09. THE DILEMMA OF UNDOCUMENTED MIGRANTS INVISIBLE TO COVID-19 COUNTING

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On March 13, 2020, after announcing that Europe had become the epicenter of the COVID-19 pandemic, World Health Organization's Executive Director Dr. Michael Ryan made a plea to assist invisible populations. "We cannot forget migrants, we cannot forget undocumented workers, we cannot forget prisoners," he argued.[1] In just a few days, civil societies around the world discovered that invisibility is indeed a recurrent companion to the virus. COVID-19 is exceptionally hard to contain due to its asymptomatic contagion and long incubation period. It has also been hard to classify as a cause of death, complicating the efforts to trace it and count its victims.[2] Despite narratives about its alleged democratic character, the virus seems to decimate weak, invisible populations the hardest. The elderly confined to care homes have been decimated across Europe, and largely uncounted.[3] From China to Pennsylvania, the toll of people passing away in the solitude of their homes or shelters does not appear in official statistics. Undocumented migrants are also dying from the virus because they are too afraid to seek help,[4] so their numbers are typically not reflected in official statistics. If today "being counted" is even more so a condition of existence and care[5], Western countries are failing to account for the health conditions of these invisible populations. In the days of COVID-19, what these dramatic missing numbers make apparent is that invisibility may mean death.

The COVID-19 pandemic forces a dilemma about invisibilized populations, and migrants in particular—one which has to do simultaneously with societal and technological concerns. On one hand, visibility gaps are a systemic aspect of population management that might be welcomed by policy makers and populations alike. Indeed, the illusion of a "data panopticon" does not account for the conditions of data collection, data gaps, and the limits of system interoperability; not everyone is counted in all systems, and not in the same way. Such invisibility serves the needs of informal economies and unscrupulous politicians ready to mobilize security concerns for their own goals. From housing insecure people to the incarcerated, from migrants

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1   @BBCWorld, '"We cannot forget migrants, we cannot forget undocumented workers, we cannot forget prisoners" World Health Organization Executive Director Dr Michael J Ryan says "the only way to beat [coronavirus] is to leave no one behind... we are in this together" http://bbc.in/2w3PUbv', Twitter post, 13 March 2020, 5:40 PM, https://twitter.com/BBCWorld/status/1238507690537730048.

2   Sarah Kliff and Julie Bosman, 'Official Counts Understate the U.S. Coronavirus Death Toll', *The New York Times*, 7 April 2020, https://www.nytimes.com/2020/04/05/us/coronavirus-deaths-undercount.html.

3   Niamh McIntyre and Pamela Duncan, 'Care Homes and Coronavirus: Why We Don't Know the True UK Death Toll', *The Guardian*, 14 April 2020, https://www.theguardian.com/world/2020/apr/14/care-homes-coronavirus-why-we-dont-know-true-uk-death-toll.

4   May Bulman, 'Charities and MPs Warn Undocumented Migrants Are Dying of Coronavirus Because They're Too Afraid to Seek Help', *The Independent*, 17 April 2020, https://www.independent.co.uk/news/uk/home-news/coronavirus-undocumented-migrants-deaths-cases-nhs-matt-hancock-a9470581.html.

5   See chapter 1 in this volume (pp. 24)

to sex workers, invisibility can be deemed a protection from care that too often resembles control and surveillance.[6]

On the other hand, a surge in the visibility of migrant populations might help curb the contagion and avoid COVID-19 spreading within vulnerable populations. Indeed, being invisible translates into the inability to access crucial services in the time of the pandemic, particularly health care. Access to testing, medication, and treatment requires insurance, and insurance demands people are countable. Even when the costs of insurance can be offset by the collective, being countable remains a key condition of access. In the US, for example, the second coronavirus relief package known as the Families First Coronavirus Response Act has extended testing to the Medicaid-eligible population,[7] even when uninsured, but not to undocumented migrants, nor to other temporary residents.[8]

We suggest that the current situation requires to reconsider the relationship between data, populations and (in)visibility. Under which conditions would including invisibilized populations in the general COVID-19 count result in a just outcome? For sure, some precautions should be heeded. Even in the best case scenario, instead of exposing vulnerable populations, such reconsideration might even entail a de facto form of civil inclusion. What follows makes the point by considering migrants and undocumented populations as especially vulnerable to COVID-19, due to their invisibilized status in official registries and administration, and the barriers to formal and professional care that their invisibility entails. While most of our examples originate in the European continent, we believe that there is something universal in this exercise that can also inform the way other countries and communities relate to people in the move in pandemic times.

