It is crucial to also understand that migration is an important part of today’s globalized world; hence solutions aimed at curtailing the negative impact should emphasize this and contribute to migration governance for the benefit of all.

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Promoting a comprehensive policy through partnerships

Virtually all nations and municipalities in the world deal with irregular migration in one form or another, but do so in different ways. Hence far more can be gained from further and more extensive collaboration at national and municipal levels. By creating a collaborative learning environment, nations can share experiences as they work toward the common

goal of a comprehensive migration policy. Such a policy can be created to suit the needs of each migration stakeholder, for instance, through intensive collaboration between local authorities from different countries facing similar migration challenges—such as security and socioeconomic issues—or between corporations. The structures of such platforms—small-scale, sufficient duration, and interactive setup—should promote intensive dialogue. A global justice framework can guide these consultations. Furthermore, bilateral and regional cooperation between nations leading to the adaptation of the rules concerning regularity can go a long way in reducing the phenomenon of irregular migration and in ensuring that the benefits of irregular migrants are well harnessed.²⁴

Concluding remarks

In December 2013, The Hague Institute organized a roundtable on international migration and global justice, during which the participants discussed the human rights of irregular migrants. The policymakers present voiced the need for policy recommendations that would help migration stakeholders move away from traditional methods of migration governance in favor of more fair and more effective policies. This brief outlines the parameters of a comprehensive migration governance policy based on a global justice framework.

We propose extending the application of the global justice framework to other relevant migration-related challenges. A next step would be to conduct research on contemporary and global matters in relation to migration governance. Themes for this research agenda should include

- revisiting the right to mobility through the lens of the global justice framework,
- the role of migrants' organizations in migration governance,
- the role of local authorities and cities across the globe in enforcing human rights protection for irregular migrants,
- the effectiveness of measures undertaken by destination countries to contain or reduce the number of immigrants,
- including migration in labor and economic development dialogues, and
- exploring the implications of EU migration policies and governance on the perceptions of citizens in EU member states about migrants.

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