

Contributions by the Center for Legal and Social Studies (CELS – Argentina)¹ to the Secretary-General’s Report on the Global Compact for Migration requested by the Office of the Special Representative of the Secretary-General for International Migration (SRSG)

Migratory regularization as a mechanism for the guarantee and exercise of rights

From our experience on the ground assisting and advising migrants who have already reached their destination country, we can confirm that when access to local documentation – or migratory regularization – is at the core of immigration policy, its impact on the effective exercise of rights is enormous. Indeed, there is evidence that having local documentation becomes **a significant instrument, in both a symbolic and material sense**, when it comes to empowering and integrating the migrant population. Migratory regularization also has repercussions on many of the daily **dimensions of life**, such as renting a home, having a formal job, enrolling children in school, receiving health care, opening a bank account or access to justice.

Therefore, we believe that guaranteeing access to regularization is one way to lend operability to the 2030 Sustainable Development Goals, which include access to quality education, health, decent work and the reduction of inequalities, among others. **Although we recognize that rights are held independently of migration status, we believe including access to documentation that enables migratory regularization is necessary for the full and effective exercise of all rights.**

In order to achieve this, State practices regarding the procedures to attain documentation must be established with clear, accessible and affordable mechanisms, and should promote **migratory regularization as a State obligation to guarantee rights**. In other words, migratory regularization should be the State’s first line of response to irregular migration status. This obligation should not be considered exclusive of more flexible mechanisms that have already been established by States for accessing rights; for instance, the use of ID from the country of origin to gain access to health, education and housing services, among others.

The procedures for regularization and deportation are usually linked. For this reason, there must be guarantee of **due process**, especially with regard to free and specialized legal advisor and the guarantee of reasonable timeframes for migrants to be able to clarify their status. Likewise, **human rights-based criteria for regularization** must be established, such as family unity, humanitarian reasons, work – formal or informal – and roots in the country. In addition, any administrative decisions involving detention, deportation or rejection at the border must undergo **review by a judicial body** in order to the rights at stake to be analyzed.

Today there are national and local policies that show that this is an attainable goal. Some laws in Latin America have incorporated regularization as a pillar of their migration policies. The experiences in Argentina and Brazil, for instance, reflect this change of paradigm. Other legislative changes in the region suggest development in the same direction, such as the cases of Bolivia, Ecuador, Peru and Guatemala. To these we can also add the regularization trend among the member countries of MERCOSUR (Southern Common Market).

¹ CELS is an organization that has worked for the promotion and protection of human rights since 1979. Its broad agenda has included the defense of human rights of migrant persons over the past decades. This work is done through strategic litigation, investigation and advocacy in public policy in Argentina and in international and regional human rights organizations (the Inter-American Commission on Human Rights, Treaty Bodies, Special Procedures, etc.). Since 2002, CELS, CAREF and the University of Buenos Aires (UBA) Law School have had an Immigrant and Refugee Rights Clinic, which provides legal advice and sponsors an average 300 cases per year for migrant and/or refugee persons. At the same time, we have jointly participated in the reform process of Argentina’s Migration Law (Law 25.871 of 2003) and in the creation of its regulatory decree, passed in 2010, which ushered in a new human rights-based migration paradigm in the country. CELS has participated, among other regional and international processes, as a contributor to the Recommended Principles and Guidelines on Human Rights at International Borders set by the United Nations High Commissioner for Human Rights.

The Argentine experience, and Brazil's new law on regularization

Argentina was one of the first countries to recognize migratory regularization as a State obligation and right of migrant persons.

“The State shall provide what is conducive to the adoption and implementation of measures aimed at regularizing the migratory status of foreigners” (Argentina, Law 25.871² of 2003, art. 17)

The regulatory decree for the Argentine law specified even further the legal obligations of migration authorities to adopt measures aimed at the regularization of the migration status of migrant persons. This law establishes that, in order to regularize the migration status of foreigners, the National Migration Office shall be empowered to (Argentina, Regulatory Decree No. 616 of 2010, art. 17):

- **Enact provisions that simplify or expedite the respective administrative procedures;**
- Enter into agreements and collaborate with public or private organizations;
- Develop and implement programs in areas of the country that require special treatment;
- Enter into agreements with foreign authorities residing in the Argentine Republic for the purpose of expediting and fostering the attainment of documentation from those countries;
- Set criteria for waiving the payment of migration fees in cases of poverty or when justifiable due to humanitarian reasons).

