

Irregular migration whilst complex is a common feature of modern day international migration. Ireland is no exception to this. The Migrant Rights Centre Ireland (MRCI) estimates that there are between 20,000 and 26,000 undocumented migrants living and working in Ireland today*. Following 15 years of inwards migration to Ireland undocumented migrants are now living here a significant length of time. Improvements in economic growth and the current examination of Ireland's protection system have created an opportune moment to proactively address this issue by implementing a regularisation scheme. A once off time-bound regularisation scheme offers a transparent, problem solving solution to an unsustainable situation. Regularisation is now commonly regarded as an effective policy instrument for the management of migration.

*See **Making Ireland Home; An Analysis of the current situation of undocumented migrants in Ireland**

Regularisations – an introduction

All developed countries face irregular migration issues partly as a consequence of a mismatch between labour market needs and immigration policies. Regularisation is one of several tools to address irregular migration and is a process used by governments to afford undocumented persons the opportunity to legalise their immigration status.

Regularisations are often portrayed as exceptional measures in immigration governance but as research indicates; most governments have implemented some form of a regularisation at different stages in their migration management. It has been estimated¹ that in the 12 years leading to 2008 almost six million people had been regularised by a range of

regularisation programmes and mechanisms; some 3.5 million in the European Union alone. Nearly all OECD countries have used a regularisation programme in the last half-century. Ireland has implemented a number of regularisation measures, including programmes such as the Irish Born Child scheme or mechanisms as the reactivation scheme². What various measures have in common is an attempt to transition migrants from an irregular status to a secure and legal one.

Regularisations and the European Union

Research shows that the implementation of regularisation programmes and mechanisms are a common feature among EU member states with motivation and type varying from country to country. Over the period 1996-2007, data from 42 regularisation programmes in the EU show a total of about 4.2million applicants in 17 countries, of which approximately 3 million were granted legal status³. In the 42 regularisation programmes identified by the EU Commission funded Regine study the number of applicants varied considerably between programmes ranging from 51 applicants in Lithuania in 1996 to over 700,000 in Italy in 2002. Presence in the territory, length of residence and lack of a criminal record stand out as the most important criterion used. Additionally employment and family ties are also frequently cited. In countries like Spain, Italy and Portugal regularisations are essentially incorporated as part of the labour migration governance, with an important role for employers and with preference of mechanisms over programmes and vice-versa shifting over time and in response to the political climate.

² This is a procedural safeguard dealing with people who fall out of the system through no fault of their own and was operational from Oct 1st 2014

³ International Centre for Migration Policy Development REGINE Regularisations in Europe Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU Ref. JLS/2007/05

¹ International Centre for Migration Policy Development

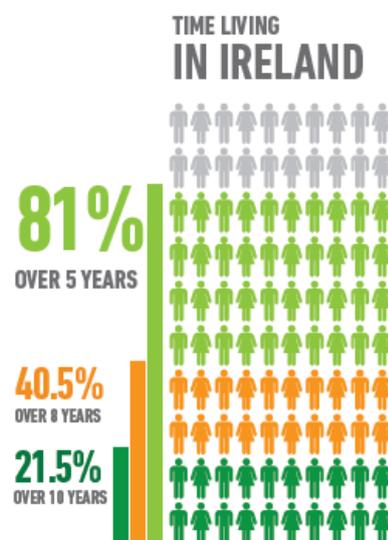
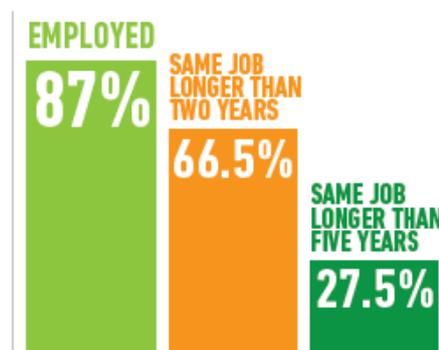
Countries like Germany, Sweden and the Netherlands have implemented both mechanisms and programmes driven by humanitarian considerations and acknowledgement of mismanagement of immigration policies over time. Finally, France and the United Kingdom have used regularisation for the purposes of labour migration governance and humanitarian considerations, often combining both elements. Given the size of the immigrant population in both countries they have been reluctant to introduce once-off large scale regularisation's and instead have given preference to introducing mechanisms that regularise a large amount of people over a period of time⁴.

International consideration - parallels with the undocumented Irish in the US

Findings of recent research carried out by the MRCI with over 500 undocumented migrants paint a very similar picture to that of the undocumented Irish living and working in the United States⁵. Similar to Irish emigrants living undocumented in the United States, undocumented men, women and children are now resident in Ireland long term; have put down roots and are making a valuable contribution to our communities and our economy. They have the same struggles, hopes and dreams as the undocumented Irish in the United States. They too would like to be able to return home to see their families and they too have experienced lonely bereavements and missed moments with loved ones.

