Regularisation mechanisms and programmes: Why they matter and how to design them
Acknowledgements

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Migration cannot be disconnected from procedures: application procedures, permit renewal procedures, family reunification procedures, resettlement procedures, return procedures, etc. This report focusses on one type of procedure: regularisation mechanisms and programmes people with an irregular or insecure residence status must go through to secure a residence permit for the country they already live in.

What they look like is not universal, however. Procedures’ design, how people experience them and what hurdles they must overcome depends on their nationality, residence status, the grounds for stay invoked, the country they live in and/or migrate to and a person’s age and family composition.

This report is written for both policy makers and government staff who design and/or implement residence procedures, whether they be time-bound regularisation programmes or ongoing regularisation mechanisms, and for civil society organisations who wish to evaluate the procedures that exist in their country and aim to change them.

Regularity has, for instance, been used both as a response to specific economic challenges and situations, and as a response to a failing of the wider migration system.

Regularisations have been used with different objectives in mind and often reflect the government’s broader approaches to equality, migration management or the economy. Regularisation programmes or initiatives more than once, and some have used a combination of mechanisms and programmes.

Regularisation mechanisms and programmes: Why they matter and how to design them

[building] on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status and “strengthen[ing] efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration.” The UN Network on Migration, which is tasked with supporting governments in the implementation and review of the Global Compact on Migration, published a guidance note on regular pathways, which underlines that regularisation mechanisms and programmes have a rightful place in any country’s approach to migration.8

A wide range of grounds for stay have thus been recognized by governments. These include, but are not limited to: an existing labour relationship, current or past labour exploitation, private life, family life, family unity, having lived a certain number of years in the country, health or illness, the inability to return to the country of origin for practical reasons, non-refoulement, being the victim of crime, of domestic abuse, or of trafficking, training and education, the best interests of the child, being in the care of the state, having grown up in the country, etc. Mechanisms or programmes often cover more grounds than one.9

Spread and grounds for stay

Regularisation is a commonly used tool by governments in their approach to migration. Both within1 and outside2 of the European Union, governments have routinely adopted regularisation mechanisms or rolled out time-bound programmes. A number of European countries have rolled programmes or initiatives more than once,3 and some have used a combination of mechanisms and programmes.

Although the EU has not issued an explicit policy on regularisation, EU legislation includes several provisions setting conditions for access to residence permits for particular groups of people, and directly impacts people’s residence status through the migration management framework, including the extension or termination of permits.4

Internationally, the 2018 Global Compact for Safe, Orderly and Regular Migration5 and the 2022 Progress Declaration6 serve as important guides for governments as the Global Compact on Migration is the first-ever global agreement on migration management. In them, governments commit to both

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1 REGINE, the most comprehensive study on regularisations in Europe to date, shows that 24 of the 27 EU member states implemented regularisation programmes or mechanisms between 1996 and 2008. Research by the European Migration Network found that 60 national protection procedures (as distinct from international protection, and most of which would be considered regularisation mechanisms) existed in the 24 EU Member States, the UK and Norway surveyed at the end of 2018. Sources: REGINE Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union, final report; ICMPD, 2009, REGINE Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union, final report; ODIHR Office for Democratic Institutions and Human Rights, 2021. Migration cannot be disconnected from procedures: application procedures, permit renewal procedures, family reunification procedures, resettlement procedures, etc. Mechanisms or programmes often cover more grounds than one.2 Recent examples include Colombia, Morocco, and Thailand while Ecuador and Canada are rolling out or considering new programmes at the time of writing.
3 For instance, Ireland had regularisation programmes in 2018 and 2022. Italy has implemented eight programmes in the last 30 years (source: European Migration Network, 2021). European Union to launch regularisation programme for migrants and refugees in the EU and Norway. Study: Belgium had two regularisation campaigns in 1999 and 2006.4 For example, ten different grounds for stay can be invoked when applying for the Greek residence permit for humanitarian reasons, namely being: a victim of human trafficking, a victim of violence or a criminal act; a victim of domestic abuse; employed under particularly abusive working conditions or are working while underage; attending a legally approved “mental treatment programme”; adults unable to take care of their affairs due to health reasons or children in need of protection and under the care of public institutions, if return to a “hate environment” is impossible; a child placed in the care of a Greek or regularly residing family by a Greek or foreign court; being a victim of a work accident, for the duration of the treatment; a child staying in a boarding school; a patient with serious health problems. Article 19A, law 4251/2014.5 UN General Assembly, 2018, Global Compact on Safe, Orderly and Regular Migration (2018), Resolution 73/189.6 UN General Assembly, 2018, General Assembly Resolution 73/189: Progress Declaration on Safe, Orderly and Regular Migration, 40/18, Resolution.7 UN General Assembly, 2022, Progress Declaration of the International Migration Review Forum (2022), Resolution 79/3.8 Under objective 7 ‘Address and reduce vulnerabilities in migration’, § 23(i).9 UN General Assembly, 2022, Progress Declaration of the International Migration Review Forum (2022), Resolution, § 59.10 UN Network on Migration, 2021, Regular Pathways for Admission and residence for Migrants in Situations of Vulnerability: Guidance Note. The research lists undocumented people as people who find themselves in a situation of vulnerability as “irregularity (…) increases exclusion and exposes migrants to greater risk of discrimination and other human rights violations, abuse and exploitation.”
Impact on people and society

Regularisation benefits both the people concerned and wider society. Once regularised, people can breathe, plan their lives, and build their future through regular work. They can also move to better homes, see their children grow up with secure status and see family members, if they were separated before.

Governments and wider society benefit as inequality and social exclusion are reduced because people are better able to participate in all the economic, social, and cultural facets of the society they live in. Stronger and more durable connections between people and the government are built as people engage more with entities, organisations and bodies become more representative, and labour relationships are regularised. Countries’ finances also benefit as people can start paying taxes.

Key elements of regularisation programmes and mechanisms

For regularisation programmes, mechanisms, or initiatives to work well and be effective, quick, humane and fair, they must meet the necessary safeguards and have certain characteristics. Based on PICUM and its members’ expertise, ten key elements are identified. The bulk of the report fleshes the elements out and includes examples of existing procedures from around the world.

In focus: Digitised procedures and fees as barriers to integration

Two facets of regularisation measures can make it harder for people to regularize their stay: the extent to which procedures are digitised and how expensive procedures are. Fees and other costs are a common feature of regularisation measures but are prohibitively high in several countries. In addition, governments have been digitising their procedures, setting up portals and online payment methods, which create opportunities but also create challenges for the digitally excluded.

Digitalisation

Residence procedures and how migration is managed are becoming more digitised. Where paper applications used to be the standard, several countries have now developed online portals where people can submit, renew, or follow up their application. For example, people could only apply for a 2022 regularisation programme in Ireland through a survey-like online portal. And, while such survey-like formats can – in theory – lead to quicker decision making, such automation has led to mistakes and dehumanizing experiences in other countries.

While there are benefits to online portals and payment methods, they also risk widening a digital divide and create new barriers to inclusion. Undocumented people may not have (affordable) access to the internet and/or digital devices to connect to the internet; lack basic digital skills needed to use the internet and scan documents; and/or little or no experience with navigating online portals. The latter is exacerbated when portals aren’t particularly user-friendly. Governments should not create additional obstacles when digitising residence procedures.

Fees and hidden costs

Administrative fees are currently a common policy in migration management and include application and renewal fees, translation fees, permit issuance fees, biometric data processing fees, etc. These fees come in addition to other costs, like paying for a lawyer and travel costs.

Given that undocumented migrants usually live in or at risk of poverty, the cost of residence procedures must be taken into account when designing fair migration procedures. Procedures should be designed to make them accessible, including by making them affordable by reducing or eliminating fees and hidden costs. Where fees are levied, they should not be disproportionate, excessive, or pose a barrier to inclusion and should not exceed actual processing and issuing costs. Fee waiver policies should be rolled out for people living in poverty, children, and victims of crime.


12 E.g., job centres, real estate agents, leisure facilities, socio-professional guidance services, etc.

13 E.g., trade unions, school boards, patients’ organisations, civil society organisations, etc.

14 By the time Operation Papyrus, a 2017-2018 regularisation initiative in Geneva, Switzerland, had regularised 1,663 adults and 727 children (about 11,000 people), the final contribution is higher, as 2,883 people were regularised through the initiative in the end. Source: République et Canton Genève 2020, Service communication et information, 2020, Communiqué de presse conjoint du département de la sécurité, de l’emploi et de la santé et du département des affaires sociales de la ville de Genève.

15 E.g., trade unions, school boards, patients’ organisations, civil society organisations, etc.

16 For more on other aspects of digitisation of migration management and enforcement, see PICUM, 2022, Digital technology, policing and migration – What does it mean for undocumented migrants? PICUM, n.d., Digitising the use of data by states and the Migration and Home Office.

17 For instance, Ireland, United States Office of the Inspector General, 23 March 2022, User Experience is an Afterthought: Vulnerable Refugees and Others at Risk of Deportation, The Citizen Lab and University of Toronto.

18 PICUM, n.d., Dismantling the use of big data to deport and the Migration and Tech Monitor.

19 Not all residence procedures/regularisation measures require a lawyer. Although people may not know this or may feel more secure when they are assisted by a lawyer.

20 Linked to this, the Commission’s 2022 proposal for the recasting of the Single Permit Directive requires fees to be proportionate and based on the services "actually provided" to process applications and issue permits (article 10). Source: European Commission, 2022, Proposal for a Directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals residing in the territory of a Member State and on a common set of rights for third-country workers, including a fee model proposal.

21 For more on other aspects of digitisation of migration management and enforcement, see PICUM, 2022, Digital technology, policing and migration – What does it mean for undocumented migrants? PICUM, n.d., Digitising the use of data by states and the Migration and Home Office.
Introduction

Migration cannot be disconnected from procedures. For individuals leaving or growing up outside of their country of origin, life is full of procedures: application procedures, permit renewal procedures, family reunification procedures, resettlement procedures, return procedures, etc. What they look like is not universal, however. The procedures’ design, how people experience them and what hurdles they must overcome depends on their nationality, residence status, grounds for stay, the country they live in and/or migrate to and a person’s age and family composition.

This report focusses on one type of procedure: residence applications and renewal procedures that individuals can apply for from within the country. In other words, this report focusses on the regularisation mechanisms and programmes people with an irregular or insecure residence status must go through to secure a residence permit for the country they already live in.

Based on PICUM’s expertise and that of its members, a list of ten key elements was developed which help make regularisation schemes more effective and fairer. This report focusses on these key elements, giving examples of how these have been met (or not) across the globe.

This report is written for both policy makers and government staff who design and/or implement residence procedures (time-bound regularisation programmes or ongoing regularisation mechanisms) and for civil society organisations who wish to evaluate the procedures that exist in their country and aim to improve them.

This report is structured as follows: it starts by defining who an undocumented person or migrant and what ‘regularisation’ is, followed by the first chapter, which delves into the prevalence of regularisation in the region, common grounds for stay, the international and regional framework and the impact of regularisation on both people and society. The second chapter focusses on how governments can develop effective, quick, humane, and fair regularisation schemes by meeting ten key elements. The elements are then developed, and examples from existing procedures given for each. A third and final chapter focusses on two barriers to integration that evaluate the procedures that exist in their country and aim to improve them.

Definitions

‘Undocumented migrants’ or ‘undocumented people’ live in a country where their residence is not officially recognized. Many have had residence permissions linked to employment, study, family, or international protection, but those permits were either temporary or very precarious and their validity expired. There are also children who are born to undocumented parents who inherit this precarious residence status.

Regularisation refers to any process or procedure through which someone can obtain a residence permit from a relevant government authority authorising - ‘regularising’ - their stay in the country they reside in. The person applies for these procedures from inside the country, including when residing irregularly, in contrast to residence and work permits which must be applied for from another country. While some benefit or target undocumented people, other measures target people with a temporary or restricted residence permit or a suspension of deportation (e.g., Duldung status).

Regularisation can also occur through changes in policy that exempt a particular nationality from the requirement to have a residence permit in the country.

Two main subsets of regularisations exist:

- regularisation programmes, which have a limited time period in which to apply
- ongoing regularisation mechanisms, with applications accepted on a rolling basis.

For example, Italy’s 2020 regularisation of undocumented workers in certain sectors was a regularisation programme, while in-country residence procedures like Poland’s procedure to acquire a residence permit on humanitarian grounds are mechanisms.

Some identify a third group: regularisation initiatives. These time-bound schemes differ from programmes as they are based on an existing mechanism which they “proactively put (…) into place.” Where programmes are based on a separate legal instrument (law, decree or ministerial decision), initiatives make use of a pre-existing legal basis. The Swiss ‘Operation Papyrus’ carried out in Geneva and the Belgian regularisation campaigns of 2000 and 2009 are examples of initiatives.


22 Suspensions of deportations are not residence permits in the sense that the government has suspended the person’s deportation order but not given them the right to reside in the country. The access to services and the labour market varies widely for these statuses, with German suspensions of deportation giving access to certain social rights and sometimes training and the labour market, and Greek suspensions of deportation not giving access to any.

23 Migrantinfo.pl, Residence permit for humanitarian reasons and consent for tolerated stay [checked on 3 October 2022]

24 OSCE ODIHR, 2021, Regularisation of Migrants in an Irregular Situation in the OSCE Region - Review Developments, Points for Discussion and Next Steps, p. 4
Background and context

Regularisation is a commonly used tool in governments’ approach to migration. The chapter starts by a broader analysis of regularisation as a policy tool used throughout the region, the EU and beyond. It explores why regularisation mechanisms and programmes matter, how to design them and why some countries have introduced new programmes, developed new mechanisms, and/or redesigned existing mechanisms.

A common policy tool

Across the world, governments have regularised people in recent years, including Colombia, Morocco, and Thailand. Ecuador and Canada are rolling out or considering new programmes. Venezuelan law sees access to regularisation as a state obligation and a right of migrants and that regularisation rather than detention or deportation must be the government’s first response. Several of these governmental policies have the potential to regularize very large populations: some 600,000 Venezuelans are predicted to benefit from the regularisation in Ecuador, while one million could benefit from the regularisation mechanism in Colombia, making it the largest regularisation mechanism today.

