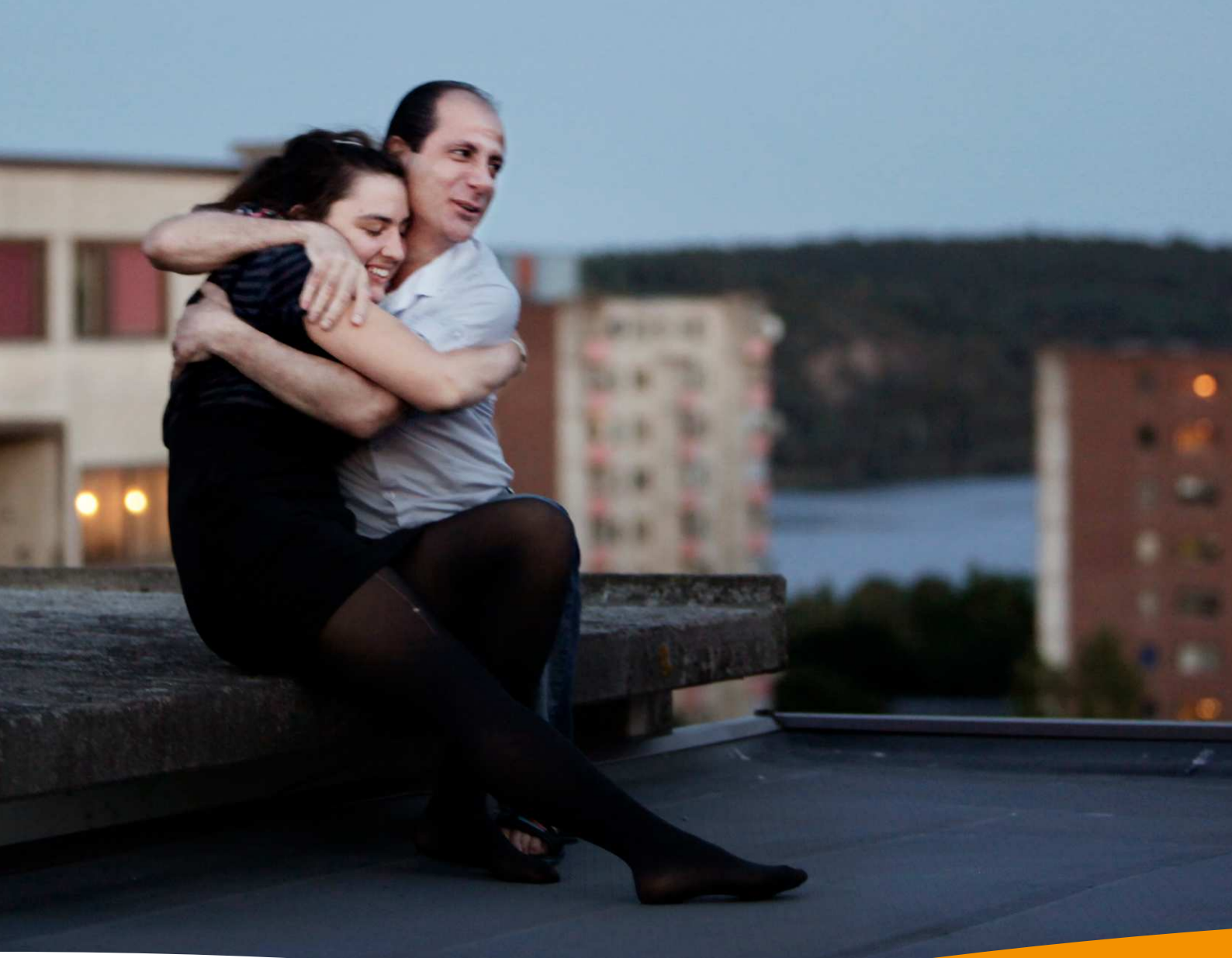

Regularisation mechanisms and programmes: Why they matter and how to design them

PICUM
PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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Executive summary

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.