Law 25.871 also modified the specific, mandatory procedure for determining the migration status of migrants in Argentina and established that migratory regularization must be the first response from the State in the case of irregular status. In this sense, the migration law establishes that, when a migrant person is found to have irregular status in the country, and in view of that person's professional circumstances, family relationship to Argentine nationals, accredited time spent in the country and other personal and social circumstances, **the National Migration Office shall compel said person to regularize his or her status within a set timeframe (Argentina, Law 25.871 of 2003, art. 17).**

Furthermore, in the past 13 years of full force of the new migration law, Argentina put in motion a series of policies aimed at regularizing migrant persons. Initial momentum came from the National Migratory Documentation Normalization Program, which helped not only MERCOSUR citizens but also migrants from outside of the region. Later, the Patria Grande program was created, which aided in rectifying some of the difficulties involved in immigration procedures faced by migrant persons from throughout the South American region, who represented quantitatively the largest migration group to the country and faced serious problems when it came to regularization.

The efficacy of these programs was broadly criticized, which prompted the design of more comprehensive policies, such as the territorial approach programs developed in 2011, and the attempts to eliminate bureaucratic obstacles, for instance, through flexibilization of proof of domicile. **The official figures between 2004 and the first half of 2015 indicate that a total of 2,158,601 residency applications were resolved in the country. Of those procedures, 86.7% happened between 2008 and 2015.**

² See Law 25.871 in its previous version, prior to the modification of Jan. 30, 2017 http://www.migraciones.gov.ar/pdf_varios/campana_grafica/pdf/Libro_Ley_25.871.pdf

Similar mechanisms were developed under Brazil's new Migration Law, passed in 2017 (Law 13.445/2017).³ The law seeks to de-bureacratize regularization procedures, guarantee due process and expand the criteria for regularization. Based on this reform, residence could be granted to persons that demonstrate, among other things (Brazil, Law 13.445/2017, art. 30):

- Involvement in academic activities
- The need for health treatment
- Humanitarian reasons
- For study-related reasons
- Having a job or job offer
- Family reunification
- Being an unaccompanied child or adolescent
- Statelessness or having been the victim of human trafficking

Furthermore, the Brazilian law guarantees adversarial procedure and broad defense throughout the entire regularization procedure (art. 30, para. 3) and the possibility of authorizing residence regardless of migration status:

"Authorization of residence may be granted regardless of migration status." (Brazil, Law 13.445 of 2017, art. 31, para. 5)

At the same time, before initiating a deportation procedure, the migrant must be granted a timeframe in which to regularize his or her migration status (art. 50).

Studies that show the positive consequences of regularization mechanisms on the guarantee of human rights: the case of Argentina

The impact of regularization on registered work:

According to the **International Labour Organization (ILO) report on labor migration in Argentina** (2015: 58),⁴ although informal labor among immigrant workers has been verified at 67.4%, "as of 2003, a process was generated whereby an unprecedented number of registered jobs were created unlike anything in the country's recent history. This allowed a significant incorporation of both Argentines as well as immigrant workers into the formal economy. Indeed, between 2002 and 2004, **the number of immigrant workers with registered jobs in the private sector increased by 123%**, while formal employment grew among Argentines by 81%. The difference is noted mainly as of 2007, when the rise in foreign workers with formal employment accelerated. **This phenomenon could be linked to the implementation of the Patria Grande Program a year early**, which allowed for the regularization of migration status of hundreds of thousands of foreigners and **provided the necessary legal conditions for them to gain access to formal employment.**"

As evidence of the ILO study, the process of migratory and labor regularization of migrant persons further demonstrated the positive impact on Argentine nationals, i.e. the benefits to society as a

³ See in [http://www.conectas.org/arquivos/editor/files/Lei%2013_445%20de%202017%20-%20Lei%20de%20Migrac%CC%A7a%CC%83o%20\(texto%20completo%20DOU%2025_05_2017\).pdf](http://www.conectas.org/arquivos/editor/files/Lei%2013_445%20de%202017%20-%20Lei%20de%20Migrac%CC%A7a%CC%83o%20(texto%20completo%20DOU%2025_05_2017).pdf)

⁴ See in http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-buenos_aires/documents/publication/wcms_379419.pdf

whole when migrant persons have access to formal work, made possible to some extent by migratory regularization.