Nonetheless, regularisation is often thought to be a taboo in Europe, particularly at the EU level. That mistaken impression was solidified in 2008, when the French Presidency of the EU proposed to prohibit regularisation in the EU. Countries such as Germany, France, Poland, the Netherlands, Denmark, Austria and Ireland were against large-scale, ‘one-off’ regularisations (although many had implemented regularisation programmes in the past), while countries such as Italy, Greece and Spain were in favour. To achieve compromise amongst the differing views of the EU member states, the European Council recommended that member states only do case-by-case regularisations.

Regularisation is however a policy tool that has been used widely in the EU in recent decades. REGINE, the most comprehensive study on regularisations in Europe to date, shows that 24 of the 27 EU member states implemented regularisation programmes or mechanisms between 1996 and 2008. In that period, 17 member states rolled out 43 regularisation programmes, involving 4.7 million applicants. The available data showed that at least 3.5 million people regularised their stay through programmes and mechanisms, but the researchers estimated the real number was much higher. According to their calculations, between 5.5 and 6 million people transitioned into a regular residence status in that 12-year period.

Recent mappings have confirmed the widespread existence of regularisation mechanisms and use of programmes in the European region. Research by OSCE ODIHR covering the period from 2006 to 2020 identified 49 measures in the 57 OSCE participating states. Research by the European Migration Network found that 60 national protection procedures (as distinct from international protection, and most of which would be considered regularisation mechanisms) existed in the 24 EU Member States, the UK and Norway surveyed at the end of 2018. The survey included procedures based on humanitarian grounds, exceptional circumstances, medical grounds, childhood, non-refoulement and climate change but not those for victims of crime and trafficking, which also exist. Another EMN study identified regularisation mechanisms based on ‘specific integration achievements’ or ‘integration efforts’ in five EU member states, whereby people “made particular efforts to integrate, such as proof of successful school attendance, language proficiency, social ties, references, or demonstrable value as a skilled worker.”

A number of European countries have rolled programmes or initiatives more than once, and some have used a combination of mechanisms and programmes. In recent years, several countries have introduced new programmes, developed new mechanisms, and/or redesigned existing mechanisms.
Research shows that governments across Europe have seen regularisation as a legitimate, proactive policy measure to meet their social and developmental objectives, as well as human rights obligations. However, a number of the schemes that have been enacted in recent years in Europe have flaws in their design that created new challenges and suffering or meant they did not reach the people they were supposed to. Learning from past regularisations, there are clear ways to avoid such pitfalls and have inclusive and successful regularisations.

**Grounds for stay**

Regularisations have been used with different objectives in mind and often reflect the government’s broader approaches to equality, migration management or the economy. Regularisation has, for instance, been used both as a response to specific economic challenges and situations, and as a response to a failing of the wider migration system. Italy’s 2020 regularisation programme during the Covid-19 pandemic\(^44\) which initially focused on agricultural workers, and expanded to include domestic and personal care workers,\(^4\) is an example of a government response to specific economic challenges, while Sweden’s regularisation programme for aged-out unaccompanied children\(^45\) and Ireland’s 2022 regularisation programme\(^46\) are examples of a programme addressing a broader migration policy issue.

Temporary measures have also developed into permanent measures. For example, Ireland’s 2009 undocumented workers scheme, known as the ‘bridging visa’, was introduced as a temporary programme for undocumented people who had lost their work permits through no fault of their own. The four-month permit allowed people to find a job or, if they were already employed, obtain a work permit for said job.\(^47\) In 2014, the scheme became a permanent mechanism in the form of the ‘Reactivation Employment Permit’, enabling people who fell out of status ‘through no fault of their own’ or who have been badly treated or exploited in the workplace, to regularise.\(^48\)

According to REGINE, measures between 1996 to 2008 followed either ‘a humanitarian and rights based logic’ or a “non-humanitarian, regulatory and labour market oriented logic.” The authors state that:

> "In the first instance, regularisation is, in a sense, a goal in itself and is used to address policy and implementation failures (e.g. in the asylum system), to respond to specific situations and needs, and importantly, regularisation is often explicitly an alternative to removal. (...) In the second instance, by contrast, regularisation is a means to achieve wider objectives, and in particular to address the nexus of irregular migration and the informal economy: Labour market oriented regularisations typically aim at combating undeclared work, ensure compliance with tax and social security obligations and at enforcing social rights and labour standards, and thus, fight social exclusion, vulnerability and other ills associated with undeclared work. In addition, a number of labour market oriented programmes also explicitly aim at promoting the integration of regularised migrants.\(^49\)

However, PICUM research\(^50\) – including this report – shows that governments also consider grounds for stay that do not fit neatly within these two categories. Examples are regularisation mechanisms based on studies or vocational training and residence permits for victims of crime, including trafficking and domestic violence. The distinction also somewhat artificially separates labour and social rights from humanitarian and human rights reasoning. Other actors also identified other categories. For example, the mapping by OSCE ODIHR distinguished between measures based on humanitarian grounds (incl. non-refoulement and the impossibility to return), on social integration, education, or employment, and those based on child rights or targeting (former) unaccompanied children.\(^51\) Another ground is pointed out by the UN Network on Migration which notes that the international human rights principle of family unity can also provide grounds for stay and that ‘effective and accessible family reunification should allow for both entry into the territory and regularisation on the territory.’\(^52\)

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\(^43\) See: PICUM, 2020, Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19, pp. 3-4, and PICUM, 14 December 2020, “Regularisation of European Unaccompanied Minor Family Members”

\(^44\) In 2014, the programme applied to agriculture, livestock and animal husbandry, fishing and aquaculture and related activities; assistance to the person

\(^45\) Sweden is phasing out this programme. See: PICUM, 2022, ‘Temporary and undocumented: Supporting Children in their Transition into Adulthood. Annex 2’

\(^46\) Euromed, 1 February 2012, ‘Ireland launches amnesty scheme for undocumented migrants’ (checked on 2 September 2022)

\(^47\) Irish Times, 14 September 2009, ‘New Bridging visa for immigrants’ (checked on 3 October 2022)

\(^48\) Department of Enterprise, Trade and Employment of Ireland, ‘Reactivation Employment Permit’ (checked on 3 October 2022)

\(^49\) ICMPD, 2009, REGINE Regularisations in Europe. Study on practices in the area of regularisation of Legally staying third-country nationals in the Member States of the European Union, policy brief, p. 3


\(^51\) OSCE Office for Democratic Institutions and Human Rights, 2021, ‘Regularization of Migrants in an Irregular Situation in the OSCE Region. Recent Developments, Points for Discussion and Recommendations’

\(^52\) UN Network on Migration, 2021, ‘Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability, pp. 7-8’
International and regional framework

EU legal framework

Although the EU has not issued an explicit policy on regularisation, it could be argued that:

“given the close link of regularisation practices with international protection in a majority of EU Member States (including asylum, subsidiary and temporary protection), the Union’s powers regarding refugees and asylum provide an additional rationale for considering regularisation as a policy area falling in principle under the competence of the European Union, as defined by the Treaty.”53

Furthermore, EU legislation includes several provisions setting conditions for access to residence permits for particular groups of people,54 and directly impacts people’s residence status through the migration management framework, including the extension or termination of permits. For instance,

- The ‘Citizens’ Rights Directive’ (Article 13) and ‘Family Reunification Directive’ (Article 15) ensure that victims of domestic violence whose residence permit depends on their partner or parent receive a residence permit in certain circumstances.
- The ‘Residence Permit Directive’ requires member states to consider issuing a residence permit of limited duration to trafficked persons who are cooperating with competent authorities linked to relevant national proceedings, and sets out the associated conditions. Member states may also do so in relation to smuggling cases.
- The Employers’ Sanctions Directive (Articles 6.5 and 13.4) requires member states to set conditions under which they would grant residence permits of limited duration to people who cooperate with competent authorities linked to national proceedings related to their experience of ‘particularly exploitative working conditions’ or child labour, and the receipt of due salaries and compensation in such cases. The conditions should be comparable to those for trafficked persons as set out in the ‘Residence Permit Directive’.
- The Return Directive (Article 6.4) underlines that member states can grant an autonomous residence permit to an undocumented person at any time.
- The Long-Term Residents Directive (Article 13) establishes Member States’ right to issue residence permits “of permanent or unlimited validity” on more favourable terms than the directive does.

53 ICMPD, 2009, Regularisation in Europe: A study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU, 5th report,” p. 182
54 See also, PCMML, 2020, ‘Illegalisation? Residence permits for victims of crime in Europe.”


Global normative and policy framework

The global normative and policy framework includes references to both governments’ commitments and elements regularisation measures should meet, the most important of which are listed here. The procedural elements included in the global normative and policy framework listed below are underlined to highlight them.

Under the 2018 Global Compact for Safe, Orderly and Regular Migration,68 which has been adopted by 18 EU member states,69 governments commit to:

“Build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population.”69

While not legally binding, the Compact serves as a guide for governments as it is the first-ever global agreement on a common approach to migration, covering all its dimensions.

In addition to the above commitment, governments agreed to prevent people become undocumented by developing “accessible and expedient procedures that facilitate transitions from one status to another (…) without fear of arbitrary expulsion.”69

Governments also committed to “reviewing and revising existing (…) pathways for regular migration (…) in consultation with the private sector and other relevant stakeholders”, to developing “flexible, rights-based and gender-responsive labour mobility schemes (…) by providing flexible, convertible and non-discriminatory visa and permit options”, and to “develop or build on existing national and regional practices for admission and stay (…) on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible.”69

The 2022 Progress Declaration of the International Migration Review Forum (IMRF), which assesses the progress since the adoption of the Global Compact on Migration and confirms governments’ commitment to it, includes more commitments and standards relevant to regularisation. At the IMRF, governments and other stakeholders recognized that “the availability and flexibility of pathways for regular migration remains limited in many cases,” even though accessing regular status reduces people’s vulnerabilities.67

63 Under objective 7, “Address and reduce vulnerabilities in migration,” 5.24.
64 Under objective 2, 3.27.
65 All under objective 5, “Enhance availability and flexibility of pathways for regular migration.”
68 UN General Assembly, 2018, Global Compact on Safe, Orderly and Regular Migration (2018), Resolution 73/189.
69 When the UN Global Compact on Migration (GCM) was adopted in December 2018, the UK was part of the EU and one of the 19 member states which registered and adopted the GCM, cited in, and at, CoE, 2018. The wording built on the Marrakech Lessons from the European Negotiations of the Global Compact for Migration, Migration Policy Institute.
70 Under objective 7, “Address and reduce vulnerabilities in migration,” 5.24.
Governments also committed to “avoiding approaches (to migration) that might create or aggravate situations of vulnerability for migrants,” to “developing national gender-responsive and child-sensitive migration policies and legislation” and to “ensuring that the best interests of the child are a primary consideration in all actions concerning children as regards migration, legislation, policies and practices.” The declaration also refers to regularisation outcomes, with governments committing to:

- “strengthen efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration including in response to demographic and labour market realities, and for migrants in vulnerable situations, as well as those affected by disasters, climate change and environmental degradation, including by (...) concluding labour mobility agreements, optimizing education opportunities, facilitating access to procedures for family reunification (...) helping migrants in an irregular situation, in line with national laws.”

The UN Network on Migration, which is tasked with supporting governments in the implementation and review of the Global Compact on Migration, published a guidance note on regular pathways for migrants in situations of vulnerability, a situation which undocumented people find themselves in because of their irregular status. The note underlines that regularisations and adjustments of status are types of regular pathways on the same level as obtaining residence permits before departure and upon arrival at a port of entry. In other words, regularisation mechanisms and programmes have a rightful place in any country’s approach to migration.

The guidance lists aspects governments can improve to move forward on their pledges under the Global Compact on Migration: guiding principles, criteria, accessibility, affordability, availability, procedural safeguards, individual determination of an application, independent monitoring and review of pathways, the issuing of ‘provisional documentation’ and regularity while the procedure is pending.

The criteria used should be clear, transparent and rights-based, respond to specific needs of migrants, situations of vulnerability they face and migrants’ socio-demographic and economic reality. This includes “regarding opportunities for admission and stay based on human rights and humanitarian grounds according to international standards and international best practices; facilitating access to regular admission by waiving onerous requirements or application fees; streamlining and expediting procedures, including clear information on the various steps and requirements, manageable timelines and early accessible evidence documentation; broadening the definition of family for family reunification cases; and dedicated support for migrants in vulnerable situations.”

The declaration also refers to regularisations and ‘adjustments of status’ underlines that regularisations and ‘adjustments of status’ are types of regular pathways on the same level as obtaining residence permits before departure and upon arrival at a port of entry. The guidance lists aspects governments can improve to move forward on their pledges under the Global Compact on Migration: guiding principles, criteria, accessibility, affordability, availability, procedural safeguards, individual determination of an application, independent monitoring and review of pathways, the issuing of ‘provisional documentation’ and regularity while the procedure is pending.