Spread and grounds for stay

Regularisation is a commonly used tool by governments in their approach to migration. Both within[1] and outside[2] 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.

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.

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 OSCE ODIHR covering 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. Sources: 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 EU, final report; 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 Recommendation; European Migration Network, 2020, Comparative overview of national protection statuses in the EU and Norway. EMN Synthesis report for the EMN study 2019

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, Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway, study). Belgium had two regularisation campaigns (in 1999 and 2009).

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.[4]

International and regional framework

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.[5]

Internationally, the 2018 Global Compact for Safe, Orderly and Regular Migration[6] and the 2022 Progress Declaration[7] 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 "[building] on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status"[8] and "strengthen[ing] efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration."[9] 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.[10]

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 or witness to a criminal act; a victim of domestic abuse; employed under particularly abusive working conditions or are working while underage ; attending a legally approved 'mental dependence 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 'safe 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 Namely: the Citizen's Rights Directive (art. 13), the Family Reunification Directive (art. 15), the Residence Permit Directive, the Employers' Sanctions Directive (art. 6.5 and 13.4), the Return Directive (art 6.4) and the Long-term Residents Directive (art 13).

6 UN General Assembly, 2018, Global Compact on Safe, Orderly and Regular Migration (2018), Resolution

7 UN General Assembly, 2022, Progress Declaration of the International Migration Review Forum (2022), Resolution

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 Stay for Migrants in Situations of Vulnerability, Guidance Note. The network 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[11] or study. They can also move to better homes,[12] 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,[13] organisations and bodies[14] become more representative, and labour relationships are regularised. Countries' finances also benefit as people can start paying taxes.[15]

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.

11 Kossoudji, S.A. and Cobb-Clark, D.A, 2002, Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population, Journal of Labor Economics, 20 (3), pp. 598-628. Kossoudji and Cobb-Clark (2002) find for the US that the 1986 regularisation had a strong positive effect on employment opportunities and wages of regularised workers, with people securing better-paid jobs that better fit their credentials and skills. In ULB, and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999.

12 ULB and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999. For more on the impact of residence status on families' housing situation, see: PICUM, 2021, Navigating Irregularity: the Impact of Growing up Undocumented

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

14 E.g., trade unions, school boards, patients' organisations, civil society organisations, etc

15 By the time Operation Papyrus, a 2017-2018 regularisation initiative in Geneva, Switzerland, had regularised 1,663 adults and 727 children (about halfway through the programme), it had generated a benefit of at least 5.7 million Swiss francs (approximately 5.2 million euros) for the cantonal social insurances. The final contribution is higher, as 2,883 people were regularised through the initiative in the end. Source: République et Canton Genève Service communication et information, 2020, Communiqué de presse conjoint du département de la sécurité, de l'emploi et de la santé et du département de la cohésion sociale «Opération Papyrus: Bilan final et perspectives »; Jackson, Y. Burton-Jeangros, C. Duvoisin, A., Consoli, L. & Fakhoury, J., 2022, Living and working without legal status in Geneva. First findings of the Parchemins study, Sociograph Sociological Research Studies 57b, Université de Genève; additional information from PICUM member CCSI on 25 September 2022.

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.[16] 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.[17] 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.[18]

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 issuing fees, biometric data processing fees, etc. These fees come in addition to other costs, like paying for a lawyer[19] and travel costs.

Given that undocumented migrants usually live in or at are 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.[20] Fee waiver policies should be rolled out for people living in poverty, children, and victims of crime.

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., Dismantling the use of big data to deport and the Migration and Tech Monitor

17 For instance, Finland, France (offline at time of writing), Greece, Hungary (for Schengen visas), and Spain (only to follow up on applications).

18 E.g., in Canada, see Canadian Immigration Lawyers Association, 23 March 2022, User experience is an afterthought: Vulnerable refugees and others forced to troubleshoot IRCC's experimental online portals [checked on 2 September 2022]; Molnar, P, and Gill, L., 2018, Bots at the gate. A human rights analysis of automated decision-making in Canada's immigration and refugee system, The Citizen Lab and University of Toronto

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 to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast)

Introduction

Migration cannot be disconnected from procedures. For individuals leaving or growing up outside of their country of origin[21], 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 have become increasingly relevant: the digitalisation of application and renewal procedures and the use of fees. The report ends with recommendations to the EU institutions and national governments.