People on the Move do not Show in COVID-19 Counts

In mid-April, António Vitorino, Director General of the International Organization for Migration, called for a universal response to COVID-19, regardless of migratory status.[9] Portugal has specifically addressed the migrant condition in its response to the pandemic. It has extended access to the same services of the resident population to third country nationals with pending applications: national health care, welfare benefits, bank accounts, and work and rental contracts.[10] The Portuguese response constitutes a temporary inclusion of foreign citizens, in the name of pragmatism and human rights. Admittedly,

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6   Polly Pallister-Wilkins, 'Hotspots and the Geographies of Humanitarianism', *Environment and Planning D: Society and Space*, 2020; 38(6): 991-1008. doi:10.1177/0263775818754884.

7   Keith Katie, 'Unpacking the Coverage Provisions In The House Coronavirus Bill', *HealthAffairs*, 16 March 2020, https://www.healthaffairs.org/do/10.1377/hblog20200316.471367/full/.

8   Nicole Narea, 'The Missing Piece in the Coronavirus Stimulus Bill: Relief for Immigrants', *Vox*, 1 April 2020, https://www.vox.com/2020/4/1/21197017/immigrants-coronavirus-stimulus-relief-bill.

9   @IOMchief, 'All migrants, regardless of their migratory status, must be included in our response if we are to curb the spread of #COVID19. Only together, we will overcome this global crisis', Twitter post, 14 April 2020, 3:57 PM, https://twitter.com/IOMchief/status/1250060674564337664.

10   'Portugal to Treat Migrants as Residents during Coronavirus Crisis', *Reuters*, 28 March 2020, https://www.reuters.com/article/us-health-coronavirus-portugal-idUSKBN21F0N7.

this response is unique in a continent that has halted most bureaucratic procedures and data processing involving people on the move.

Sweden[11], The Netherlands[12], and Belgium[13] have suspended administrative services for migrants, refugees and asylum-seekers. After halting asylum procedures, Greece has put migrants living in overcrowded camps[14] under quarantine.[15] In Serbia, along the so-called Balkan Route, armed forces have taken over the security of about 150 social welfare institutions, 120 medical facilities and 20 migrant camps, locking migrants in.[16] Similarly, Bosnia Herzegovina has introduced tighter controls in the reception centres, so migrants and refugees can no longer leave or enter.[17] Italy has declared its ports "unsecure",[18] asylum and police offices are closed and data processing suspended.[19] Meanwhile, an estimated 200,000 undocumented farmworkers in Italy live in cramped informal settlements in precarious hygienic conditions without running water, which makes it impossible to implement the social distancing and hygienic measures necessary to slow the contagion. In France, many sleep in makeshift camps or on the streets, and local nongovernmental organizations (NGOs) sound alarm bells about an upcoming "health scandal", and question the government's lack of adequate response.[20] In the UK, NGOs point out that the suspension of various support networks increasingly puts already precarious people at risk, noting how the hostile environment deters undocumented people from seeking help.[21] In many European countries migrants are not included in