68 § 55.
69 § 54.
70 § 53.
71 § 52.
73 i.e., whereby a person transitions from one residence status/permit into another.
74 Regular pathways for admission and stay are understood to be “legal, policy and/or administrative mechanisms that provide for regular travel, admission and/or stay in the territory of a State regardless of whether the initial entry was regular and/or temporary.” § 14.
75 These are: people-centredness, child-sensitivity (including best interest of the child), gender-responsiveness, trauma-informed and upholding international human rights and labour standards, including the prohibition of discrimination.
76 The criteria used should be clear, transparent and rights-based, respond to specific needs of migrants, situations of vulnerability they face and migrants’ socio-demographic and economic reality. This includes “regarding opportunities for admission and stay based on human rights and humanitarian grounds according to international standards and international best practices; facilitating access to regular admission by waiving onerous requirements or application fees; streamlining and expediting procedures, including clear information on the various steps and requirements, manageable timelines and early accessible evidence documentation; broadening the definition of family for family reunification cases; and dedicated support for migrants in vulnerable situations.” para 29.
77 To improve accessibility, “mechanisms for identification and referral of migrants in vulnerable situations should be put in place and implemented by trained, qualified and competent authorities and other personnel, including child welfare authorities, in line with a multi-disciplinary, child sensitive, gender-responsive approach. Adequate and accessible information and advice should be available in languages that migrants can understand. Migrant women should be able to access information independently and not depend on their partners who might be abusive.”
78 Pathways should be “affordable or free of charge, including obtaining required documentation.” Information about procedures should be readily available to people who do not rely on unregistered brokers.
79 Listed as ‘procedures’ in the note. Regular pathways should be available for people, and governments should include human rights, humanitarian grounds and ‘other considerations relevant to migrants in vulnerable situations’ as grounds for admission and stay.
80 Procedural safeguards to be put in place include: formal and individualised decision in writing; reasons for rejection are given; guarantees of a prompt and transparent process; the application of best interests procedures for children; the administrative and judicial review of a negative decision; the supervisory effect of an appeal, access to information in an accessible format; free and independent legal advice; qualified and independent interpreters; the possibility for individuals to apply for themselves and access to all related information and documentation pertaining to their case; assurance that applicant’s data is not used for immigration enforcement purposes should the application fail.
83 ULB and Centrum voor Sociaal Beleid en Centrum voor Gelijkheid van Kansen voor rechtsnemende burgers, 2008. Wonen en werken: de impact van de regularisatie op de economische positie van personen die illegaal woonden (in Dutch) (The impact of regularisation on the economic position of persons who were irregular).
84 Man, 34 years old, from the Democratic Republic of the Congo now living in The Netherlands, quoted. Quoted in UNDP, 2019, Scaling Fences: Voices of

One of the few research projects consulting regularised people and comparing their lives before and after regularisation in Belgium mentions that people’s behaviour changed. Being regularised allowed people to look at themselves and their place in society in a new and different way. It enabled them to become more self-sufficient in terms of finding housing, food, and ensuring their safety and day-to-day survival. The same study noted that respondents unequivocally described their time as an undocumented person as the darkest period in their lives, one they found difficult to recount.

Regularisation also benefits family life. Families who have been living in different countries can finally be reunited, and the possibility also opens up for potential family reunification through official channels for partners, children, as well as parents. Mixed-status families also benefit, especially when an undocumented parent, partner or child of a regularly residing person receives a permit.

Impact on wider society

In addition to the direct impact on people’s lives, prospects and well-being, governments and society at large also benefit. Regularising undocumented people reduces inequality and social exclusion because people are better able to participate in all the economic, social, and cultural facets of the society they live in. They feel safe watching their children put down roots and bond with their peers.86

Regularisation also offers an opportunity both for the person and the society to connect and build more durable relationships. People start engaging more with formal social networks and entities like job centres, real estate agents, socio-professional guidance services, etc because it is safe to do so.87

Trade unions, school boards, patients’ organisations, consumer protection bodies, women’s, youth, environmental and a host of other civil society organisations benefit from regularisation as they become more representative of the population.

It is also an opportunity to regularise existing labour relationships and promote decent work and social protection. While residence and work permits should not depend on a specific employer or contract,88 existing work relationships can and have continued after the employee was regularised.89 Employment can be declared and integrated into the social security system. Depending on the conditions of the permit granted, regularised workers also have greater labour market mobility. They are able to negotiate fair conditions at work, develop in their careers and, in some cases, find employment that better matches their skills and expertise. Experience in certain economic sectors, like the cleaning and domestic care sectors, while people were undocumented also facilitated their later entry into the formal labour force.90

Countries’ finances also benefit from regularising undocumented people. By the time Operation Papyrus, a 2017–2018 regularisation initiative,91 had regularised 1,663 adults and 727 children in the Swiss canton of Geneva (about halfway through the programme), it had also generated a benefit of at least 5.7 million Swiss francs (approximately 5.2 million euros) for the cantonal social insurances.92 The final contribution is higher, as 2,883 people were regularised through the initiative in the end.93

Developing ways for undocumented people to regularise offers countries other tangible advantages. In addition to increased tax revenues and security payments, governments also develop a better understanding of their resident population and labour market and the opportunity to better regulate working conditions, health, and social services.
When key elements are missing

When countries have effective regularisation procedures in place, governments benefit by having stronger connections to local communities, and communities that trust they will be treated fairly. But when a government fails to introduce fair and effective regularisation procedures, it leads to human suffering, unnecessary bureaucracy, and pressure on the courts and justice systems.

When people cannot apply for regularisation and can only appeal against orders to leave the territory and/or deportation orders, judges must process these appeals. People may also apply for residence permits that are not meant for them, simply because they are the only ones available. This also causes unnecessary anxiety for the applicants, has a massive impact on their wellbeing and the wellbeing of their children, wasting their time and financial resources.

As always: the proof is in the pudding. How regularisations turn out depends on the provisions attached to the regularisation measure in question. If only a temporary residence permit is issued, the relief from uncertainty and social exclusion can be short-lived as people may become undocumented once again. If the permit is attached to a particular employer, there are significant risks of exploitation. If family members are not regularised at the same time, the anxiety for them and risks of family separation continue to weigh on people’s mental health.

Ten key elements of humane and fair regularisation programmes and mechanisms

For regularisation programmes, mechanisms, or initiatives to work well and be effective, quick, humane and fair, they must meet the necessary safeguards and have certain characteristics. Based on PICUM and its members’ expertise, we identified ten key elements. The bulk of this report fleshes the elements out and includes examples of existing procedures from around the world.

1. Undocumented people themselves can apply, including children.
2. Civil society, including migrant and refugee-led associations, are involved in the design, implementation and evaluation of the scheme.
3. Decisions are based on clear, objective criteria.
4. Reasons for refusal are documented and argued and can be appealed.
5. Decisions are made in an independent and impartial way and are informed by experts relevant to the criteria assessed.
6. The procedure is accessible in practice.
7. Procedural safeguards are in place.
8. A temporary status that gives access to services, justice and the labour market is issued during the application process.
9. The resulting residence permit is secure and long-term, gives access to services and the labour market, counts towards settlement and citizenship, and does not depend on anyone else.
10. The regularisation measure prevents irregular stay and work and is accompanied by support measures.

94 An ‘order to leave the territory’ or ‘return decision’ is an administrative document ordering a person to leave the territory of a certain country, usually within a certain deadline. The person is expected to leave the territory on their own, but may be able to seek assistance (e.g., through assisted voluntary return and reintegration programmes). A deportation or removal order is an administrative or judicial decision or act ordering the removal of a person from the territory to a third country, usually followed by a deportation/forced return.
Ten key elements for regularisation

1. Application
Undocumented people themselves can apply, including children.

2. Whole of society
Civil society, including migrants’ associations, are involved from the design to the implementation and evaluation of the scheme.

3. Criteria
Decisions are based on clear, objective criteria.

4. Appeal
Reasons for refusal are documented and argued and can be appealed.

5. Decision-making
Decisions are made in an independent and impartial way and are informed by experts relevant to the criteria assessed.

6. Accessibility
The procedure is accessible in practice, meaning that it is not bureaucratic, burdensome, or expensive. Programmes should be open for at least 18 months.

7. Safeguards
Procedural safeguards are in place, including access to readily available information and free legal aid, the existence of firewalls and having the right to be heard.

8. Temporary status
A temporary status that gives access to services, justice and the labour market is issued during the application process.

9. Residence permit
The resulting residence permit is secure and long-term; gives access to services and the labour market; supports and services; counts towards citizenship; does not depend on anyone else; and protects family unity.

10. Future proof
The regularisation measure prevents irregular stay and work and is accompanied by support measures.
Regularity programmes and mechanisms in action: practices across the world

This report elaborates on different elements of regularity programmes and mechanisms, and highlights examples of how countries have implemented them. Both promising practices and examples of procedures that do not, or poorly, integrate the elements mentioned are included. As the examples hopefully make clear, all countries have adopted both positive and negative practices, and the same regularity mechanism or programme (residence procedure) can include both poor and promising elements.

The examples given only relate to the key element they illustrate and their inclusion in this report should not be understood as a blanket judgement on the procedure as a whole.

1. Undocumented people themselves can apply, including children.

Ensuring people can apply for a residence permit themselves helps prevent or decrease dependency on and possible dangerous power relationships with others. This can be the case for employees (who may be dependent on an employer), partners (dependent on a partner who is a national) and children.

When Italy launched a two-track regularity programme in 2020, in the first track, employers could apply to conclude an employment contract with a foreign national living on the territory or declare an existing irregular employment relationship. Employers were meant to pay a fee of 500 EUR on top of lump sum amounts for taxes they most likely were not paying. However, it turned out that some employers made the undocumented worker pay the fee, used the prospect of regularisation to blackmail workers into putting in longer hours or sold labour contracts, in amounts of up to 7,000 EUR.

Individual applications in ‘Operation Papyrus’

People applying for a residence permit during ‘Operation Papyrus’, a regularisation initiative in the Swiss Canton of Geneva (2017-2018), could do so without the support of their employer. People had to self-declare their current working relationship. This data was then used by the state (only once the permit had been granted and the person was thus safer from retaliation) to conduct labour market controls and ensure that employers complied with the relevant laws on minimum wage, social contributions, paid leave, etc.

It is important that government bodies in charge of processing and deciding on permit applications systematically assess whether a person who is rejected on one ground meets the grounds for another residence permit. This safeguard, called an ex officio examination, closes protection gaps, and ensures that people do not become or stay undocumented because they are unaware of certain permits, cannot pay for them and/or have lost faith. It also ensures governments meet their due diligence requirement.

‘Ex officio’ examinations in Italy

In Italy, the International Protection Commission must examine whether an individual meets the grounds for a special protection permit (‘protezione speciale’) when rejecting their asylum application. This permit is meant for situations in which there are barriers to return related to art. 3 of the Refugee Convention (the principle of non-refoulement), art. 33 of the European Convention on Human Rights (ECHR; prohibition of torture and ill-treatment), to art. 8 ECHR (family and private life) and for people who are relatives of Italian citizens.

95 Stranieri in Italia, 20 May 2020, Regolarizzazione, ecco il testo in Gazzetta Ufficiale. Il contributo forfettario è di 500 euro
96 Limited to specific categories of employment, namely agriculture, livestock and animal husbandry, fishing and aquaculture and related activities; assistance to the person for themselves or for members of their family, even if they are not living together, suffering from pathologies or handicaps that limit their self-sufficiency; domestic work to support family needs.
2. Civil society, including migrant and refugee-led associations, are involved in the design, implementation and evaluation of the scheme.

Too often, governments and civil society work apart from each other, often to the detriment of undocumented people, effective administration and wider society. However, involving all stakeholders benefits everyone involved: governments are certain they roll out effective processes, reaching and receiving quality applications from people eligible for the scheme; migrants experience procedures that are designed with them in mind and can trust in a fair result; and both the design and the implementation of the procedure benefits from everyone’s expertise.

“In I am still going to the Home Office to report, and that is even giving me depression because I haven't done anything wrong. Why are we going there to report everything? And we have to queue, queue, queue so much, sometimes you’re standing for two hours. And they shout at you, they treat you like you are nobody. Every time I go there I develop hatred. And it’s not good, it’s not me, I’m a nice person. But the way they treat you like s**t – it’s not a good experience.” – Constance, a parent,

Human-centered and user-centered design have been used by governments in other policy areas, creating better relationships between governments and people and boosting confidence in governments. For example, the Allegheny County Department of Human Services, United States, reshaped their services after conducting a human-centered process to understand the experiences people seeking drug and alcohol treatment.

In addition to the whole-of-society approach, a whole-of-government approach during the design phase ensures horizontal and vertical policy coherence across the government and helps streamline procedures. However, the firewall principle must be upheld when procedures are implemented, as sharing personal information, including people’s residence status, by service providers with the Immigration Office and immigration enforcement bodies will prevent people from accessing necessary services and support.

3. Decisions are based on clear, objective criteria.

Whether to issue a permit to someone is, in essence, a decision. While all regularisation mechanisms and programmes contain technical requirements (such as having a certain document or not), not all include clear substantive criteria. In fact, several important mechanisms do not list any substantive criteria or are wholly discretionary by design. This is problematic, as it can create confusion and may give false hope. People are also unlikely to provide all the information relevant for the consideration of their case, making the procedure ineffective. It can also deter people from applying when it is unclear who could benefit. Wholly discretionary procedures also tend to be applied differently depending on the political inclination of the government in power and can lead to wide variations in practice between regions and localities, and in some cases, even individuals. So, although decision-makers need some discretion when assessing applications, especially those that are not clear-cut, substantive criteria should be objectified as much as possible and be transparent.

Several organisations that are members of the Collectif de soutien aux sans papiers de Genève (Collective in Support of Undocumented Migrants in Geneva) including PICUM member CCSI, were involved from the earliest stages in the development of Operation Papyrus (Geneva, Switzerland). Civil society organisations took part in both the technical and political steering committees set up for the implementation phase, meeting with immigration authorities and political representatives at least monthly throughout the initiative. This kept constructive dialogue going and meant unforeseen issues could be discussed quickly with all relevant actors.

The Spanish government must consult the Forum for the Social Integration of Immigrants (Foro para la Integración Social de los Inmigrantes) when reforming migration law. The forum consists of representatives from different relevant civil society organisations. Public consultations are also held, so organisations which are not part of the forum can provide input and suggestions.

Once the Irish coalition government decided they would launch a regularisation programme and set out the target population, the Ministry consulted civil society before deciding on the finer details of the scheme, including the eligibility criteria and application process.

For more information on CCSI, visit www.ccsi.ch

Operation Papyrus was a regularisation initiative that ran in the Swiss Canton of Geneva in 2017 and 2018. It regularised around 3,000 undocumented workers, many of which were women working in the domestic care sector. For more information on Operation Papyrus, see PICUM, 4 April 2020, Geneva: Operation Papyrus regularizes thousands of undocumented workers, blogpost

Information provided by PICUM member CCSI on 30 September 2022.

Email exchange with PICUM member Fundación Cepaim, Geneva, on 30 August 2022.

GOV.ie, 23 April 2021, Minister McEntee outlines draft scheme to regularise undocumented migrants to Cabinet [checked on 10 September 2022]

The REGINE study observed that regularisation programmes “on the whole” included relatively transparent and clearly defined criteria, while the criteria and even procedures of mechanisms were often much too well-defined and left “substantial room for administrative discretion.” This must be nuanced, however, as some mechanisms do have clear-cut criteria (e.g., arraigo in Spain, private and family life in the UK).
Criteria

Governments should develop criteria with undocumented people’s realities in mind, including requirements regarding income when people are formally excluded from the labour market. That is why criteria should be developed in consultation with local civil society and (former) undocumented people, so they can meet local realities. Requirements which may seem harsh for policy makers and administrations can create real barriers for people.

