Analysis
Spain/Portugal/Italy
Partial relief: migrant regularisations during the COVID-19 pandemic
Yurema Pallarés Pla
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Introduction
The uncertainty that the Covid-19 outbreak has brought to every sphere of life has had a major impact on already vulnerable groups, such as undocumented migrants. People who, for whatever reason, lack official authorisation to stay, live and work in a particular state usually live with constant fear of being detained or receiving an expulsion order after a spontaneous stop by the police. Among the different measures approved by European countries under states of emergency, some have addressed the situation of migrant populations.

This article looks at the cases of Portugal, Italy and Spain, which have been praised by the general public for appearing to offer regularisation, or an end to detention. However, the positive tone – probably exacerbated by the need for good news – has set aside details that suggest a less optimistic outcome.

Portugal
Portugal, which declared its state of emergency on 18 March, before it could be hit by the pandemic as hard Italy and Spain have been, was the first of these countries to announce a measure intended to give asylum seekers and foreigners with pending applications the same right as permanent residents to access social services. This permit will, however, expire on 30 June, and was only granted to those who could access the procedure before the pandemic.

In the Portuguese system, one of the most common means of access to a request for a residence permit is through a job contract, according to articles 88, 89 and 90 of the law governing entry, exit, stay and return of foreigners.1 It is also possible to start the procedure

1 Lei n.23/2007, de 4 de Julho, Entrada, permanencia, saida e afastamento de estrangeiros do territorio nacional, Procuradoria-Geral Distrital de Lisboa,

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if “there is a proven work relation through a labour union, migrant community representative – with a seat in the Council for Migrations – or the authority for work conditions,” as long as the entry to the country happened through regular means and the person is registered to work.

It is unknown how many people have benefited from the measure because the Foreigners and Borders Service (Serviço de Estrangeiros e Fronteiras FES) does not offer data on the number of ongoing applications. Last year, 135,000 residence permits were issued. However, it has been reported that it takes approximately 12 months working in the country before being granted the residence permit. Apart from that, questions still remain over what happens to these people after 30 June. Possible delays in evaluating the applications of those who could not access the system before the pandemic started are also expected. The postponed evaluations will add to the workload of those applying now for the first time, because when administration offices reopen they will start processing cases in chronological order.

**Italy**

In the case of Italy, the minister of agriculture, Teresa Bellanova, announced measures addressed to undocumented workers as part of a wider “relaunch bill” (rilancio) to tackle the economic and social crisis derived from the COVID-19 pandemic. Her presentation in Palazzo Chigi included a personal statement – she had started working in the fields when she was just 14 years old – that quickly went viral due to its moving content. Although the bill introduced only minimal improvements, it did prompt some sort of celebration given the predominantly negative tone in Italian public discourse due, among other things, to the loud xenophobic discourses of Matteo Salvini, leader of the far-right populist party Lega, over migration.

It must be emphasised that the rilancio bill does not specifically aim at reforming migration law. It is linked to a labour reform limited to the agriculture, domestic work and social care sectors and applicable to both Italian and foreign citizens working informally. It also extends by six months the validity period of residence permits that expired between October 2019 and January 2020.

This follows recent articles and news in the media showing growing alarm for the economic and food losses that Italy would incur if it did not manage to get enough workers. Italian fields are heavily dependent on seasonal migrant labour, usually undertaken by people from Eastern

European countries and North Africa. Due to COVID-19 travel restrictions and lockdowns, the country is in a desperate need of 250,000 workers to complete the harvest.6

As soon as the bill was approved it prompted angry reactions, as shown by the campaign #Siamoqui7("we are here"). It has proven disappointing to those who hold hopes of a sanatoria – a regularisation of everyone without documents in Italy.8 On 21 May, there was a call for a strike against the amnesty by migrant workers, because the envisaged permit relies on having an existing work contract and thus may cause more vulnerability and increase exploitation. It also excludes some sectors, as reported by Infomigrants in a piece highlighting the work of union activist Aboubakar Soumahoro.9

Another claim widely-expressed is that the rilancio does not dilute the narrative that migrant workers are mere assets for the market, rather than human beings who deserve dignity and their rights recognised. Permits are granted to people because they play a role in the economy, above anything else.

Spanish

In the case of Spain, there have been two types of measures concerning the treatment of migrants during the COVID-19 outbreak, concerning work and residence permits and the use of immigration detention centres.