The current Irish government has shown considerable leadership in advocating on behalf of the

undocumented Irish living and working in the United States; leadership that has spoken directly to the hearts and minds of both the Irish diaspora and the current administration in the United States. A forward thinking pragmatic concession for undocumented migrants here in Ireland would undoubtedly add credibility to and strengthen efforts by the Irish government to negotiate a regularisation for Irish citizens living undocumented in the United States.



⁴ In relation to The European Pact on Immigration and Asylum agreed on September 24th 2008 , practices within the EU do demonstrate that regularisation mechanisms and schemes can regularise large number of migrants and still be administered on a case by case basis at the discretion of immigration authorities. In conclusion there is no common position in the European Union in relation to regularisation; neither from the institutions nor from Member States. Rather there have been calls for transparency in terms of policy measures which may intentionally or not regularise migrants. Therefore regularisation programmes with defined criteria are generally preferred.

⁵ Making Ireland Home An analysis of the current situation of undocumented migrants in Ireland published in Dec 2014 by MRCI found that of 540 undocumented migrants surveyed 87% were in employment (of this 66.5% in the same job longer than 2 years), 81% were living in Ireland over 5 years (40.5% of this over 8 years, 1 in 5 over 10 years)

Regularisations as a necessary tool to 'manage' migration

Regularisation is not without its controversy or challenges but is nevertheless common practice. Proponents for regularisation highlight it as a pragmatic solution that increases community solidarity and reduces exploitation and abuse of migrants. Indications from the UK and other countries are that strengthening border controls is a limited tool for dealing comprehensively with irregular migration. Tougher in-country enforcement in the form of mass deportations has very real economic and social costs

and are in practice impossible to implement. In this vein regularisations are increasingly viewed by countries within the EU and internationally as a necessary tool to manage migration; a perceived form of allowing irregular migrants an opportunity to 'start again'.

Regularisations are also increasingly seen as tools to achieve wider policy objectives; rectifying inconsistencies in migration policy and in the labour market and actively combating social exclusion. The motivations behind implementing regularisation measures are generally categorised as either (a) responding to humanitarian needs (non-refoulement issues, undocumented children in school, medical conditions) or (b) regulatory in nature (backlog in asylum application, shortages in the labour market, large stock of irregular migrants). In reality they often respond to both.

Regularisation mechanisms and programmes are tools to keep pace with the changing nature of migration and the labour market, inform Government of all persons residing in the State and respond to security and wellbeing concerns. Finally it offers a humanitarian approach to the phenomenon of irregular migration and those most vulnerable: children and other long-standing migrants who would be uprooted were they made to return to the home country.

Introducing a regularisation scheme in Ireland; recommendation and rationale

Ireland; the current context and opportunity

The Ireland of 2015 is a diverse multi-ethnic society which has benefited enormously from the contribution made by migrants to our communities and the economy. Over the past decade and a half, Ireland's period of inward migration occurred in the absence of a coherent legal framework which has contributed significantly to the emergence of irregular migration.

The improved economic situation and current examination of Ireland's protection system combine to create a timely opportunity to pragmatically deal with this issue and recognise the contribution being

made by migrants who have put down roots in Ireland. It is worth noting that the majority of undocumented migrants have entered the country legally and have been working and living here for many years⁶. To date, little has been done to respond to the situation of undocumented migrants. Given the stage Ireland is at in its migration history and lessons learned from the challenge of integrating Third Country National migrants in other European countries it would be prudent to respond to the situation of undocumented migrants here as well as demonstrating responsible leadership.

Regularisation precedent in Ireland

There has never been an official 'amnesty' or regularisation in Ireland. However, similar to our neighbours in the United Kingdom, there have been discrete and timely attempts to clear backlogs which have had the same effect. Over the past decade, the state has implemented two schemes aimed at clearing backlogs; the 2005 Irish Born Scheme and the Undocumented Workers Scheme 2009.

The Irish Naturalisation and Immigration Service (INIS) have also administered preventative measures to stop migrants falling into irregularity, such as the Student Probationary Scheme. These policies and procedures have provided necessary and timely tools to address some of the collateral damage produced by an immigration system that evolved in an ad-hoc fashion, at a very quick pace.

Regularisation recommendation

At this point in time and in consideration of the numbers of undocumented migrants now settled in Ireland MRCI is of the opinion that this situation can best be addressed through the introduction of policy measures allowing for the administration of a once off, time bound regularisation scheme or programme.