11   Emma Löfgren, 'No Coronavirus Legislation Planned for Work Permit Holders in Sweden', *The Local*, 26
        March 2020, https://www.thelocal.se/20200326/no-coronavirus-legislation-planned-for-work-permit-
        holders.
12   'New Corona Measures, Limited IND Services', *Immigratie en Naturalisatiedienst*, 15 March 2020,
        http://ind.nl:80/en/news/Pages/New-corona-measures,-limited-IND-services-.aspx.
13   Leslie Carretero, 'Belgian Government Is Doing Nothing to Protect Migrants from Coronavirus, NGOs',
        InfoMigrants, 1 April 2020, https://www.infomigrants.net/en/post/23804/belgian-government-is-doing-
        nothing-to-protect-migrants-from-coronavirus-ngos.
14   Agence France-Presse in Athens, 'Fire Wrecks Greek Refugee Camp after Unrest over Woman's Death',
        The Guardian, 19 April 2020, https://www.theguardian.com/world/2020/apr/19/fire-wrecks-greek-
        migrant-camp-after-iraqi-death-sparks-unrest.
15   'Μέτρα Προστασίας Από Τον Κορωνοϊό Στα Κέντρα Υποδοχής Και Ταυτοποίησης, Στις Δομές
        Φιλοξενίας Και Στην Υπηρεσία Ασύλου', Accessed October 22 2020, https://www.mitarakis.gr/gov/
        migration/1956
16   'Group of Serbian Doctors Calls for Dismissal of National COVID-19 Response Team', *Euractiv*, 14
        March 2020, https://www.euractiv.com/section/coronavirus/short_news/serbia-update-covid-19/.
17   Danijel Kovacevic, 'No Coronavirus Cases Found Yet Among Migrants, Refugees in Bosnia', *Balkan
        Insight*, 6 April, 2020, https://balkaninsight.com/2020/04/06/no-coronavirus-cases-found-yet-among-
        migrants-refugees-in-bosnia/.
18   Pietro Salvatori, 'L'Italia chiude i porti', *Huffington Post*, 8 April 2020, https://www.huffingtonpost.it/
        entry/litalia-chiude-i-porti_it_5e8d89f2c5b6e1d10a6c2671.
19   'Coronavirus (COVID-19) in Italy: Asylum and Immigration', *JumpMap*, Accessed 22 October 2020,
        https://coronavirus.jumamap.com/en/asilo-e-immigrazione/.
20   Leslie Carretero, 'France: Migrants Left out in Fight against Coronavirus', *InfoMigrants*, March 20 2020,
        https://www.infomigrants.net/en/post/23522/france-migrants-left-out-in-fight-against-coronavirus.
21   Emma Wallis, 'UK Charities Demand Urgent Steps for Migrants during Covid-19 Pandemic',
        InfoMigrants, 26 March 2020, https://www.infomigrants.net/en/post/23653/uk-charities-demand-
        urgent-steps-for-migrants-during-covid-19-pandemic.

COVID-19 counts, hindering access to care and relief systems. What are the consequences of this situation, and how can it be rectified?

The Consequences of Invisibility

The invisibility of moving populations in pandemic time can have health, economic, and social consequences. First, we are seeing that its effects stack on existing social and institutional inequalities.[22] Vulnerable populations are left behind when addressing the public health threats of the coronavirus outbreak. As already hostile environments bar mobile populations from seeking professional and official health care, the spread and effects of the coronavirus will be exacerbated among these populations. They are already vulnerable due to a lack of accessible information and access to hygiene facilities, and also because their economic vulnerability forces them to seek employment when others can choose to stay at home. The exclusion of some people from comprehensive efforts to counter the spread of COVID-19 will cause harsher and more prolonged sanitary effects among these groups. These effects will impact not only their well-being, but also the general well-being of society at large, as failure to contain the virus will exacerbate its spread.

Second, invisibility may exacerbate asymmetries in economy and labor relations. Invisibility not only permits exploitation in agricultural economies, construction work, and temporary job markets. It also marks a harsh asymmetry between migrant workers' contribution to the COVID-19 response and their under-representation in statistics. For instance, European countries like Austria and Germany are importing farmhands from Eastern Europe to harvest seasonal vegetables like asparagus. The Italian Minister of Agriculture Teresa Bellanova has proposed to give some of the estimated 600,000 undocumented immigrants in the country temporary work permits to plug the labor gap, which is large and urgent in the agri-food sector.[23] Yet counting, as well as rights asymmetries, continue to permeate job sectors that are vital to the COVID-19 response. Food delivery workers in European cities are largely migrants who cannot afford to "stay home" and lose income. According to the Migration Policy Institute, in the US, the foreign-born represent 38 % of home care and a significant share of workers in food production and distribution, all sectors at the coronavirus response frontline.[24]

Third, invisibility has societal consequences, because it fuels racism and xenophobia. In Italy, for example, pseudoscientific myths are spreading on social media, in a country where migration is often associated with heterogeneous skin traits, and hospitalized patients are largely white.[25]

22   Afua Hirsch, 'If Coronavirus Doesn't Discriminate, How Come Black People Are Bearing the Brunt?', *The Guardian*, 8 April 2020, https://www.theguardian.com/commentisfree/2020/apr/08/coronavirus-black-people-ethnic-minority-deaths-pandemic-inequality-afua-hirsch.