Italy’s 2020 regularisation programme included several criteria which were very hard to meet, and which may have resulted more from political negotiations than anything else. For example, undocumented workers in the agricultural and domestic sectors (which the programme targeted) had to prove they lived in a home of a certain size that met certain housing regulations, even though agricultural workers most often live in informal settlements or inadequate, communal housing on or near the farms they worked at. The second track of the programme excluded job seekers whose residence permit expired before 31 October 2019, a seemingly random date.

The two main Belgian regularisation mechanisms are highly discretionary and difficult to apply for.

Firstly, the law states that the application for a (temporary) residence permit on humanitarian or medical grounds needs to be made abroad, but someone living in Belgium can apply if “exceptional circumstances” justify that they cannot file the application at a Belgian embassy or consulate. However, the admissibility threshold is quite high as – according to the Immigration Office, the Council for Alien Law Litigation and the Council of State – there would be very few reasons why a person could not submit their request from outside of Belgium. This means that many requests are declared inadmissible and never get analysed on their merits. Secondly, the decision on the merits is highly discretionary, as the law does not include criteria or a timeline within which the decision must be made. Although criteria on the merits were established in an instruction in 2009, the instruction was later annulled by the Council of State because it would “render inoperative” the legal admissibility condition that there must be “exceptional circumstances.”

In addition, case law backs up the Immigration Office’s position that integration is not sufficient grounds to receive a residence permit. From 2013 to 2016, 10 temporary residence permits and 106 permanent residence permits were issued based on article 9bis (humanitarian grounds).

111 The programme included two tracks: one for people who were currently working, and one for people who were looking for work and previously worked in an unregulated sector. For more on the programme, see PAVON, 2020. Non-legislative overview of European government measures impacting undocumented migrants taken in the context of COVID-19

112 PICUM, 14 December 2021. 2020 regularization programme in Belgium

113 Belgium law includes a third regularisation mechanism for unaccompanied children who do not apply for asylum. See PICUM, 2022. Turnin16 and undocumented children in transition into adulthood for more on the ‘transition solution’ procedure.

114 Art. 35, s. 1, of the Immigration Act, respectively.

115 Circular 31 June 2007, Geschiedenis en bestaande staatkundige regelingen in de regelregering bestaande uit het vasthouden van zekerheid over de woningblijging van de betreffende personen, in de wetgeving van 15 september 2006.

116 For instance, case law states that having lived in Belgium for many years, going to school and being well-integrated in Belgium are by themselves not a secure residence status. The following case law refers specifically to former unaccompanied children whose application was deemed inadmissible: RvS, 9 December 2008, nr. 130.700; RvS 30 April 2015, nr. 146.806; RvS 15 October 2015, nr. 154.017; RvS 27 May 2016, nr. 164.544. The regularisation mechanism that formed the basis of the regularisation initiative ‘Operation Papyrus’ in Geneva, Switzerland (2017-2018) was simplified and made more transparent. Candidates had to meet five criteria to be eligible: continuous residence in Geneva for five years with school-aged children, or 10 years for others; being employed; being financially independent; obtaining a certified AJ level in French (oral only); and being able to produce a clean criminal record. Although each case was reviewed individually, the fact that the procedure was somewhat standardised and based solely on objective criteria made it easier to process many cases in a short amount of time. There was also a list of documents that candidates knew would be accepted to prove their years of residence in Geneva, reducing uncertainty for them and making the process less arbitrary.


118 ENO 30 November 2018, nr. 213.212; ENO 27 May 2016, nr. 164.544.

119 The programme included two tracks: one for people who were currently working, and one for people who were looking for work and previously worked in an unregulated sector. For more on the programme, see PAVON, 2020. Non-legislative overview of European government measures impacting undocumented migrants taken in the context of COVID-19

120 As a reminder, regularisation initiatives are temporary regularisation campaigns that put in use an existing regularisation mechanism (i.e., a pre-existing legal basis). See chapter on definitions. In this case, articles 30 al. 1 let. b) or 31 of the Ordinance on admission, residence and the exercise of a gainful activity (OASG; RS 142.111). In Spain’s voluntary return programmes, the city council may also decide the termination of a return programme, or, alternatively, present a report to the Autonomous Community that shows the personal social integration, and, if submitting a signed employment contract on a business plan if the person is self-employment.

Examples of clear criteria in Geneva, Spain, and Poland

The regularisation mechanism that formed the basis of the regularisation initiative ‘Operation Papyrus’ in Geneva, Switzerland (2017-2018) was simplified and made more transparent. Candidates had to meet five criteria to be eligible: continuous residence in Geneva for five years with school-aged children, or 10 years for others; being employed; being financially independent; obtaining a certified AJ level in French (oral only); and being able to produce a clean criminal record. Although each case was reviewed individually, the fact that the procedure was somewhat standardised and based solely on objective criteria made it easier to process many cases in a short amount of time. There was also a list of documents that candidates knew would be accepted to prove their years of residence in Geneva, reducing uncertainty for them and making the process less arbitrary.

Applications for one of the four Spanish ‘arraigos’ which are based on ties with Spain, are all assessed on meeting criteria which are clarified in law. For example, to receive a one-year residence and work permit under the ‘arraigo social’, people must meet seven criteria: a) not be a citizen of the EU or the EEA, b) not having a criminal record, c) not being prohibited from entering Spain, d) not being under a three-year period to not return to Spain after returning to a third country if the person received official support to return to a third country e) having family ties with other foreign residents or, alternatively, present a report by the Autonomous Community that shows the personal social integration, and, if submitting a signed employment contract on a business plan if the person is self-employment.

Poland’s 2012 regularisation programme was open to all undocumented migrants who were living in Poland at the time, who had lived in Poland for at least four years and who could provide proof of identity/identification. There were no other requirements.

121 As a reminder, regularisation initiatives are temporary regularisation campaigns that put in use an existing regularisation mechanism (i.e., a pre-existing legal basis). See chapter on definitions. In this case, articles 30 al. 1 let. b) or 31 of the Ordinance on admission, residence and the exercise of a gainful activity (OASG; RS 142.111).

122 PICUM, 14 December 2021. 2020 regularization programme in Belgium

123 Arraigo social, laboral, familiar and formativo (the last introduced in 2022).

124 Spain’s voluntary return programmes require people to commit to not returning to Spain to reside and/or work for three years. Source: Gobierno de España, 13 March 2018. Regularization programmes and return programmes, powerpoint presentation

125 Absences cannot exceed 120 days.

126 This can include a spouse, a registered domestic partner, or direct descendants or ascendants in the first degree.

127 Or the city council if the Autonomous Community has authorized it.

128 From 2013 to 2016, 10 temporary residence permits and 106 permanent residence permits were issued based on article 9bis (humanitarian grounds).
Accessing benefits and other social protection measures should not be grounds for refusing to grant or extend a permit. Social protection – the systems to "help individuals and families, especially the poor and vulnerable, cope with crises and shocks, find jobs, improve productivity, invest in the health and education of their children, and protect the aging population" – is meant to protect the individual from the worst, and help sustain a prosperous society. However, some policies prevent or effectively punish people from accessing benefits. For instance, some residence permits do not allow people to access (all) supports. This is the case in the UK, where residence permits on private and family life grounds prohibit access to a wide range of benefits, including child benefits, disability living allowance and income support. Other permits cannot be renewed if people have accessed benefits. For instance, to renew a permit issued during Geneva's 'Operation Papyrus' people must show that they still meet the original criteria, including financial independence (i.e., not having debts or be on welfare).

Denying people access to supports, or punishing them when they do, keeps or pushes them in precarious situations and poverty. It also risks discriminating against parents, young people and people with disabilities and denies people access to vital social protection supports, including when they have been paying into the social protection system. If people are eligible to receive social assistance under national law, access to that social assistance should not be a barrier to accessing secure and settled status.

The self-sufficiency requirement and accessing benefits in Germany

Germany's residence permit based on 'sustainable integration' requires applicants to be self-sufficient through work (or to be expected to be so soon). However, people who cannot meet that criterion "due to physical, mental or psychological illness, disability or age" are exempted from it. The article also allows people to receive housing benefits and lists five categories of people that can receive the permit despite receiving benefits. These are: students, trainees and people undergoing vocational training; families with underage children who are temporarily dependent on social benefits; single parents 'who cannot reasonably be expected to work'; and care givers of close relatives.

Morocco and Spain learning from past mechanisms and programmes

Morocco’s 2017 regularisation programme was more flexible and was open for longer than the earlier 2014 programme. The groups of people who could apply in 2017 included: women and their children; unaccompanied children; spouses of Moroccan nationals or regularly-residing foreigners, regardless of the length of the marriage; foreigners who could prove a professional activity, but no employment contract; foreigners who could not prove five years of residence in Morocco but who had a college education or equivalent. In contrast, unaccompanied children on women and their children could not apply for the 2014 programme, and the programme also required two or more years of regular work contracts or five years of continuous stay; and people had to be married for at least two years to Moroccan nationals or four years to regularly residing foreigners.

Spain reformed its legal framework in 2021, facilitating access to a secure residence permit for (former) unaccompanied children. Until November 2021, unaccompanied children who turned 18 and then became undocumented had to meet a monthly income from work requirement to access a residence permit. To renew the permit, they had to earn 4x the minimum income (EUR 2,259.60 at the time) – much higher than what is needed to live in Spain. Due to this requirement, tens of thousands of young people were unable to renew their permits and remained undocumented despite living regularly in Spain for years. In 2021, the government reformed the law, requiring resources (from work, subsidies, or grants) equal to the minimum income (470 EUR) and giving unaccompanied children older than 16 access to the labour market.

Governments can learn from existing mechanisms and earlier programmes – both their own and those in other countries – and adapt the design and criteria of an existing or new ones accordingly.
Private and family life

Governments should consider a few years of residence sufficient grounds for regularisation, as the person is likely to have created important ties to society. In fact, measures restricting the right to reside in a country may entail a violation of Article 8 of the European Convention on Human Rights (ECHR) if they create disproportionate repercussions on the private and/or family life of the people concerned. States are obliged to conduct a rigorous balancing exercise between the deportation of someone and the potential breach of their right to private or family life before issuing a return decision.\(^{144}\)

The European Court of Human Rights (ECtHR) has clarified that the right to private and family life protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual’s social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of ‘private life’ within the meaning of Article 8.\(^{145}\)

German law foresees that a person who has been living with a suspension of deportation (aka, has been living with a Duldung status) is granted a residence permit if they have become permanently integrated.\(^{146}\) According to the law, that means that: a) the person is financially self-sufficient through work or can be expected to become self-sufficient through work,\(^{147}\) b) knows German (A2 level), c) is committed to the ‘free democratic order’ and has a basic knowledge of te legal and social order and living conditions in Germany, and d) has lived in Germany with a suspension of deportation for eight years, or six years if they live with a minor, unmarried child.\(^{148}\) (Note that the German government plans on amending the permit to make it more accessible.\(^{149}\))

Lower thresholds for children in Ireland and Geneva, Switzerland

Ireland applied a lower threshold for families with underage children during the 2022 regularisation programme, requiring three years instead of four years of irregular status.\(^{150}\) ‘Operation Papyrus’ (Canton of Geneva, Switzerland) required half the length of stay for families with children compared to others.\(^{151}\)
Permits for children born in or growing up in the country

Some countries have provisions for children born in the country to acquire a secure residence permit and/or citizenship. Others have provisions for those who grew up in the country.

For example, young people (adults) who were born in or completed six years of schooling in Greece can access a five-year residence permit. Young people (adults) who have lived in Portugal since before their 10th birthday can regularise their stay.

Undocumented children who were born in the UK can apply for indefinite leave to remain after seven years, including when they had a residence permit during that time. However, children must still show that it is “unreasonable” to expect them to leave the UK, and the Immigration Office and UK courts apply a high threshold. Children born in the UK are also eligible for British citizenship but must turn ten first.

Norway adopted a mechanism issuing a permit on humanitarian grounds or a particular connection with Norway for “long-staying” undocumented children in 2014. Although the exact minimum stay is not defined in law, children must generally have lived in Norway for at least four and a half years and gone to school for one year. The regulation makes clear that the child’s best interests and the child’s attachment to Norway shall be weighted heavily, and, in many cases, have greater importance than “immigration management concerns.” What these can be is also defined by law: “weighty” immigration concerns include parents’ “active opposition” to being identified and serious criminal offences. Irregular stay, missed departure deadlines and the inability to prove one’s identity are “less weighty” considerations, and the stronger a child’s connection to Norway, the more it prevails on immigration concerns.

The above regularisation mechanisms require quite some years of (irregular) stay first. That is not the case in Portugal, where children who were born and remained in Portugal, and who attend pre-school, primary, secondary, or professional level school have the possibility to regularise their situation. In other words, Portugal prevents children from having to grow up undocumented.

158 People must submit a birth certificate or proof of successful completion of Greek primary and/or secondary education and can apply until their 23rd birthday. Article 108 of Law 4251/2014. See PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood, p. 8.4

159 Article 122 of Law 8/2014.

160 Home Office, 11 August 2022, Family Policy. Family life (as a partner or parent), private life and exceptional circumstances, p. 52. See also: Free Movement, Can children and parents apply to remain after seven years’ residence? (checked on 23 March 2022) See also PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood, p. 8.4-6

161 Home Office, 15 March 2022. Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118), §7.34, p. 8

162 The rules also read: When assessing strong human considerations according to section 38 of the Act, children’s attachment to the state must be given particular weight. The length of the child’s stay in Norway, combined with the child’s age, must be a fundamental consideration. Furthermore, the following must be emphasised: a) the child’s need for stability and continuity, b) the language the child speaks, c) the child’s mental and physical health situation, d) the child’s connection to family, friends and the local environment in Norway and in the home country, e) the child’s care situation in Norway, f) the child’s connection to family, friends and the local environment in Norway and in the home country, g) the social and humanitarian situation upon return. Own translation. Source: Regelingen no. 8, December 2014, Decision on national or regional residence permit for children born in or having grown up in the country in line with the respect for family unity.

163 Article 122, R1, of the NLCA, in conjunction with article 61, 63 of the RD 58/2007 as amended by order number 1836/2007 of 11/12. See also Serviço de Estrangeiros e Fronteiras. Applying for residence in Portugal. Special situations: article 122, paragraph 1, subsection paragraph 1 – Minor who were born and have remained in national territory, and who attend preschool or school at basic, secondary or professional level(checked on 1 October 2022).