Broad based schemes with a low barrier in terms of application, offer the advantage of bringing the largest portion of the undocumented population back into the managed migration system. Such a scheme would give undocumented migrants a window of opportunity to come forward, enter a bona fide

⁶ MRCI 2015 Making Ireland Home; An analysis of the current situation of undocumented migrants in Ireland

process with the state, which having satisfied essential criteria could result in regularisation of a person's immigration status. This could be implemented in tandem with other solutions for those living in Direct Provision and non-returnable people. A scheme such as this can be introduced as part of a policy package and does not require legislation. It is envisaged as a broad based ex gratia, time bound scheme with exclusions at the outset and a probationary period to allow sufficient time to administer scheme. (Child scheme 2005, Student Probationary Scheme 2014). Lessons will have been learned which will be valuable in terms of the implementation process of this regularisation scheme. Realistic administration time frames and adequate staffing levels (particularly during registration) are clearly critically important.

Criteria for entry to Regularisation Scheme

The scheme's conditions would apply to all categories of undocumented people allowing for a long-term, comprehensive, cost-effective and efficient response. The proposed regularisation would be a once-off, time-bound scheme designed around **three essential criteria**:

1. Length of time in the state

Persons resident in Ireland for 4 years would be eligible to register for the scheme (3 years with children). A 2-year probationary period would apply.

2. Criminal bar

Similar to other programmes, this scheme would exclude all persons with a serious criminal conviction.⁷

3. Probationary period.

Undocumented people have a window of time to register for the scheme and pay a fee. They are temporarily regularised and enter a 2-year probationary period (much like the recently administered 2004 Student Probationary Extension Scheme). This gives the Department an opportunity to administer the scheme. During the probationary period applicants are:

- Issued with a temporary status/visa
- Have the right to work without a work permit
- Have the right to travel (to a maximum of three months of the year)

⁷ This can be defined as an offence punishable by a maximum term of imprisonment greater than 5 years or a custodial sentence of 12 months or more.

On exiting the scheme, the person is granted residency and can earn their way to citizenship.

Addressing Common Concerns

Pull factor

The most frequent counter-argument against regularisations is that they create an 'incentive' – a "magnet" for more workers to immigrate irregularly. Evidence for the "magnet" effect comes mainly from the United States and includes surges in border interdictions when legalization programmes are believed to be coming. Irregular migration in this regard is occurring in a vastly different climate and context.

Apart from this there is no evidence that regularisation programmes or mechanism's act as a significant 'pull' factor for future migrants. Evidence indicates that it is labour demand and the structure of the labour market that determines flows of irregular migration.

Comprehensive studies such as REGINE⁸ have demonstrated the overall positive impact of regularisation programmes in Europe with small but permanent reductions in irregular residence and employment and little evidence to support claims of increased irregular migration flows in any direction. It suggests that inflexible or poorly designed migration policy contributed more to the presence of irregular migrants than the implementation of regularisation tools. The European Union's shared border management practices coupled with Ireland's recent policies in migration management act as deterrents for irregular crossing and as a disincentive to over stayers; this is seen in the marginal numbers of recently-arrived irregular migrants who approached MRCI's service.

Costs to the economy

Economic imperative

There is in fact a strong economic imperative for the introduction of a regularisation.

⁸ International Centre For Migration Policy Development Regularisations in Europe Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU

1. The high cost of pursuing a full scale expulsion policy. One study in the UK costed a full scale expulsion policy at £4.7 billion which was 20 times the resources allocated to removals at that time.⁹ The Costs to enforce returns are far higher than the potential gain of granting access to the labour market to regularised migrants. In 2012 the Department of Justice and Equality estimated that the average cost of deporting one person (in terms of flight costs alone) was €3782.53¹⁰. Full scale deportation of undocumented migrants could therefore cost the state over €75 million¹¹.
2. Opportunity cost of lost tax revenues. Tax revenues accruing from regularising workers are estimated to be of significant worth to the Irish exchequer every year, depending on immigrant earnings. The scheme through direct taxation could generate an annual income in excess of 7.5 million. Income brought in through employer PRSI contributions could generate 20 million per year.
3. The unfair competitive advantage which the current system gives to exploitative employers who systematically hire undocumented workers. The resulting 'race to the bottom' as businesses try to compete by employing 'illegal' labour, further expands the underground economy and reduces tax revenues the exchequer badly needs.