Regularization and access to health services

The IOM published a study in 2016 on Colombians in Argentina,⁵ providing evidence of an increase of 353.5% of persons of that nationality in the country from 2001 to 2010. The report shows that this migration flow has had access in high proportions to the mechanisms of regularization established by Law 25.871. It also indicates that more than two-thirds of this population has had access to registered work (IOM, 2016:99). And as a result, the study shows that **69% of Colombians surveyed use some form of public health benefit plan**, while 30% have private health insurance (IOM, 2016:99).

This data highlights the correlation that regularization has with registered work and, in turn, with medical coverage, since affiliation with Public Health Plans is mandatory for employees in the country, in accordance with Law 23.660 on Public Health Plans. In other words, all workers with gainful employment must register with a public health provider and contribute, along with their employer, to that plan in order for the worker and his or her family to have access to health care coverage.

Regularization for the prevention of human trafficking

The case of Dominican women has been extremely illustrative in bringing evidence to bear in Argentina on the positive effects of regularization and the negative impact of requiring visas for entry into the country. It is important to clarify that, in Argentina, visas are not required for anyone coming from countries in the Americas, except for the Dominican Republic and Belize. And while Dominicans make up just 1% of the total migrant population in the country, female Dominican migrants are more at risk of falling prey to the human trafficking and prostitution networks than other groups.⁶ This situation is especially prevalent due to the huge barriers blocking access to regularization, aggravated in 2012 when the visa requirement for entering the country was imposed.

The IOM and CAREF report (2015) informs that *“the visa requirement for entering the country as of 2012 (preceded by frequent rejections at the border) and the difficulties posed to regularization of migration status in Argentina have repeatedly marked the trajectories of a significant portion of Dominican migrants. The barriers blocking entry have made the journey more expensive (and surely more dangerous), either because those who “facilitate” migration and entry profit from false tickets, promise documents that they then do not procure, organize itineraries that combine air and land travel (or air and water) that end up in clandestine border-crossings, or even sometimes abandon their “female passengers” at points along the way. Once in Argentina, the will to seek regularization and the overall perception of the importance of doing so are pitted against the limited possibilities of fitting into any of the criteria established in the migration law. As a result, they resort to marriages “on paper” and the petition for refugee, paths that can be considered questionable in terms of means but are certainly legitimate when it comes to the ends (IOM, CAREF, 2015:114).*

The case of Dominican women has proven that restrictions on entry into the country and to access migratory regularization have limited effects on the volume of migration flows, but are responsible for forging populations with no legal protection, who suffer labor exploitation and socially de-legitimization. The paths of marginalization and informal work that used to be the fate of Latin American migrants in Argentina before Law 25.871 came into force are now the ones followed by

⁵ See in <https://www.colombianosune.com/sites/default/files/OIM-La-migracion-colombiana-en-argentina-PDF-WEB.pdf>

⁶ See in http://caref.org.ar/campus/pluginfile.php/563/mod_resource/content/1/OIM-CAREF%20La%20migraci%C3%B3n%20dominicana%20en%20Argentina%202000-2015.pdf

migrants from the Dominican Republic, Haiti, China and Senegal (to mention a few of the more visible cases) (OIM, CAREEF, 2015:115).

In early 2013, the executive branch created a regularization program for Dominican nationals (Disp. 001/2013). The program was limited to certain dates of entry into the country and authorized a temporary migration category of “autonomous worker”, based on a Small Taxpayer payment (*monotributo*). The time limit component was highly criticized, because it did not authorize a general migration category for persons of those nationalities, in addition to the existing limits to access permanent residence. Nevertheless, it should be noted that the State found ways to resolve the vulnerability generated by the lack of documentation. For instance, in the case of persons from the Dominican Republic, the program allowed 60% of temporary residencies between 2004 and 2013.

However, Dominican women who entered the country after the dates set in said provision continued to face the risk of being caught up in the net of human trafficking. Therefore, the study highlights two policies shown to be inefficient and risky for the migrant population: the visa requirement and the difficulty of regularization, which led Dominican women to become involved in prostitution, either as victims of sexual exploitation or by choice.