

Legality, Migration and Poverty: Legal Status and Temporary Labour Migration

Overview

This policy briefing explores whether or not legal status affects the success of temporary labour migration as a poverty reduction strategy. It discusses what is meant by 'irregular' labour migration, considers some of the challenges involved in conducting research on this type of migration, and explores the findings of a research project carried out by the Development Research Centre on Migration, Globalisation and Poverty (Migration DRC) studying Malawians who migrated to the UK and South Africa. Many of these migrants fit into the category of irregular migrants at some point during their time abroad — and they provide a useful qualitative window into irregular migration. In conclusion, the briefing introduces several policy recommendations related to irregular labour migration.

Irregular migrants: an overview

There is often a tendency to divide all international migrants into two categories: 'documented' and 'undocumented', or 'legal' and 'illegal', migrants. However, this binary opposition obscures the empirical reality that the legal statuses of many international migrants shift during their time in host countries. For example, some migrants may enter countries through legal channels and later become 'undocumented' by overstaying their visas, while others may violate the terms of visitor visas by working without permission. The notion of 'irregular' migration is useful in order to conceptualise these nuances of migrant legality. Irregular migration refers to a broader group of migrants than the 'undocumented' category allows for, encompassing any migrant who is in violation of the terms of their admission into their host country. This includes migrants who enter countries illegally, failed asylum seekers, migrants who overstay their visas, and those who have a legal right to remain but work illegally. The primary focus of this briefing will be to explore how irregular migration overlaps with temporary labour migration — whereby migrants attempt to access better labour markets in order to improve their economic prospects.

Exact numbers of irregular migrants are difficult to estimate (see the 'methodological issues' section below), but it is clear that irregular migration occurs on a large scale — and is a global phenomenon. The Pew Hispanic Center estimates that there are 11.5 to 12 million 'unauthorised'

migrants in the US (Passel 2006), and, despite the attempts of European countries to limit immigration of 'unskilled' workers, there are an estimated 5 to 6.5 million 'undocumented' migrants in the EU (Euskirchen *et al* 2007) — although the latter figure presumably does not include all irregular migrants. Irregular migrants are also common in the Global South. For example, there are large flows of irregular migrants to South Africa from other countries in the Southern African Development Community (Oliver 2008).

People move in order to pursue better economic opportunities — and they may end up as irregular migrants in instances where they cannot access more formalised migration routes. As is spelled out in the migration literature, a number of factors influence decisions to migrate. These include unfavourable factors in migrants' countries of origin ('push' factors), the demand for migrant labour at comparatively better pay rates in receiving countries ('pull' factors), and a host of mediating factors, including ease of immigration and migrants' access to transnational support networks. As we shall see, stricter border controls and exclusionary immigration regimes have not diminished many people's migratory ambitions.

Methodological and political issues

Relatively little is known about the experiences of irregular migrants and their impact on host countries. Evidence of the impact of legal status on migrants' ability

to find work whilst abroad is limited, as is knowledge about the impact of irregular workers on labour markets, and the potential implications that this type of temporary labour migration may have for development outcomes in sending countries. A significant barrier to conducting research on irregular migrants is the fact that it is often difficult for researchers to gain access to them. Estimates of the total number of irregular migrants are also problematic, as these migrants are not always recorded in macro-data instruments. For example, estimates of illegal migrants are often calculated by using the 'residual method' — which involves subtracting the number of migrants in census data from the total number of known legal migrants in the country. This technique is often imprecise, and in any case provides only a partial window into the volume of irregular migration.

There are also significant political issues which surround irregular migration — not least because this type of migration is seen through a negative lens by most host country governments and citizens, particularly in the Global North. Irregular migrants are often seen to take jobs from citizens in receiving countries — potentially contributing to unemployment — and to be a drain on government services. However, there is some evidence that these negative stereotypes of irregular migrants are overstated. Lant Pritchett, a World Bank economist, has

noted that developed states spend US\$17 billion per year fighting illegal immigration. He argues that if the same countries let in enough migrants to increase their workforces by 3 percent, this would result in US\$300 billion in additional remittances flowing to poor countries and US\$51 billion in growth for receiving countries (Pritchett 2006) — figures based on data provided by the Migration DRC's Global Migrant Origin Database. While Pritchett's argument points to a hypothetical scenario, figures from the UK show that first-generation migrants, in general, generate more revenue for the state than they consume in government services, indicating that they are not a 'drain' on state services (Home Office and Department for Work and Pensions 2007).