Permit for school-going children and their families in Luxembourg

The Grand Duchy of Luxembourg ensures that families with children who have been in public school for at least four years, and who are younger than 21 years old when applying, can regularise on that basis. The entire family regularises, in line with the respect for family unity.

In 2013, The Netherlands adopted a regularisation mechanism and a programme targeting children and young people who had applied for asylum and then stayed in the Netherlands for at least five years before turning 16. The measure was adopted to prevent the children from being the victim of long asylum procedures and/or the decisions of their parents. However, many children and young people remained undocumented because of how the measures were designed and implemented (see further).

See key element 6 for more on the burden of proof and demonstrating whether criteria are met.

4. Reasons for refusal are documented and argued and can be appealed.

As part of good administration, to facilitate policy coherence, transparency, predictability, and ensure people do not make hopeless applications or appeals, rejections should be documented and clearly articulated. This also ensures that people can better argue their objections should they appeal the decision.

Documented and argued decisions are crucial for appeal procedures to be fair and effective. This is especially important when governments have discretion in assessing, issuing, and retracting permits, but it is rarely the case. The right to appeal a decision is a component to promote fair procedures and of the right to an effective remedy.

People must have enough time to prepare and submit their appeal. If the deadline is too short, people will most likely not have spoken to their lawyer, reviewed and understood the rejection, or
gathered the necessary evidence in support of their appeal. This is the case regardless of where they live, but especially important for undocumented migrants in detention, who may only see their lawyers once a week, which means that an appeal deadline can lapse without people having seen their lawyer.

States must also inform people of the possibility to appeal and the timeframe in vigor. Not doing so is a violation of article 13 ECHR. 168

Related, it is essential that people are not detained nor deported until the deadline to appeal has lapsed and - if they appeal - until a decision is taken. This is particularly relevant in countries in which residence procedures are linked with return procedures, or when people apply for permits in the context of return procedures.

In Greece, the First Instance Public Prosecutor must first recognize someone as a victim of trafficking before a residence permit can be issued or renewed (either based on cooperation with the prosecution or based on humanitarian grounds because the victim does not or cannot cooperate). People cannot appeal the prosecutor’s decision. 169

The 2014 Immigration Act gave the UK Home Office the power to deport third country nationals with criminal convictions without allowing them to appeal the deportation in the UK, under a policy known as ‘deport first, appeal later.’ That meant that the person would not be in the UK to give evidence in support of their case. The 2016 Immigration Act then widened these powers to affect everyone assessed. Doctors with the relevant specialisation should be informed by experts relevant to the criteria assessed. The decisions should also be independent and impartial, by decision-makers with no conflict of interests with rights of the child. They should also be multi-disciplinary and involve child protection actors, the child’s legal representative, parents, guardian, and others as needed (see box ‘Decisions regarding children’ below).

In the same vein, decisions concerning children should be independent and impartial, by decision-makers with no conflict of interests with rights of the child. They should also be multi-disciplinary and involve child protection actors, the child’s legal representative, parents, guardian, and others as needed (see box ‘Decisions regarding children’ below).

**Decisions regarding children**

The international human rights framework indicates clear standards concerning children’s rights. High standards and safeguards are thus essential concerning both procedures and decision-making on regularisation programmes and mechanisms that concern children. When designing procedures regarding children than can result in the issuing of a return decision, the “Guidance to respect children’s rights in return policies and practices” published by Unicef, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle in 2019 details what that should look like. In it, the organisations develop what a procedure to identify a durable solution for a child whose residence status isn’t settled yet should look like. This best interests of the child procedure is designed to identify a durable solution – regularisation or (re)integration in a third country - based on a consideration of their best interests and in respect of the children’s fundamental rights.

Essential characteristics of the best interests procedure to find a durable solution are:

- Aims to identify a durable solution (considering all options)
- Formal, individual procedure examining all aspects of the child’s situation
- Independent and impartial (decision-makers with no conflict of interests with rights of the child)
- Multi-disciplinary (child protection actors, legal representative, parents, guardian, others as needed)
- Views of the child duly heard and considered throughout
- Child-friendly information, counselling, support
- Legal assistance
- Documentation during the procedure (no enforcement actions against the child or family members) and access to stay
- Whichever durable solution, discussion and development of plan
- Leads to reasoned, documented decision with right to appeal with suspensive effect.

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168 E.g., MFS v. Belgium and Greece, 92603. ‘In order to be effective, the remedy required by Article 13 must be available in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.’ See also Magyar őrök, 2020. The European Union’s Return Directive and its Compatibility with International Human Rights Law. Brill Academ, Leiden (Dorset, p. 161). see.

169 Greek legislation includes two types of residence permits for victims of trafficking depending on their cooperation with the national authorities. The relevant conditions are set out in Articles 45 to 51 and Article 59A (top) of Law 450/2014. See: PICUM, 2020. One Law Justice: Residence Permits for Victims of Crime in Europe for more on these permits.

170 Right to Remain, 18 July 2018, Out-of-country appeals (checked on 3 October 2022)

171 Email exchange with PICUM member Immigrant Council Ireland on 15 August 2022.

172 Email exchange with PICUM member Immigrant Council Ireland on 15 August 2022.
6. The procedure is accessible in practice.

Accessibility implies many different things: people should be able to apply (see ‘key element 1’), the procedure should not be bureaucratic, burdensome, or expensive and submission and response timelines should be realistic.

It should be feasible and reasonable for undocumented people to produce the proof that the government requires. Given that undocumented people try to limit their exposure to government bodies for fear of deportation, governments should also be flexible when defining what constitutes proof, especially of stay or work. For instance, a previous employment relationship could be demonstrated through a combination of messages, photos, testimonies, and knowledge, if formal proof like a written contract or social security payments are not available.

In 2013, the Netherlands launched a regularisation programme targeting children and young people (20 years old and younger) who had applied for asylum\(^ {181}\) and then stayed in the Netherlands for at least five years before turning 18. During those five years, they had to have been in regular quarterly contact with one of four national bodies (the Immigration Office, the Return Office, the reception institution (COA) or the Immigration Police).\(^ {182}\) These criteria caused many children to remain undocumented despite having lived in the Netherlands for years, sometimes their entire lives. For example, children who were born after their parents applied for asylum were excluded.\(^ {183}\) Children and families who had not stayed in contact with the listed national-level institutions were also rejected, even though they were in regular contact with local or other government bodies.\(^ {184}\)

Programmes, and time-bound initiatives, should be open for long enough for people to inform themselves, collect the necessary proof, solicit the help of others if they need to, and submit their application. A period of at least 24 months should be preferred, as it can take a long time for people to hear of the programme or initiative, prepare their application and trust the process. In addition, people who meet the criteria during the programme’s application timeframe should also be able to apply — but this is not always the case. Several recent programmes only accepted applications from people who met the criteria before a certain date, thereby excluding people who met them during the application period.\(^ {185}\)

Examples of elements considered proof in Ireland and Geneva, Switzerland

Ireland published a non-exhaustive list of documents that would be accepted as proof of residence for its 2022 regularisation programme for long-term undocumented people.\(^ {179}\) Each main applicant had to submit at least one document for each year they were living undocumented in Ireland. The list of acceptable proof included: utility bills (electricity/phone/gas/cable/broadband/mobile phone), letters from a doctor or hospital, vaccination passports, proof of money transfers carried out at a money transfer facility in Ireland, official correspondence with a government agency, official letter from the local embassy or consulate highlighting interactions (e.g., to renew a passport), evidence of school or training attendance, etc. Eligible adult family member applicants had to prove their undocumented residency, that they were living with the main applicant for at least two years immediately prior to the launch of the scheme,\(^ {180}\) and that they continued being undocumented and living with the main applicant when they applied. Underage children had to prove their residence prior to the publication of the scheme.\(^ {186}\) Expired proof of identity was also accepted for an application, although issuing the residence permit itself required a valid passport.

A list of documents that constituted proof was also published during the 2017-2018 regularisation initiative ‘Operation Papyrus’ in Geneva, Switzerland. Any documentation that related to the children (for instance, such as insurance plans, enrolment in school, etc) was understood to prove the parents’ stay as authorities rightly assumed that if a 5-year-old had health insurance in Geneva and attended school there, the parents must have been there too.\(^ {187}\)

\(^ {179}\) Information provided by PICUM member (CSS), 25 September 2022.

\(^ {181}\) Or whose parents had applied for them.

\(^ {182}\) Overheid.nl, 2013, Besluit van de Staatssecretaris van Veiligheid en Justitie van 30 januari 2013, nummer WBV 2013/1, houdende wijziging van de Vreemdelingencirculaire 2000 , Article 3.1. Initiatie in Duits: ‘Immigratie en Naturalisatie, Aanwijzingen van de Vreemdelingendienst, n. 3938 (‘the Vreemdelingencirculaire’).

\(^ {183}\) Siegfried, 2005, ‘Indirect evidence of family ties’ (questions 3, 9).

\(^ {184}\) See ‘key element 1’.

\(^ {185}\) Ibid, 2017.

\(^ {186}\) For example, NOS Nieuws, 27 September 2013, ‘Bent en stel je documenten buiten het kinderpardon’ (checked on 12 September 2022).

\(^ {187}\) For example, in the Irish 2022 regularisation, people had to reach three years of uninterrupted irregular stay by 31 January 2022 (the day the programme opened to benefit from the regularisation programme for long-staying undocumented people. The forthcoming regularisation programme for people with a suspension of deportation (SARs) will only benefit people who met the criteria by 1 January 2022.

Victims of trafficking in Spain

The Spanish State Secretariat for Immigration and Emigration (part of the Ministry of Labour and Social Security) takes into account information from organisations working with victims of trafficking before issuing a residence permit to a victim of trafficking on personal grounds.\(^ {175}\)
Regularisation mechanisms and programmes: Why they matter and how to design them

Many programmes are open for just a couple of weeks or months, and some eligible people are not able to apply. Morocco’s most recent regularisation programme was open for slightly more than a year, from 15 December 2016 to 31 December 2017. In contrast, an earlier programme was open for just one month (January 2014). Poland’s regularisation programme was open for six months, from 1 January 2012 to 2 July 2012.

Belgium’s 2000 regularisation initiative was open for just three weeks, from 10 to 30 January 2000. An official information brochure in Dutch and French was only published on the first day of the campaign, while translations of the brochure in other languages were disseminated a week into the campaign. A survey of 340 undocumented people who did not apply for the scheme showed that eleven percent did not because they did not have enough time to prepare their application. About 22 percent did not apply because they (originally) thought they did not meet the requirements, 11 percent (wrongly) thought they needed a lawyer and did not have the money, and 24 percent said they could not collect the necessary proof (in time).

The practice of announcing programmes and their details well in advance, so people can inform and prepare themselves before the window for submissions starts, should be adopted widely. Information should be available in several formats and many languages, including for people with low or no literacy.

A draft-in period for Ireland’s 2022 programme

A draft proposal for Ireland’s 2022 regularisation programme was announced well in advance (April 2021) and the final programme was officially presented on 3 December 2021 and opened for applicants on 3 January 2022. The scheme lasted just six months. Although details of the procedure weren’t announced until December 2021, the substantial criteria were known from the start. The government also developed extensive information in ten languages.

Governments routinely require a fee to be paid by the applicant or the employer for the application. However, most undocumented people experience poverty, and fees – especially high fees – can be an insurmountable obstacle to regularisation. They can also make them vulnerable to predatory lenders and exploitative employers. If families consist of several children, including some over the age of 18, parents may have to choose whose application they support financially, as paying for all of them may be too expensive. Fees should be minimal and affordable for someone with income below the minimum wage. Fee waivers should also be in place. The affordability of residence permits is discussed in more detail in “In focus: Digitalisation and fees as barriers to inclusion” on page 63.

Fee waivers in Belgium

Belgium waives the application fee for children and recognized stateless people and regularisations on medical grounds are free.

Procedures themselves can be too burdensome for people, and the prospect of acquiring a residence permit – although feasible in theory – becomes illusory. Procedures should be simplified and, in the case of permits based on victimhood, not depend on a criminal conviction.

Spain issues a five-year ‘residence permit on exceptional grounds’ to victims of domestic violence. While an important regularisation pathway, the procedure requires a court conviction of the perpetrator. Reports by social services or women’s shelters cannot by themselves constitute sufficient evidence for the administration to issue a residence permit. This means that victims need to go through a judicial proceeding to have access to a residence permit, which is fraught with many challenges, and can itself be traumatic experience. This constitutes a very high threshold for many victims of gender-based violence, especially for those with an insecure residence status, who tend to be afraid to report crimes to the police. Moreover, if the perpetrator is acquitted, the victim’s permit is withdrawn, and they are subject to sanctions for their irregular stay and deportation.

Flexibility for victims of trafficking in Spain

Spanish law provides that residence permits can be granted to trafficked persons either in relation to cooperation with authorities around criminal investigations, or in response to their personal circumstances, for their social integration.

190 Information provided by PICUM member CGD, 15 September 2022.
191 See also PICUM [forthcoming], The use of fees in residence procedures in Europe: Pricing undocumented people out of a residence permit?
192 Dienst Vreemdelingenzaken, 2022, Retributie, webpage (checked on 18 August 2022)
Regularisation mechanisms and programmes: Why they matter and how to design them

7. Procedural safeguards are in place.

Several things should be in place to make the procedure safe and fair. As a rule, procedures should be child-sensitive and gender-responsive and meet the procedural characteristics laid out in global and regional normative and legal frameworks (see pp. 15-17). When children are concerned, additional child rights safeguards should be in place (see box on p. 37). Here, we focus on four procedural elements that haven’t been discussed elsewhere in this report: the availability of information, access to free legal aid, the possibility to be heard, and the existence of a firewall. Other safeguards that have been discussed elsewhere include clear and transparent criteria, the right to appeal and argued decisions.