23   Hannah Roberts, 'Italy's Coronavirus Farmworker Shortage Fuels Debate on Illegal Migration', *POLITICO*, 13 April 2020, https://www.politico.eu/article/italy-seasonal-migrant-farm-workers-coronavirus-covid-19/.

24   Julia Gelatt, Immigrant Workers: Vital to the U.S. COVID-19 Response, Disproportionately Vulnerable, *Migration Policy Institute*, March 2020, https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response.

25   ' "Africani immuni? È una ipotesi'. Ma Galli precisa: 'La tubercolosi non c'entra",'

Not only do these resurgent racialized explanations of alleged immunity to the virus fuel racist narratives, they lack any scientific base and disregard empirical evidence of African-American communities tragically and disproportionally hit by the virus on the other side of the Atlantic.[26] They also reignite racial classifications and genetic pseudoscientific thinking that we assumed had dissipated with nineteenth-century colonial anthropology. Furthermore, they counteract socio-scientific explanations and consequent policy action. If temporary residents are less rone to ask for support when confronting COVID-19 symptoms, their reluctance might be due to their tendency to associate the health care system with repressive authorities, scarce linguistic skills and fragmented social networks—all explanations that should be investigated in order to curb the contagion.

Our Proposals for Just Visibility

All things considered, one might wonder whether the current emergency requires reconsidering the relationship between data, visibility and populations. Institutional solutions appear to timidly move in the direction of making migrant populations more visible. In Italy, the introduction of mandatory self-certification to exit home was sufficient to halt the agricultural production chain, as work force is mainly constituted by irregular migrants. As a result, the Italian Agriculture Ministry is attempting to overcome the impasse by creating a new registry of agricultural labor.[27] US scholar and author Shoshana Zuboff, a fierce critic of what she herself terms "surveillance capitalism," in an interview with the Italian daily *La Repubblica*, surprisingly argued that contact-tracing apps should be mandatory and data should be managed by public bodies.[28] But Zuboff's argument falls short when it meets vulnerable populations who don't want to be traced and are suspicious of authorities. Becoming visible through an app of this kind clashes with the fears of repression and deportation these vulnerable populations live with.

The question becomes, how can visibility be *just*? The consequences of invisibility we have identified do not exist in isolation, because forms of invisibilization stack upon each other. As mentioned above, mobile populations often work in already precarious and exploitative sectors, which have suddenly become foregrounded as "essential" during the pandemic. This creates the paradox that while the work is visibilized as vital, the workers are barred from accessing civil rights, and are still kept out of the count and thus excluded from aid and relief. It is then crucial to consider what inclusion in the COVID-19 response is for; is it a temporal

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Huffington Post, 24 March 2020, https://www.huffingtonpost.it/entry/extra-comunitari-immuni-e-una-ipotesi_it_5e79d2c4c5b63c3b6496e69f.

26   John Eligon, Audra D. S. Burch, Dionne Searcey and Richard A. Oppel Jr., 'Black Americans Face Alarming Rates of Coronavirus Infection in Some States', *The New York Times*, 14 April 2020, https://www.nytimes.com/2020/04/07/us/coronavirus-race.html.

27   'Agricoltura: Mipaaf, iscrizione virtuale per Sos manodopera - Terra & Gusto', *ANSA*, 14 April 2020, https://www.ansa.it/canale_terraegusto/notizie/a_tavola_con_ansa/2020/04/14/agricoltura-mipaaf-iscrizione-virtuale-per-sos-manodopera_d482075b-76f5-4a33-9e1d-03afa1f86657.html.

28   Jaime D'Alessandro, 'Shoshana Zuboff: 'Le App per Il Controllo Della Pandemia Possono Essere Obbligatorie Come i Vaccini'', *La Repubblica*, 09 April 2020, https://rep.repubblica.it/pwa/intervista/2020/04/09/news/shoshana_zuboff_altro_che_privacy_le_app_per_il_controllo_della_pandemia_devono_essere_obbligatorie_come_i_vaccini_-253587046/?ref=RHPPTP-BH-I253595676-C12-P4-S3.4-T1.

visibilization in disease tracing and tracking, so that people who have been immunized can return to orchards and elderly houses to become invisibilized workers again? Or will access to civil rights be granted on a permanent basis to all?