Moreover, there are signs that the attempts of governments to prevent the immigration of 'unskilled' workers has not stopped these migrants from attempting to immigrate, but has made the migration process more costly and dangerous. For example, migrants increasingly pay high costs to smugglers in order to reach Europe or the US. What is more, the risks faced by irregular migrants once they have entered receiving countries are numerous. They usually have little protection under law, no workers' rights, and are much more likely to be exploited than citizens or 'regular' migrants. They may also face verbal abuse or physical assault related to xenophobia or racism. In the case of the UK, there is evidence that policies which exclude undocumented immigrants from social services have an affect on all migrants, encouraging discriminatory policies towards migrant populations in general (Bragg and Feldman 2008).

Box 1: Other Migration DRC-related research on legal status and migration

Sabates-Wheeler *et al* 2007 provides an analysis of a Netherlands Interdisciplinary Demographic Institute (NIDI) study on legality and migration success for Ghanaian returnees. This data suggests that legal status does influence migration success — at least for this sample of Ghanaian returnee migrants — as those who were documented were more likely to move out of poverty during their time abroad than those who were undocumented. However, these findings were based on migrants' subjective impressions rather than on objective economic criteria (which was used in the Malawian case study discussed in this briefing), and did not make a distinction between Ghanaians who had moved to countries in the Global North and Global South. **Black *et al* 2006** explores 'routes to illegal residence' in the UK, based on interviews with Ghanaians awaiting deportation. The study found that the overwhelming majority of these migrants had entered the UK through various legal channels, before becoming 'undocumented' during the course of their stay in the UK.

Malawian case study

A Migration DRC study of Malawian returnees, based on qualitative and quantitative interviews with migrants who had migrated to the UK and South Africa, partly focused on the linkages between legality and migration success. There were important economic differences between these two groups of migrants, as those who migrated to the UK were comparatively better off than those who moved to South Africa. The Malawians who moved to the UK were also comparatively better educated, and were employed in more skilled professions in Malawi. However, there were some broad similarities shared by both groups of migrants (as indicated in Table 1 on Page 3). Only 2.5 percent of Malawians entered the UK without any form of documentation, and none of the Malawian migrants entered South Africa illegally. However, a number of those interviewed became fully undocumented

during the course of their migration by overstaying their visas — 27 percent in the case of the UK returnees and 51 percent for the South Africa returnees. Moreover, many migrants who had a legal right to be in the country began working illegally whilst there — putting them in the ‘irregular migrant’ category. On the other side of the spectrum, the number of migrants with a legal right to work increased in the case of both UK and South African returnees, reflecting the fact that some migrants actually enhanced their visa status whilst abroad (see ‘Right to work F/T’ in table).

A number of interesting findings emerged from the Malawian case study regarding the importance of legal status for the migration prospects of this particular group of migrants. In the case of both UK and South Africa returnees, irregular status did not work against migrants in terms of obtaining positive outcomes from their migration (which were defined as income change and occupational mobility), nor did it prevent them from obtaining a positive change in their immigration status whilst abroad. Even more striking was the fact that characteristics such as marital status, age, wealth and education had little effect on migrants’ success whilst abroad. Indeed, length of stay and social protection, including asset-building and access to informal social networks, were determined to be the most important factors influencing migration success for both UK and South Africa returnees. It was these factors that largely determined whether temporary labour migration allowed Malawian migrants to move out of poverty.

The Malawian case study demonstrates the ambiguity between different categories of legal and irregular migrants, and foregrounds the fact that international migrants often have a plethora of alternative strategies to access international labour markets and to achieve positive outcomes from their overseas migration. It was equally likely to find migrants without the right to work who had secured formal work contracts that were taxed, as it was to find ‘legal’ migrant workers taking on jobs in the informal sector of host countries. Many legal migrants saw little point in contributing to formal social security benefits, and this made working in the informal sector an attractive option for some migrants. Migrants’ access to formal state services in their host countries varied. Many migrants were able to access state health and education services in the UK, but migrants in South Africa were largely excluded from these services. In both cases, however, access to transnational social networks arguably served as migrants’ main ‘safety net’ against the risks posed by international migration.