Information is readily available

For any measure to work, all actors involved must be well informed of the measure’s existence, its criteria, the required proof, and the procedure as a whole. It is obviously crucial for undocumented people to be informed, but other actors should also be well-informed as well. It has regularly happened that undocumented people who meet the criteria do not apply for regularisation because they are either not aware of the measure, or because they are misinformed. A Filipino woman in Belgium, for instance, did not apply during the 2000 regularisation initiative because a local government official incorrectly told her she did not meet the criteria.197

Information campaigns are an obvious way to raise awareness and combat misinformation, but information sessions and one-on-one advice is crucial too. Civil society organisations often take it upon themselves to inform people. For instance, civil society organisations and trade unions provided more than 2,230 hours of professional, confidential, and free information and advice to people targeted by the Swiss Operation Papyrus and organised and carried out twenty public information sessions.198

This came in addition to a broad communication campaign by the Geneve government, including a press conference mid-way through the initiative.199

Information and governments campaigning in Ireland

The Irish government published extensive information about the 2022 regularisation programme on a specific webpage, which included application guides and an FAQ in Arabic, Cantonese, French, Hindi, Mandarin, Portuguese, Spanish, Tagalog, and Urdu.201 Information outreach activities were limited, and relied greatly on civil society, while the government also launched an information campaign – for example, placing posters at bus stops – in the last weeks of the application period to encourage people to apply.202

Free legal aid

While asylum seekers usually have access to free legal aid, this is not always the case for those who apply for a permit on other grounds. Trying to navigate an unfamiliar administrative and judicial system is daunting – especially if you’re not well-versed in laws and procedures and don’t know the language well enough to be fluent in legal language. If free or low-cost legal aid is unavailable, it can cause people to stay undocumented, stay in abusive relationships,203 or fall out of status.204 Effective access to competent legal assistance is a key safeguard to enable migrants to exercise their rights to an effective remedy and access to justice.205 This is certainly the case for proceedings that may lead to a return decision.

Providing subsidised or free legal advice can also improve the whole administration and implementation of the regularisation scheme, with applications more likely to be eligible and better prepared. It also helps avoid exploitative practices. It is quite common for private lawyers to charge undocumented people high fees to submit applications, sometimes even when people are clearly not eligible.

200 ULB and Centrum voor Sociaal Bewerk Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, “Before and after”, de sociale en economische positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999. The researchers note that women had more diverse sets of skills but important conditions with Belgian society that helped them regularise their stay compared to men: They raised especially the women’s employers, especially if they worked in the domestic sector, and their children’s schools.

201 Department of Justice, Regularisation of Long Term Undocumented Migrant Scheme [checked on 16 June 2022].

202 An email exchange with PICUM member (Evron Legal Consultancy), 15 August 2022.

203 Their residence permit depends on an abusive partner’s residence status.

204 Refugee Aid Good Practice, 2021, No access to justice: How legal advice deserts fail refugees, migrants and our communities.

205 See also: EU Fundamental Rights Agency, 2021, Legal aid for returnees deprived of liberty.
Access to legal aid in Greece

In Greece, undocumented migrants can receive legal aid, but the procedure is complex as they must solicit the competent court. The Courts and the Bar Associations of Greece share the responsibility for legal aid. In civil, administrative and criminal cases, a person who lacks the financial means to pay for legal aid can solicit the court for legal aid. A judge or justice of the peace reviews the application and decides whether to grant legal aid. Third country nationals and stateless persons are entitled to legal aid if their habitual residence is in Greece. People can benefit from legal aid if their annual family income does not exceed two-thirds of the minimum annual individual wages provided for by the National General Collective Labour Agreement (about EUR 7,500).

Being heard

According to the Court of Justice of the European Union (CJEU), when the authorities take measures that come within the scope of EU law, such as a return decision, they are bound to observe the defence rights of the people affected. The rights of the defence, which form part of general principles of EU law, are codified in the EU Charter as the right to a good administration includes the right of every person to be heard before any individual measure which would affect them adversely is taken; the right of every person to have access to their file while respecting the legitimate interests of confidentiality and professional and business secrecy; and the obligation of the administration to give reasons for its decisions.

The right to be heard is key to someone’s access to their rights and to due process and fair procedures, so their views can be considered. This is not only the case in criminal law cases, but also in civil and administrative cases. As said by the UN Special Rapporteur “Administrative law must provide similar guarantees when the consequences of the decision can be similar or worse. […] Fast track procedures [must] incorporate appropriate procedural safeguards, including the opportunity to be heard [for migrants].”

One of the biggest barriers for undocumented people who would be eligible to apply for regularisation is the fear of being deported. Regularisation applications entail providing detailed personal information and documentation to a state authority, usually migration authorities. People are extremely wary of doing so if there is any chance that their application might be rejected, and that information might be used for immigration enforcement purposes. The risks also weigh heavily on people when residence permits issued are only temporary, with risks that they will not be renewed. While regularisation is a life-changing event, deportation has such far-reaching consequences that for some, any risk of it outweighs the potential benefits of regularisation.

In regularisation procedures, the right to be heard is particularly important if criteria are not fully objective and involve an assessment of various aspects of an applicant’s personal and social circumstances, safety and/or well-being. However, when criteria are more clear-cut, the right to be heard must be respected too. It is also an opportunity to clarify doubts in applications where it is not readily clear from the application or supporting documents that the person meets the criteria. It can thus avoid unfounded refusals and additional administrative and judicial procedures, with all the associated financial and emotional costs, when people must appeal.

Trust in governmental bodies and decision-making is key to make procedures work. However, trust in state institutions and migration procedures, including regularisation procedures, is considerably undermined by the lack of adequate safeguards to ensure that personal data gathered in the context of public service provision is not used for immigration enforcement purposes. In particular, the near systematic prioritisation of immigration enforcement over protection of people – including victims of violence and exploitation - who engage with institutions and bodies such as labour inspectors and law enforcement drives people away from any engagement with state authorities. This is equally the case when a temporary residence permit may be available for the purpose of engaging

206 Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012.

207 Refugee Aid Good Practice, 2022. ‘Access to justice: how to provide effective legal advice to refugees, migrants and their communities.’

208 It is a criminal offence under the UK Immigration and Asylum Act of 1999 to give immigration legal advice unless the adviser is regulated by the Office of the Immigration Services Commissioner (OISC) or is a barrister, solicitor, or ‘legal executive’. For more on this, see Refugee Aid Good Practice, 2022, ‘No access to justice: How legal advice deserts fail refugees, migrants and our communities.’


210 Or reside regularly in Greece.

211 Information provided by PICUM member ARSIS on 23 September 2022.

212 UN Network on Migration, 2022, Migrants’ access to justice: international standards and how the global compact for safe, orderly and regular migration helps paving the way, p. 10.

213 Sophie Mukarubega v. Préfet de Police and Préfet de La Seine, C- 166/ 13, (November 5, 2014), §50

214 UN Special Rapporteur on the human rights of migrants.

215 UN Special Rapporteur on the human rights of migrants, UN Network on Migration, 2022, ‘Migrant access to justice: international standards and how the global compact for safe, orderly and regular migration helps paving the way’, p. 10.


218 Neihof, Leiden Boston


220 UN Network on Migration, 2022, Migrants’ access to justice: international standards and how the global compact for safe, orderly and regular migration helps paving the way, p. 10.

221 Information provided by PICUM member ARSIS on 23 September 2022.

with legal proceedings, as is the case in theory for undocumented victims of criminal labour exploitation or trafficking in human beings, across the European Union. The likelihood that the victim will be required to leave the country before they are able to report, or at the end of any proceedings should they go ahead (even if they result in a conviction), means that such permits are rarely issued and ineffective. Implementing safeguards both in regularisation procedures and across society is key to enable undocumented people to engage with state institutions.

The Rosarno Law,²¹⁶ which transposes the EU Employers’ Sanctions Directive in Italy,²¹⁷ includes the possibility for undocumented workers who denounce their employer for ‘particularly exploitative working conditions’ and cooperate in related criminal proceedings to be issued a six-month permit – if proposed or accepted by the public prosecutor.²¹⁸ The permit can be renewed for one year or longer, linked to the length of the criminal proceedings. It can be converted into a permit for employment or self-employment. While the possibility to convert this permit for severe labour exploitation into a work permit is positive, the permit for severe labour exploitation can be revoked at any time, if the criminal proceedings are discontinued or the person’s presence is no longer considered necessary. In addition, the law does not include a complaint mechanism establishing a firewall between authorities’ courts’ engagement and support to the person as a worker or victim, and their sanctioning of the person’s irregular stay.

8. A temporary status that gives access to services, justice and the labour market is issued during the application process.

Undocumented people usually have very restricted access to services and support because of their irregular residence status. This violates their fundamental rights and prevents them from living in dignity. It also makes them vulnerable to poverty, exploitation, chronic stress and mental ill-health.²²⁰ It can take years before the Dutch Immigration Office (IND) takes a decision on applications for the ‘no-fault’ permit (‘buitenlandsestatus’), which is meant for people who cannot return for external reasons.²²¹ During that time, applicants have access to very few rights,²²² little protection and remain undocumented.²²² France does not issue a temporary residence permit during the Statelessness Determination Procedure. This means that people do not receive any support and risk being baselessly²²³ detained for prolonged periods of time before they are formally recognised as stateless.²²⁴

Temporary residence permits that grant access to services, justice and the labour market during the application process would prevent and alleviate suffering and promote inclusion. This is already the case for asylum seekers, who are usually²²⁵ considered regular residents while their application is processed and can access the labour market within nine months of lodging their asylum claim.²²⁶

### Permits for victims of domestic violence during proceedings

Several countries provide for a temporary residence permit for victims of domestic violence while judicial proceedings are ongoing.²²⁷ One example is Spain, where victims of domestic violence are given an interim residence and work permit to enable them to achieve financial independence from their partner. The permit is valid from the moment a protection order (precautionary judicial measure) or a report by the Public Prosecutor is issued. The permit also protects the victim from being prosecuted because of their irregular stay. If such proceedings have already begun or if a deportation order was already issued, they are suspended.²²²³

216 Article 22, paragraph 12b to 1/2, Legislative decree No. 108 of 16 July 2012 (Rosarno Law) as amended by 17 December 2016, art. 122.


218 Note that the EU Employers’ Sanctions Directive does not require that the person is participating in criminal proceedings to be issued a residence permit under the Directive. Temporary residence permits are linked to the length of the relevant investigation or judicial criminal procedure or the willingness to cooperate with authorities, and can be extended until resolution of the remuneration matters (Articles 13 and 15 and European Commission Communication COM(2021) 592 final, Brussels, 9 September 2021).

219 See www.picum.org for resources on access to education, healthcare, housing etc.

220 Reasons can include: not having received a laissez-passer; lack of cooperation by the country of origin; family members who cannot be deported together to the same country; children who don’t have a family member or legal guardian in their country of origin; or people who are too old to travel. A prerequisite is that all doubts about the person’s identity have been resolved.


222 For more on this residence permit, see PICUM, 2022, Access to return: Protection in international, EU and national frameworks.

2223 Baseless because detention should be a measure of last resort to ensure the person returns to their country of origin or a third country where they have the right to reside. Stateless people, however, can only be returned, for more on this in France and elsewhere, see European Network on Statelessness, n.p., 2022, Status or Security? Why Europe must act now to protect stateless persons; Flemish Refugee Action, Detention Action, France terre d’asile, Hungarian Association for Migrants and The European Council on Refugees and Exiles, 2014; France terre d’asile – Hungarian Association for Migrants, 2022, Free from fear of statelessness.

2224 Several countries provide for a temporary residence permit for victims of domestic violence while judicial proceedings are ongoing. One example is Spain, where victims of domestic violence are given an interim residence and work permit to enable them to achieve financial independence from their partner. The permit is valid from the moment a protection order (precautionary judicial measure) or a report by the Public Prosecutor is issued. The permit also protects the victim from being prosecuted because of their irregular stay. If such proceedings have already begun or if a deportation order was already issued, they are suspended.


2226 Article 15 of the European Conditions Directive. This is not the case in the UK, where only some asylum seekers can apply to work if they have been waiting for a decision for more than six months, and only if the occupation is on the Shortage Occupation List. Source information provided by PICUM member state, 17 September 2022.

2227 The fact that a victim’s ultimate residence permit depends on the perpetrator’s conviction is a bad practice. See PICUM, 2020, Immigrant Protection Residency Permits for Victims of Crime in Europe for more on this. See also chapter on EU legal frameworks above.

2228 Council of Europe/OSCE, 2019, Report submitted by Spain pursuant to Article 15.11 of the Council of Europe Convention on preventing and combatting violence against women and domestic violence, p. 68. See also PICUM, 2020, Access to return: Protection for victims of crime in Europe, pp. 50-56.
A secure residence status for children in Italy and France

Although not issuing a permit during regularisation procedures in the strict sense, both French and Italian laws provide for all children on their territory to have a regular residence status, at least in theory. In doing so, children can fully participate in society while they apply for another (longer-term) residence permit. No residence requirements are placed on children in France, meaning that no child - at least in theory - can be undocumented there.230

A secure residence status during the Covid-19 pandemic in Portugal

In March 2020, the Portuguese Immigration and Borders Service (SEF; restructured since then)231 issued an order granting access to health care, welfare provisions and the labour market to those who had applied for a residence permit before 18 March 2020, the start of the first COVID-19 lockdown.232 This included in-country applications for residence permits (regularisations) for work purposes and was extended until 30 April 2021.233 The stub that people received when submitting their regularisation application was sufficient evidence of eligibility, essentially functioning as a temporary residence permit.234 Twenty civil society organisations (mostly socio-cultural associations of Nepali, Pakistani, Brazilian and Bangladeshi people) had expressed their concern about the situation of migrants in Portugal in the face of the COVID-19 pandemic.235 Some 356,700 people benefited from the measure.236

9. The resulting residence permit is secure and long-term, gives access to services and the labour market, counts towards settlement and citizenship, and does not depend on anyone else.

Whatever residence status a person has defines many aspects of their life: it defines the degree to which they can participate in society, support their family, and - often - achieve their goals. Only permanent residence statuses that give access to the labour market, supports and services ensure people are fully able to take care of themselves and their loved ones and give people the context to thrive instead of survive.

Secure and long-term permit

Long-term permits create mental, social, and financial stability for people. One-year permits are too short for people to create mental peace, settle into their jobs or find alternative employment if necessary, build financial stability and save up for the renewal or extension. Having to continuously renew permits despite having lived in a country for years drains people, their finances, and their mental health.237 It is also more difficult to find work, internships, training or housing with a temporary permit, as employers might be suspicious, the validity might end during a training or renewal procedures take a long time.