In facing the visibility/invisibility dilemma for populations on the move, diverse scenarios open up, from repressive authorities identifying and tracking undocumented migrants, to a de facto form of civil inclusion. De facto inclusion would entail universal access to civil institutions such as health care, welfare and civil rights. It would be an infrastructural (but nevertheless political) way to classify people on the move as members of civil communities, while at the same time protecting them through civil rights. De facto inclusion would entail protected visibility. In what follows, we reflect on the conditions under which the counting of invisibilized populations can lean towards this second scenario.

We argue that a multi-pronged approach is needed to address the problem of making the invisible population of migrants countable under fair conditions. First, we need to carefully consider how we count and what digital infrastructure we employ. For starters, counting should respect the principles enshrined in the EU General Data Protection Regulation, most notably data minimization (i.e., data collection should be limited to what is necessary) and purpose limitation (i.e., data should be collected for specific, explicit and legitimate purposes). But data collection should also commit to fairness and transparency, meaning that personal data should be processed transparently to data subjects, and abide by democratic oversight and accountability. In other words, the counting we propose should protect populations and the societies surrounding them, rather than exclude, discriminate, or repress them. To this end, we need to ensure that data collection and use are discrimination- and future-proof. Data about, for example, health conditions collected during the pandemic emergency should not be used against these vulnerable populations at a later stage. In this process of envisioning fair rules for counting vulnerable populations, the infrastructural dimension should be given adequate consideration. Although "invisible" in themselves, digital infrastructures—including how they are designed, integrated, and owned—are an integral part of any decision-making with regards to counting.

Second, civil rights for people on the move must also include the right to be deleted from any database, and to not be traced beyond the original goals (i.e., the purpose limitation mentioned in GDPR). Data about people who have been on the move is already stored in systems of identification and registration used at the border, with the risk of carrying stigmas far and wide. On top of that, entering a health care or welfare database often means being subjected to a system of invasive cross checks. As many counts and registries are also modes of control and surveillance, inclusion should also entail the right to be forgotten. Furthermore, any restrictive or invasive measure should come with adequate sunset provisions, whereby any data collection that is in some way invasive of people's privacy can cease to have effect when a vaccine becomes available and is widely administered.

Third, the practice of counting empowers the counter more than for the counted, so we propose an alliance between different counting entities rallying around the need for public critical care. These entities include migrant-led organizations, shelters, health

care institutions, unions, and local organizations. Our rallying cry comes with its own set of challenges, including database interoperability issues and principles, as various organizations will have to gather around a concern for care and public health, while bringing their own experiences and values. The alternative would leave us with a prolonged public health crisis or empower state authorities and private corporations to collect population data.

Finally, and most importantly, the counting we propose should take stock of the European migration regime, and invert the priority given since 2015 to securitization at the expenses of health data. Our research at Processing Citizenship has shown that in European frontline countries, the assessment of health conditions was originally the primary concern among people rescued at sea upon disembarkation.[29] However, with the so called "Hotspot approach" introduced in 2015, priority has shifted to fill administrative databases for security concerns.[30] If anything, COVID-19 is a powerful reminder of the need to restore the original priority given to health data in population management. In sum, we argue that identification and tracking of migrants for purely security purposes should be replaced with health care assessment through specialized, non-interoperable information systems that count resident populations and those on the move.

To conclude, we cannot but note that the bulk of our proposals—especially around data protection, data minimization, purpose limitation, and sunset clauses—are also valid when considering deploying contact-tracing apps for the general population. We wonder, to what extent can any counting measure to contain the virus be effective while distinguishing among populations? By considering how to fairly include invisibilized populations in what is today's most pressing count, we might end up realizing that even most classifications for visible populations are being redefined. A more comprehensive solution to this conundrum would be to include all residents of a given polity in critical services, regardless of their status. If so, the challenge is how to ensure that this redefinition is as inclusive as possible. This might require changing the ways Europe sees its people and who these people are, and ultimately, the role of data infrastructures in this inclusive recounting.

Acknowledgements

This essay has been first published in openDemocracy (28 April 2020). An Italian translation ("Come e perché rendere visibili i migranti nei dati della pandemia") has appeared in the Italian weekly magazine Internazionale (14 May 2020).

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