Displacement of workers

From a detailed review of international literature there is no comprehensive research to indicate that displacement of native born workers occurs as a result of introducing regularisation mechanisms and schemes. On the contrary bringing irregular migrants into formal employment could help diminish the grey economy strengthening the position of both Irish and migrant workers in accessing employment rights and

⁹ Centre Forum Earned Amnesty: bringing illegal workers out of the shadows Demetrios G. Papademetriou, Will Sommerville

¹⁰ Data derived from a Parliamentary Question put forward by Deputy Catherine Murphy to Minister for Justice and Equality June 2012

¹¹ Average cost multiplied by estimate of 20,000 people

Additional Benefits of the Scheme

✓ Income from the Scheme

In total this scheme has the potential to generate 185 million over five years. This offsets any resource implications for the introduction of such a scheme and contributes significantly to the tax purse.

✓ Enhance Security

A regularisation programme such as this enables the Government to quantify its undocumented population which allows for greater security within the state. It also deals with rather than regards 'illegality'.

✓ Keep in step with International practice

Ireland is out of step with many of its EU partners in not recognising that regularisation policies are a necessary part of managing migration. It also adds credibility to efforts by the Irish Government to agree a regularisation for Irish citizens living undocumented in the United States.

✓ Good for communities and social cohesion

It is difficult to underestimate the impact of a regularisation scheme in aiding social cohesion and addressing barriers to integration.

✓ Humanitarian

A scheme such as this provides a humanitarian response for undocumented individuals, families and children to escape the constant fear, stress, poverty and isolation associated with living undocumented.

✓ Workers' Rights and employment standards

A migrant working irregularly in Ireland has no legal contract of employment and therefore no enforceable employment rights. The Fundamental Rights Agency (FRA) along with other EU institutions have recognised the vulnerability of undocumented migrants to severe forms of labour migration. Bringing irregular migrants into formal employment could help to roll back the grey economy, potentially strengthening the position of migrant and Irish workers in accessing employment rights and improving working conditions in the low paid sector. Trade unions, employers and other agencies could help to secure this long-term benefit by making sure that statutory employment rights apply across such sectors (please see note above regarding enforcement campaign).

improving conditions in low pay sectors. Irregular migrants are often over represented in low wage precarious work on the margins of the labour force. A major potential gain from regularisation could be the opportunity to make much better use of migrants talents, through higher rates of employment and transfer from poor and-or informal jobs to formalised employment.

Access to services

There are no grounds for claims that regularising migrants would generate unsustainable costs to Irish taxpayers. It is more likely that any net increase in costs to public services or benefits would be largely offset, and possibly even outweighed, by increased revenue from income tax and contributions regularised migrants would make. Keeping large numbers of people outside the system and cut off from public services is in itself creating hidden costs in modern society in particular in relation to long term health implications. Also the Habitual Residence Condition in Ireland ensures there are checks and balances in the current system.

The immediate effects of regularisation on the housing market are likely to be very limited because relevant households are already living in the country and any changes in demand will come from changes in incomes, rather than as a consequence of status. Simply being regularised will not make migrant households eligible for housing benefit or social

housing. The same can be said in relation to access to education. Currently access to free fees at third level requires citizenship and education at national and secondary level is free.

Public opinion

According to the Migration Policy Institute public attitudes to legislation or regularisation are not built on real world experience of immigration, are not evidence based and government competence is critical to building trust. For policy makers in the eyes of the public, delivery matters; setting realistic expectations about what can reasonable be achieved and delivering on it. Messaging is clearly important. Voters are conflicted on migration and will respond to

measured and reasonable debate if such an approach is fair, pragmatic and rooted in commonly-held values.

The Irish public would for example be relieved to know that regularisation makes us safer; by reducing the number of unknown residents in the country, regularisation allows the state to focus their resources and energies on those residents who pose a real threat. And the Irish public would be agreement that the exploitation of vulnerable undocumented migrant workers is unacceptable. It is also worth mentioning that MRCI's regularisation proposal has been endorsed by over 40 organisations across civil society and the business sector and as a motion has been passed by a number of city and county councils.

Conclusion

To conclude the current government is being presented with an unprecedented opportunity to show leadership in the area of managed migration and immigration reform. And to respond responsibly and fairly to the untenable situation of undocumented migrants who having made a valuable contribution to Ireland are living in the shadows. Ireland's entire period of inwards migration over the past fifteen years has taken place in the absence of the necessary legislative framework. This has been a significant contributing factor to the emergence of irregular migration in Ireland unlikely to occur again.

The improved economic outlook and significant length of time undocumented migrants have now lived in Ireland make this an opportune time to bring about a comprehensive solution. A once off time bound regularisation scheme does not require the introduction of primary legislation and can be administered by on a case by case basis by the Irish Naturalisation and Immigration Services. Introducing a regularisation scheme in the lifetime of this government is the responsible, pragmatic and right thing to do about a situation that will clearly not resolve itself.