The first action under the state of emergency explicitly taking migrants into consideration came in the framework of a measure addressed to workers in the agricultural sector to ensure food supplies. Under the title of labour flexibility, migrant workers whose work permit was due to expire between the approval of the state of emergency (14 March-30 June) and to third-country nationals aged between 18 and 21 in possession of regular documentation could benefit from a work permit for the first time. 10 This group is targeted in reference to unaccompanied minors who turn eighteen years old - and stop being under the custody of the administration - with their documents still pending a resolution. This measure was updated and extended on 26 May to provide a residence and work permit for two years (with a possible renewal of two more years) to young foreigners who obtained their first work contract due to the measure on work flexibility in the agricultural sector. This is more aligned with the demands

7 #Siamoqui means “we are here” and is the theme of a social media campaign by several activist groups and NGOs in defence of undocumented migrants in Italy. It protests against the use of migrant as mere tools for farm work rather than individuals who deserve dignity and human rights regardless of their job situation.
of NGOs working on migrant inclusion and integration - that legal uncertainty should be reduced as much as possible.11

A more extensive measure was passed on 20 May, extending permits to foreigners who are already in possession of documents. This measure means the automatic renewal for 6 months following the expiry date of all temporary work, residence and study permits, that expired during the state of emergency or 90 days before its declaration. It also allows the renewal of residence cards of family members of EU citizens. However, in the middle of a public health crisis, it does not apply to foreigners that are taking formative stages in the health sector.12 As in Italy, the measure prompted disappointment due to its relatively limited scope. The minister of Inclusion, Social Security and Migration, José Luis Escrivá, referred to the 2008 European Pact on Immigration and Asylum as an obstacle to more ambitious reforms. Through the Pact, EU member states committed “to use only case-by-case regularisation, rather than generalised regularisation, under national laws, for humanitarian or economic reasons.”13

However, two regional governments in Spain, Balearic Islands and Canary Islands, have taken a truly positive step towards the protection of undocumented migrants by finding ways, thanks to the collaboration of NGOs, of transferring them a basic income.14 The regional government of the Balearic Islands transfers the equivalent sum of the minimum income guarantee to NGOs like Red Cross, Doctors of the World and Caritas, who then hand it over to those in need. For their part, the Canary Islands uses a top-up card for those who cannot open a bank account.15

Significantly, Spain has closed its immigration detention centres, a longstanding demand of NGOs, activists and human rights defenders alike. Under Spanish law, migrants can be held in detention for up to 60 days whilst awaiting the execution of their expulsion order. Since


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returns are not possible under the current situation, people held in detention have been released and for the first time ever Spain’s eight CIEs (Centro de Internamiento de Extranjeros) are empty. For years, reports have denounced the lack of transparency, restrictions of liberties and violations of fundamental rights taking place in these centres. Although the total number of people who have been released remains unknown, they are now included in the scheme of the reception system, under the authority of the State Secretariat for Migrations. A number of NGOs and activists are calling for the closure to be permanent.

There is another type of detention centre for foreigners in Spain that is not covered by the measure – the CETI (Centro de Estancia Temporal de Inmigrantes), particularly the one located in the enclave of Melilla. It is overcrowded, holding 1,620 people with an official capacity of 782, with no possibility of social distancing and poor hygiene conditions. It lies under the direction of the Ministry of Interior, where internal sources have said that in the short term, they have no plans to transfer people to other centres in mainland Spain with more capacity.

**Every silver lining has a cloud**

In conclusion, caution must prevail when celebrating the recent measures in the field of migration under the state of emergency. Close follow-up is required to pursue needs and circumstances that they fail to address.

For instance, while Italian and Spanish measures have been addressed to workers in the agricultural sector with an evident economic and labour interest, the multiple concerns raised about migrant workers’ conditions cannot be forgotten. In January 2020, the UN Special Rapporteur on the right to food, Hilal Elver, denounced the situation in Italy: “As a developed country and the third largest economy in Europe, such levels of poverty and food insecurity in Italy are unacceptable.” Following his visit to Spain in February 2020, Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, said: “In Huelva, I met with workers living in a migrant settlement in conditions that rival the worst I have seen anywhere in the world. They are kilometres away from water, and live without electricity or adequate sanitation.”

Moreover, the systems for processing residence permits or asylum applications of these countries tend to be overloaded, with lengthy procedures subject to extensive delays. It is

likely that many applications will be postponed, increasing uncertainty for those waiting for their opportunity to apply.

Thus, these measures are temporary and provide a short period of relief for a few. They do not tackle much-needed structural reforms nor directly address the conditions under which undocumented people have to live, or the situation they will face once the state of emergency has officially ended. Their consequences will shadow many people’s lives for months – if not years – to come.