If a temporary permit is issued, it should be of sufficient length and its renewal should be automatically reviewed for free. Twenty-four months should be the minimum length of a temporary permit.

Examples of permits that are valid for more than 24 months and can be converted into longer-term permits

France’s statelessness determination procedure can lead to a four-year residence permit, after which the recognized stateless person can acquire a 10-year residence permit. With each of these permits, the person can access a travel document, family reunification, education, and the labour market. Recognized stateless people also have a route to naturalisation (though the process is not accelerated as is for refugees).238

229 Ministère de l’Intérieur France, 2011, Le séjour des mineurs étrangers; and Adate, 2021, L’entrée et le séjour des mineurs. See also: the chapter on France and Italy in PICUM, 2016, Migrant regularization for children, young people and families.
230 However, issues remain. In France, for instance, unaccompanied children can be incorrectly registered as adults, or stay homeless because the relevant government instances don’t take charge of them. See PICUM, 2021, Navigating irregularity: The impact of growing up undocumented in Europe, pp. 14-15.
231 See ECRE, 2022, Overview of the Main Changes since the Previous Report Update (Portugal) [checked 17 August 2022]
232 Publico, 28 April 2020, Governo regulariza todos os imigrantes que tenham pedidos pendentes no SEF [checked on 17 August 2022]
233 Social Europe, 6 December 2021, Regularising migrants: Portugal’s missed chance [checked 17 August 2022]
234 PICUM, 2020, Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19, p. 6
235 Publico, 20 March 2020, Comunidades, Patricias, 20 associações questionam Governo sobre direitos de migrantes [checked on 17 August 2022]
236 UHR network on migration, 2020, Possible Pathways for Admission and Stay for Migrants in Situations of Vulnerability, p. 15

227 Let us Learn!, Justice for Kids Law and We belong, 2019, Normality is a luxury. How ‘limited leave to remain is blighting young lives.
238 Migrants Today, March 2021, France
Colombia’s 2021 regularisation programme for Venezuelan nationals was launched, amongst others, because the government saw that earlier schemes issuing two-year permits were not working. More than half of the Venezuelans in the country remained undocumented (56% at the end of 2020). The 2021 programme provides a temporary residence permit that is valid for ten years.\footnote{241}

A five-year residence and work permit is issued to some people\footnote{240} who regularize through the ‘arranque familiar’ in Spain.\footnote{242} The five-year permit can be issued to the parents or guardians of Spanish (or European\footnote{243}) children, to some live-in carers of Spanish nationals with disabilities, to partners of Spanish nationals, and to some ascendants and dependents of Spanish citizens.\footnote{244}

Italy’s special protection permit ('protezione speciale') is valid for 24 months, after which it can be converted into a work permit.\footnote{245}

The UK’s temporary residence permits (limited leave to remain) based on the Appendix Private Life\footnote{248} criteria last 30 or 60 months (2.5 or 5 years).\footnote{249} However, as residence permit applications are very costly in the UK,\footnote{250} and most people must apply for several renewals before being eligible for ‘indefinite leave to remain’, the permit’s length proves little reprieve for people’s socioeconomic security or mental health as they are forced to constantly worry and save for the next renewal immediately.\footnote{251}

In the Grand Duchy of Luxembourg, the temporary permit for medical reasons is transformed into a permanent residence permit after two years.\footnote{252}

Temporary suspensions of deportation

Several countries suspend (or defer) people’s deportation, although their length and basis vary widely. Some examples include the ‘Duldung’ status in Germany\footnote{253} and the Deferred Action for Children Arrivals (DACA) programme in the USA, but these suspensions exist elsewhere too. Spanish\footnote{254} and German\footnote{255} programmes, for instance, both suspend the deportation of pregnant women when the deportation can pose a risk to the pregnancy or the health of the mother.\footnote{256}

While suspensions of deportation can by themselves be life-changing if they include access to services and the labour market,\footnote{257} suspensions of deportation do not amount to a secure residence status (or residence permit) as people can still be deported. Suspensions of deportation are fundamentally insecure and people living with these statuses for prolonged periods of time cannot build their futures and contribute in full.

Procedures should foresee a way to renew or extend temporary permits. There should also be a way for the person to convert them into a long-term permit or apply for a (long-term) permit on other grounds (e.g., social ties or work after a permit for study or training). Permits issued must be counted for accrued residence rights. Governments should prefer issuing long-term permits after just a couple of years on temporary permits.

The UK issues a specific residence permit to unaccompanied children who saw their asylum claim rejected and did not receive humanitarian protection but for whom ‘there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted.’\footnote{258} This temporary permit is called ‘unaccompanied asylum-seeking child leave’ or ‘UASC leave’ for short and is valid until the child turns 18. It cannot be extended or renewed into adulthood, as one of the conditions for the permit is being an unaccompanied child. As such, the permit is not a route to settlement, and it is unlikely the child will meet the requirements of other British regularisation mechanisms.\footnote{259}

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Regularisation mechanisms and programmes: Why they matter and how to design them

While some people whose deportation is suspended in certain member states can access services and the labour market, that is not always the case. Greece suspends people’s deportation for six-month periods at a time without giving people any access to the labour market, services or supports. These types of suspensions essentially relegate people to extreme poverty and undecleared work, even though the government acknowledges that they cannot be returned to the relevant third country.

While these suspensions are not meant to be indefinite (exemplified by the fact that they are usually issued for a six-month or one-year period), people can live with them for many years. Sixty percent of the people living with a ‘Duldung’ status in Germany in July 2020 had been living with the status for more than three years and 6.5 percent for more than a decade. The German government estimates that about 136,000 people have lived with the status for more than five years. Germany now wants to give residence permits to unsuccessful asylum seekers who on 1 January 2022, lived in Germany with a suspension of deportation for at least five years. Under the scheme, people would be issued a one-year residence permit, to enable them to obtain a longer term residence permit for which they need to have learned German and can support themselves financially.

Giving access to the labour market, supports and services

If migrants have access to services and benefits and the labour market as nationals do, it would enable them to take care of themselves and their families, fully contribute to society and decrease the risk of exclusion, poverty and exploitation.

This includes access to social protection, the system in place to help individuals and families, especially the poor and vulnerable, cope with crises and shocks, find jobs, improve productivity, invest in the health and education of their children, and protect the aging population. Denying people access to supports, or punishing them when they do, keeps or pushes them in precarious situations and poverty. It also risks discriminating against parents, young people and people with disabilities and denies people access to vital social protection supports, including when they have been paying into the social protection system.

The Finnish temporary residence permit for people who are excluded from international protection, but protected by the principle of non-refoulement, does not allow people to work. People can thus not contribute to society or make a living wage, potentially for years.

Count towards citizenship

Citizenship is the most secure residence status, and all forms of residence should count towards it in some way. In addition to the security that other indefinite residence permits give, citizenship also enables people to participate fully in society because they can vote. People feel that acquiring the country’s citizenship or nationality is an important recognition of them and the fact that they are equal to others. Some regularized people said they applied for citizenship because they felt that employers were put off by their (original) temporary residence permit, even when their right to reside (their residence status) was indefinite. Parents applied for citizenship to make sure their children would inherit it, as the children were born or grew up in the country and felt it was theirs. By enabling access to citizenship, “regularisation turns (…) people into fully-fledged citizens and ensures that others, especially (nationals), view their foreignness differently,” write some researchers.

Governments should consider issuing citizenship or nationality to children who have grown up in the country after a short period of time.

Cyprus’ citizen law effectively excludes all refugees and migrants, including children born and raised in Cyprus, from accessing citizenship. It does so by excluding everyone who has entered or resided irregularly on the territory, and by excluding time spent on a study visa or seeking international protection from counting towards citizenship.

263 “E.g., when having accessed services or benefits is grounds for refusing (the renewal of) a permit.
264 See also PICUM, 2022, A snapshot of social protection measures for undocumented migrants by national and local governments
265 OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice. Section 89 of the Finnish Foreigner’s Act (68/1999) section 89
269 KISA, 9 February 2021, New citizenship bill brings social racism to light [checked on 4 October 2022]

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Access to citizenship in France and the UK

A child who has been in the care of the French Child Welfare Services (ASE) for at least three years can claim the French nationality. This includes unaccompanied children who, according to French law, should always be placed in the care of the ASE. Declarations of French nationality from these young people cannot be refused on grounds of insufficient integration. They are made directly to the district court, so are not subject to the discretion of the Prefecture. Under the same article in law, children who have received five years of schooling can also claim French nationality if they are younger than 25, have lived regularly in France for more than ten years, and completed at least five consecutive years of schooling.

Children who were born in the UK can apply for an indefinite leave to remain after seven years of living in the country, irrespective of whichever residence status/permit they held previously. However, they must show that it is "unreasonable" to expect them to leave the country, and the Immigration Office and UK courts apply a high threshold. Once ten years old, the child can apply for British citizenship.

Not depend on anyone else

This characteristic is linked to the first key element (being able to apply for a permit autonomously). Dependent permits can very easily lead to harmful power dynamics where the person is pushed to accept unacceptable treatment for fear of losing their residence permit.

Belgium’s 2009 regularisation initiative based on work resulted in extensive exploitation of people, as the work permit it gave access to was employer-dependent, which meant that people lost their residence permit if they wanted or needed to change jobs or if the employer stopped paying social security. It also gave employers a lot of power, which many took advantage of. People were obliged to work for lower wages or more hours than agreed, contracts were sold (for EUR 1,000 to EUR 3,000), and employers coerced workers to cover the monthly labour taxes and social security.

Independent permits in Italy

The Italian Immigration Law ensures that children of regularly-residing migrant parents receive an autonomous residence permit for family reasons. This permit, valid until they turn eighteen, ensures that they would not become undocumented automatically if their parent(s) lose their status, and gives them the possibility to continue living regularly in Italy in their own right if their parent(s) choose to move to another country.
Families – in all their diversity – are the fundamental unit of society and, as such, require respect and protection. Family life and family unity are important to adults and children alike. Family life and unity protect children’s lives, their development, and their well-being. By physically being together, migrant families thrive and contribute more productively to their communities and feel more secure. Nonetheless, not all residence permits allow people to live with their partner or children, as not all allow for family reunification, either from abroad or with those already present on the territory. Residence permits should allow family unity to be respected, by extending the permit to already-residing partners and dependent children, and by allowing family reunification. This should be the case for both temporary and indefinite permits too.

Luxembourg’s mechanism regularizing children who have gone to school for at least four years automatically regularizes the child’s parents and their siblings. This prevents mixed-status families.

The regularisation measure prevents irregular stay and work and is accompanied by support measures. Regularisation programmes should also be flanked by permanent mechanisms.

People applying for a regularisation have likely lived somewhat socially isolated, as they are formally excluded from common spaces of interaction, experience long working hours, discrimination, etc. Consequently, they could benefit from additional language lessons, guidance and support to navigate the formal labour market and institutions. People may also lose their job because of regularisation or want to shift to another economic sector once they can officially work, but may need some training or guidance to navigate or enter the formal labour market or to enter it from a better position. For example, despite the fact that Belgium’s 2009 regularisation initiative targeted undocumented workers, people who became regularized afterwards were not allowed to access employment services (such as job search, coaching, etc). This was problematic if people wanted to change employers, as they were generally unfamiliar with the formal labour market and, thus, often had to rely on exploitative employers.

Example of support measures

The regularisation initiative ‘Operation Papyrus’ in the Swiss canton of Geneva (2017-2018) included measures designed to address the issue of undeclared work and support regularised individuals and families. As many applicants were domestic workers - often living with their employers – the initiative was flanked by integration measures to ensure that those regularised would step out of social isolation, could find more work or other employment if they lost hours in the process, and could find take affordable French classes. In addition, the Canton of Geneva launched public campaigns to encourage formal employment of domestic workers and labour market controls to ensure working conditions were being met once workers were regularised.

280 UNICEF, n.d., Family unity in the context of migration, working paper
281 Information provided by PICUM member ASTI, 21 September 2022.
282 I.e., received a work permit or a residence permit that allows the person access to the labour market.
283 This was because people were issued a work permit ‘B’ which only allows the specific contract / labour relationship it was issued for. The worker thus was not ‘available for the (whole) labour market’, a condition to access employment services. Source: Email exchange with PICUM member Fairwork Belgium on 20 October 2022.
286 It must be noted that repeated workplace controls were one of the reasons why employers sacked regularised workers in Belgium, who then lost their residence permit and became undocumented once again. De Standaard, 1 February 2014, ‘Uitgebuit en met lege handen. Het fiasco van de economische regularisatie’ [checked on 12 September 2022]; De Standaard, 1 February 2014, ‘Mijn baas zei dat hij controle kon missen als kiespijn’ [checked on 12 September 2019].
Prevent undocumented stay and work

Many people are undocumented because of gaps and failures in the design of migration and residence policies. Therefore, residence procedures provide the ideal opportunity for governments to prevent future undocumented stay. If governments are committed to laws given per irregular migration, their residence permit policies’ effectiveness should be judged on whether people can retain their regular residence over time. Today, we see regularization measures containing criteria which make it inherently difficult or even impossible to maintain regular status. For example, tens of thousands of former unaccompanied children in Spain (‘ex-tutelados’) became undocumented because they could not find a job that paid them four times the monthly minimum income (2,259 EUR). The temporary permit thus provides ample time for people to decide, prepare, apply for, and acquire the indefinite permit.

People who have received a temporary permit for humanitarian reasons in Brazil can apply for a permanent residence permit when their two-year permit comes to an end. They can apply 90 days before their permit expires and must prove that they have no criminal record in Brazil and have means of subsistence.

Colombia’s 2021 regularization programme for Venezuelans provides a ten-year temporary residence permit, during which time people can apply for Colombia’s indefinite residence permit which requires five years of residence. The temporary permit thus provides ample time for people to decide, prepare, apply for, and acquire the indefinite permit.

In 2021, Spain’s migration law was reformed and now helps prevent that unaccompanied children become undocumented at 18. Those who are documented on their 18th birthday receive a six-month extension of the permit they had as a child. They will also have access to the ‘minimum vital income’ (‘ingreso mínimo vital’) and be allowed to work regularly as of 16 years old, which facilitates their access to a residence permit on other grounds (e.g. based on work).