Table 1: Legal status of Malawian returnees (all figures in percentages)

Legal status	UK returnees		SA returnees	
	Arrival	Departure	Arrival	Departure
A. Undocumented	2.5	26.8	0	51.2
B. Documented	97.5	73.1	100	48.4
1. No work permitted (incl. visitor or student visa)	70.6	49.2	100	34.9
1.1 Worked illegally	64.7	36.3	98.7	21.4
1.2 Didn't work	5.9	12.9	1.3	13.49
2. Right to work F/T	14	16.9	0	13.5
3. Other documents	12.9	6.9	0	0

Source: Sabates-Wheeler *et al* 2008

Policy implications

The Migration DRC’s research on the relationship between legality, migration and poverty reduction suggests that creative solutions are needed in order to maximise the benefits and minimise the risks of migration for irregular migrants. Host governments are faced with a dilemma, given that tighter border controls have not stopped migratory flows, but rather created more diverse migrant strategies. Formalising the status of irregular migrants would likely improve these migrants’ rights and security — and increase migrant remittances, making migration more beneficial to migrants’ sending countries. However, such policies must contend with the negative attitudes towards irregular migration that are present in many political and popular narratives.

Potential policy options in this area include:

- Seasonal or short-term work permits, which would formalise temporary labour migration. These should be integrated, where possible, with measures to assist temporary migrants in returning to their country of origin.
- Ensuring migrants’ access to better financial services in order to support remittance flows. This is needed, as migrants often send funds through informal — and sometimes insecure — channels.
- Measures to support migrant organisations, including hometown societies, which have been shown to enhance the informal social protection of migrants whilst they are abroad.

References

Black, R., Collyer, M., Skeldon, R., and Waddington, C. (2006). 'Routes to Illegal Residence: A Case Study of Immigration Detainees in the United Kingdom'. In: *Geoforum* 37(4): 552-564.

Bragg, R., and Feldman, R. (2008). ' "An increasingly uncomfortable environment": Access to healthcare for documented and undocumented migrants in the UK.' Paper presented at the 'Migration and Social Protection: Exploring Issues of Portability and Access' conference at the University of Sussex, 5-6 November 2008.

Euskirchen, M., Lebuhn, H., and Ray, G. (2007). 'From Borderline to Borderland: The Changing European Border Regime'. In: *Monthly Review*, November 2007.

Home Office and the Department for Work and Pensions (2007). *The Economic and Fiscal Impact of Immigration*. Report available at: <www.official-documents.gov.uk/document/cm72/7237/7237.pdf>.

Oliver, M. (2008). *Report: Regional Overview of Social Protection for Non-Citizens in the Southern African Development Community (SADC)*. Washington DC: The World Bank.

Passel, J. (2006). *The Size and Characteristics of the Unauthorised Migrant Population in the US; Estimates Based on the 2005 Current Population Survey*. Washington DC: Pew Hispanic Research Center.

Pritchett, L. (2006). *Let Their People Come: Breaking the Gridlock On Global Labor Mobility*. Washington DC: Center for Global Development.

Sabates-Wheeler, R., Avato, J. and Koettl, J. (2008). *Social Protection for International Migrants* (A synthesis report prepared for the UK Department for International Development). Available from authors.

Sabates-Wheeler, R., Natali, C., and Black, R. (2007). 'Migration, Legal Status and Poverty: Evidence from Return to Ghana'. Migration DRC Working Paper WP-T19. Brighton: Migration DRC, University of Sussex. Available online at: <http://www.migrationdrc.org/publications/working_papers/WP-T19.pdf>.

Development Research Centre on Migration, Globalisation and Poverty

The Migration DRC aims to promote policy approaches that will help to maximize the potential benefits of migration for poor people, whilst minimising its risks and costs. Since 2003, the Migration DRC has undertaken a programme of research, capacity-building, training and promotion of dialogue to provide the strong evidential and conceptual bases needed for such policy approaches. This knowledge base has also been shared with poor migrants, with the aim of contributing both directly and indirectly to the elimination of poverty. The Migration DRC is funded by the UK Government's Department for International Development, although the views expressed in this policy briefing do not express DFID's official policy.

How to Contact Us

This briefing was written by Jon Sward and Rachel Sabates-Wheeler. For further information on this work please contact Saskia Gent (s.e.gent@sussex.ac.uk), Acting Research Manager for the Migration DRC.

For more information on the Migration DRC, please contact:

Sussex Centre for Migration Research
Arts C, University of Sussex
Falmer, Brighton BN1 9SJ, United Kingdom
tel: +44 1273 873394
fax: +44 1273 873158
email: migration@sussex.ac.uk
web: www.migrationdrc.org