One way to ensure people do not lapse into the uncertainty and social exclusion of undocumented life, and to prevent exploitation, is by ensuring people can maintain a regular residence status for a period of unemployment and job search. Residence permits based on work should not be dependent on a particular labour relationship, but provide for people to change employer, work for multiple employers, and be unemployed and look for alternative work. Bridging or transitional permits enable people who have had a work permit, and lost employment through no fault of their own, to stabilize their situation and re-enter the labour market. Permits linked to study also should not end the moment people graduate but either be extended to include a period of job search, or be transposed into another permit for this purpose. Laws which include a ‘job searching’ period would allow the person to secure a new (job), as it is much more difficult and expensive for people to secure a job or a permit once they are undocumented, and society continues to benefit from their skills and knowledge. It is also a crucial measure to enable people to leave exploitative work relationships and promote declared and decent work, as people are unable to find alternative employment while working in exploitative conditions.

From 2018 to 2021, Sweden had a regularization mechanism for young people who had claimed asylum as unaccompanied children but saw their application refused. Anyone who was younger than 25 years old, studying in either a national programme for upper secondary school or vocational education, and had not yet completed such education, in Sweden or abroad could apply. Although the permit was usually extended for full-time education only, part-time studies could qualify too. To renew the permit, the young person had to report their active participation in the studies every year. The resulting residence and work permit was valid for the duration of the training programme plus six months. If the young person found employment within six months of graduation, they were given permanent residence. Although this a ‘job seeking’ period is a good practice in itself, it was very difficult for people to find steady employment within six months (especially in times of...
Examples of permits that enable a period of unemployment and job search

Italy’s 2020 two-track regularisation programme for workers in the agricultural and domestic sectors included a safeguard for workers who were issued a permit based on an existing employment relationship (track one). Although that residence and work permit was still linked to the duration of the work contract, they could be issued a residence permit valid for up to a year to look for another job, in that or another sector, if they lost their job. However, that permit’s minimal length wasn’t ensured, as the decree mentioned ‘a permit up to one year’. Also, under track two of the programme, people whose residence permit had recently expired and had work experience in one of the targeted economic sectors could apply for a six-month residence permit to look for work.

The EU Students and Researchers Directive establishes the possibility for third country national students and researchers to stay in the member state where they studied/worked to seek employment or start a business. The directive sets a minimum length of nine months to remain to look for work, but some member states issue longer permits (e.g., one year in Belgium, and France). During that time, the person has unlimited access to the labour market.

Permit for victims of labour exploitation in Finland

In October 2021, Finland introduced a one-year residence permit for regularly residing people who experience labour exploitation. To receive the permit, the person must report the labour violations to the competent authority, but they do not have to pursue a formal complaint with the labour inspection or courts. The permit is not linked to any investigation. During the one-year period, people can work but have time to stabilize their situation, be unemployed and look for alternative work or take steps to start a business. The permit can be converted into a normal work permit on finding a job in any sector. Permit holders are also entitled to family reunification.

Permits usually lapse when technical or substantive criteria are no longer met (e.g., no longer a student, no longer working, not meeting a certain level of language proficiency, no longer having medical needs). While this may make sense on the surface, it can also create unsafe or even absurd situations and put people in harm’s way. As an example, French law ensures that undocumented victims of domestic violence receive a temporary residence permit once a family court judge issues a protection order to the victim. The one-year permit can be renewed if the parallel protection order is renewed. In other words, this creates an astonishing situation in which the victim (and their dependent children) will lose their residence permit once they no longer risk domestic violence.

It is also the case when the reason for the criteria no longer being met are completely out of the person’s control, such as their employer not properly declaring the employment or making due social security and tax payments, whether intentional and abusive, or unintentional on the employers’ part. This effectively punishes workers for their employers’ behaviour.

Governments should also prevent statelessness, which is regularly a cause of prolonged undocumented stay. Governments can do this by registering births, issuing birth certificates and nationality documents to children. Countries that don’t yet have dedicated procedures to determine statelessness must introduce them and grant protection (including residence, rights and a route to nationality) under the 1954 Convention relating to the Status of Stateless Persons.

rising unemployment). Also, many young people (...) have a patchy history of formal education in Sweden, sometimes due to having been transferred between asylum accommodations – and schools – in different parts of Sweden, and due to limitations to the right to education for undocumented persons over 18.

Ministry of Economic Affairs and Employment Finland, 17 December 2020, [Hiljaisaikainen liittymisen etsintäempirison hyväksyminen ja ilmoitettavuus. Toinen julkistus (2020:16)] (checked on 13 September 2022)

ICLA, 2020, [Legislation on residence permits for victims of crime in Finland (461/2020), Direct au séjour en violation régulière des frontières (checked on 13 September 2022)]

 ► For more on statelessness in the context of migration, see: European Network on Stateless Persons, n.d., [Undocumented refugees and migrants (checked on 13 September 2022)]
Preventing stateless newborns in Spain

Spanish courts recently published landmark case law that positively reinforces children’s right to birth registration and to a nationality, including for migrant children born en route. In October 2021, a first instance court held that, to respect the child’s right to be registered as soon as possible after birth, Spanish authorities should register the child’s birth if the child was born abroad and not registered in another country. In May 2022, in a case where the child was born en route and the birth was never registered, another court recalled the principle of the best interests of the child and found a violation of the child’s fundamental rights, declaring that the child held Spanish nationality.

In Focus: Digitalisation and fees as barriers to inclusion

Two facets of regularisation measures can make it harder for people to regularize their stay: the extent to which procedures are digitised and how expensive procedures are. Fees and other costs are a common feature of regularisation measures but are prohibitively high in several countries. In addition, governments have been digitising their procedures, setting up portals and online payment methods, which create opportunities but also create challenges for the digitally excluded.

When (re)designing procedures, governments should ensure that both the digitisation and the cost of procedures does not prevent people from regularising their stay or keeping their existing permit.

Digitisation of procedures – widening the digital gap?

Residence procedures and how migration is ‘managed’ are becoming more digitised. Where paper applications used to be the standard, several countries have now developed online portals where people can submit, renew, or follow up their application. In some countries, fees must be paid online or through a bank payment app. While there are benefits to online portals and payment methods, they also risk widening a digital divide and new barriers to inclusion. Undocumented people familiar enough with the online environment may find it easier to apply, as will those who have or know someone or an NGO with a computer they can use, etc. Where undocumented people have ownership of application procedures, or at least are guaranteed access to their file through the online portal, it can also be a way to improve follow up and communication, and to reduce control and possible abuse by lawyers, employers or partners. And while digital procedures may take away some barriers, like having to travel to apply, they can create new ones, like needing a computer or smartphone to scan and send through documents.

Online portals are becoming a common element of how people interact with government institutions and vice versa, and it is no different in the migration field. For example, people could only participate in the 2022 regularisation programme in Ireland through an online portal. People had to fill out a survey-like form and upload the required proof and documentation. If people did not meet certain criteria, they could not proceed with the application. Although the portal was said to function well and be user-friendly, it did pose some issues. Applicants had to ensure files were in an acceptable format and size and had to merge and upload files to the online portal. NGOs had to

313 See also: Statelessness Index, Spain [checked on 17 August 2022]
314 Diario Constitucional.cl, 13 August 2022, La recencia a nacionalidad española a una menor nacida en una embarcación que se dirigía a la costa de Cádiz [checked on 17 August]. See also: European Network on Statelessness, 7 July 2022, Portals payment made: Spain, court verdict: Spanish nationality to a young child born en route to a case of invisible children, blogpost [checked on 17 August 2022]
support large numbers of people to do this. And, while such survey-like formats can – in theory – lead to quicker decision making, such automation has led to mistakes and dehumanizing experiences in other countries.

While online portals can reduce some burden on administrations and may facilitate life as people do not have to travel to apply, digital procedures also throw up barriers and create new hurdles. The Greek portal, for example, is only available in Greek with the translation to English option not working at the time of writing. Similar issues exist with the Spanish portal for people with no or little digital literacy or a computer at hand find it difficult to submit online applications. The online regularisation procedures are said to be lengthy, not user-friendly, and only available in Spanish. The system regularly gets overloaded, and appointments with the Immigration Office are so difficult to get that they are sold by nefarious third parties. To ensure people get appointments without having to pay for them, Migrationspitz was set up by volunteers who continuously refresh the immigration website to book people’s appointments.

People who are digitally excluded usually do not have (affordable) access to the internet and/or digital devices to connect to the internet. They may not have basic digital skills needed to use the internet and scan documents and little or no experience with navigating online portals. The latter is exacerbated when portals aren’t particularly user-friendly.

Governments should be careful not to create additional obstacles when digitising residence procedures. Being able to regularize one’s stay should not depend on having internet or the ability to navigate an online portal. Governments can take several steps, including ensuring people can continue to submit paper applications (without penalty), designing portals with the end-user (i.e., the applicant) in mind, developing user guides for non-native speakers and technophobes, setting up accessible helpdesks for people applying online, and ensuring all portals are available in several languages, including the main languages of the most prevalent third country nationalities. Any portal should also be thoroughly tested before its launch.

Another trend, the broader societal evolution towards cashless societies, is visible in the migration sphere too. This is best exemplified by the fact that the Finnish government levies higher application fees for paper applications to incentivize people to submit online applications.

In several countries, fees must be paid into a government bank account (e.g., Belgium, UK) while undocumented people very likely do not have a bank account. This is because banks regularly require official documents, like passports, national identity cards or residence permits to verify a customer’s identity, something an undocumented person may not have. However, EU law does not require this and leaves it up to national law to determine and clarify the spectrum of documents banks can accept.

Governments can and should make sure that other payment methods exist in addition to online payments and bank transfers. These measures can include accepting payments by third persons (possible in Belgium and cash payments (e.g., Finland, Poland, and Switzerland).
In Spain, applications for and renewals of residence permits on the grounds of ‘exceptional circumstances’ imply different costs, depending on the grounds, but all are low. Applications for victims of gender-based violence or victims of trafficking cost EUR 10.94. Applications for the ‘arráigo social’, ‘arrampo lobral’ and ‘arrampo familiar’ each cost EUR 38.28, while renewals cost EUR 16.40.

Lowering financial barriers in Austria, Belgium, France, Ireland and Spain

Some countries have introduced fee waivers, either for certain groups of people or for certain permits. Belgium exempts children and stateless people from paying fees and the regularisation mechanism on medical grounds is free of charge. No fees must be paid for the residence permit of a child born in Austria until the child turns two years old, and lower fees are required for children under 6. In France, applying for the statelessness determination procedure is free. Fees may also be waived in the UK if people can prove they are destitute, faced with exceptional financial circumstances or cannot meet their child’s particular and additional needs.

Fees were to be paid per application rather than per person during Ireland’s 2021 regularisation programme. This made applications more affordable for families with children, including children living within the household up to 23 years old, and for couples without children -- including spouses, civil and de facto partners.
Conclusion

Governments in Europe and across the world have developed regularisation mechanisms and programmes – i.e., residence permits migrants can apply for from within the country – in a variety of different ways. Some have adopted mechanisms or programmes based on private and family life, education or training, work, ties with society, the inability to return to a country of origin (‘non-returnability’), while others have adopted schemes for workers, victims of crime or exploitation, children born or raised in the country, statelessness, or ancestry, to name a few.

How these procedures are designed impacts who can apply for them and who benefits from them. As this report argues, procedures that are conceptualised, designed, and implemented with undocumented people and key procedural safeguards in mind, can both better protect undocumented people and serve governments and wider society. The examples listed throughout the report serve to show the many promising practices that exist and illustrate how the ten key elements can be, or have been, implemented in the real world.

Recommendations

1. To European Union institutions:
   - Recognize the use of regularisation as a commonly used policy tool by EU member states and develop an enabling EU framework by:
     - Encouraging member states to design and implement regularisation programmes and mechanisms through policy recommendations and funding;
     - Ensuring that EU law and the procedures they put in place guarantee people can access national-level residence procedures;
     - Developing regular migration pathways on a range of grounds;
     - Engraining in any relevant legislation that fees should be proportionate and not exceed the cost of the services actually provided to process applications and issue permits.

2. To national governments:
   - Review and (re)design regularisation mechanisms and any ongoing programmes with the listed ten key elements in mind, in particular by:
     - Maintaining a human-centered, whole-of-society and whole-of-government approach;
     - Ensuring that legislation on permits is not implemented in a way that (further) victimises people by imposing onerous and impractical conditions or procedures;
     - Ensuring procedural safeguards are in place in all procedures;
     - Ensuring that fee waivers are available for children, young people, and people in poverty, and making sure that any fees levied are proportionate and do not exceed the costs of the services provided to process applications and issue permits;
     - Guaranteeing that residence permits have a minimum validity of 24 months (36 months when children are involved) to ensure stability;
     - Establishing an application period of at least 18 months for regularisation programmes, and allowing people who fulfil the criteria during this period to apply (i.e., no cut-off dates);
     - Establish permanent regularisation mechanisms on a range of grounds;
     - Monitor and evaluate existing and future mechanisms and programmes, with particular attention to accessibility, effectiveness, decision-making process, barriers, etc.;
     - Fund research on the impact of regularisation mechanisms and programmes, experiences of applicants, and if and how procedural elements hamper or facilitate applications and integration;
     - Make certain that free legal aid is available to everyone who applies for or renews a residence permit or appeals a decision.
Additional PICUM resources on regularisation

2022 - FAQ Regularisation and access to a secure residence status

2022 - Turning 18 and undocumented: Supporting children in their transition into adulthood. In-depth descriptions of regularisation mechanisms and programmes open to children and young people in Belgium, Germany, Greece, Spain, Sweden, and the UK.

2022 - Barriers to return: Protection in international, EU and national frameworks. Descriptions of residence permits for people with barriers to return in Cyprus, France, Germany, Greece, Italy, the Netherlands, Poland, and Spain.

2020 - Insecure Justice? Residence permits for victims of crime in Europe. In-depth descriptions of regularisation mechanisms and programmes for victims of crime in Belgium, France, Germany, Greece, the Netherlands, Italy, Poland, Spain, Switzerland, and the United Kingdom.

2018 - Manual on regularisations for children, young people and families. Descriptions of regularisation schemes available to children, families or youth in Belgium, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, and the United Kingdom. The manual also includes methods for change and policy recommendations.

2018 - Talking points to argue for the regularisation of children, young people and families.
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