21 'Country of origin' is relative when speaking of children born to immigrant parents.

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).[22]

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[23] 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."[24] 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, Regularization of Migrants in an Irregular Situation in the OSCE Region. Recent Developments, Points for Discussion and Recommendations, 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 legal and policy framework and a description of the impact of regularisation on people's lives and wider society.

A common policy tool

Across the world, governments have regularised people in recent years, including Colombia,[25] Morocco[26] and Thailand.[27] Ecuador[28] and Canada[29] are rolling out or considering new programmes. Venezuelan law sees access to regularisation as a state obligation and a right of migrants and establishes that regularisation rather than detention or deportation must be the government's first response.[30] 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,[31] while one million could benefit from the regularisation mechanism in Colombia,[32] 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.[33] 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.[34]

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.[35] In that period, 17 member states rolled out 43 regularisation programmes, involving 4.7 million applicants.[36] 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.[37]

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.[38] 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.[39] 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."[40]

A number of European countries have rolled programmes or initiatives more than once,[41] 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.[42]

25 Freier L.F. and Castilo Jara S., 30 March 2021, Colombia's exceptional migratory regularization, Migration Mobilities Bristol [checked on 2 September 2022]

26 In 2014 and 2017. Source: OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

27 Reuters, 29 December 2020, Thailand offers work permits to undocumented migrants to curb COVID-19 [checked on 2 September 2022]

28 Reuters, 1 September 2022, Ecuador begins regularization process for thousands of Venezuelan migrants [checked on 11 October 2022].

29 Radio Canada, 7 October 2022, Ottawa envisage de régulariser des centaines de milliers de sans-papiers [checked on 11 October 2022]

30 Law 25.871, Art. 17. Source: OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice. When a person is found to be irregularly residing on the Venezuelan territory, the country's immigration office (the National Direction of Migration) orders them to regularize their stay within a specific timeframe. Law 25.871, Art. 61.

31 Reuters, 1 September 2022, Ecuador begins regularization process for thousands of Venezuelan migrants [checked on 11 October 2022]

32 Danish Refugee Council, 2021, DRC commends Colombia's decision to regularize Venezuelan migrants [checked 5 August 2021]

33 Brick, K., 2011, Regularisations in the European Union: The Contentious Policy Tool, Migration Policy Institute Insight

34 Council of the European Union, 2008, European Pact on Immigration and Asylum, p.7

35 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 EU, final report

36 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, policy brief. In Italy, a 2002 programme regularised 650,000 people and a 2005 programme in Spain, called 'normalisation', regularised 578,375 people.

37 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, policy brief

38 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.

39 European Migration Network, 2020, Comparative overview of national protection statuses in the EU and Norway. EMN Synthesis report for the EMN study 2019

40 Germany, Spain, France, Luxemburg and Malta. Source: European Migration Network, 2021, Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway, study

41 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, Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway, study). Belgium had two regularisation campaigns (in 1999 and 2009).

42 For instance, Spain and the UK. Spain redesigned its law to prevent unaccompanied children and former/aged-out unaccompanied children fall out of status in 2021 and adopted several changes in 2022, including the adoption of a regularisation mechanism for training or study purposes *('arraigo formativo')*. In 2022, the UK integrated in law an earlier concession concerning a regularisation mechanism for young people who have grown up in the country. Sources: PICUM, 1 September 2022, UK: new rules make it easier for young people to access secure residence permit, blogpost; PICUM, 18 November 2021, Spain adopts law to facilitate regularisation of young migrants, blogpost; PICUM, 2022, September newsletter.

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 had 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[43] which initially focused on agricultural workers, and expanded to include domestic and personal care workers,[44] 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 regularize.[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:

> *"[i]n 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]

43 See: PICUM, 2020, Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19, pp. 3-6, and PICUM, 14 December 2021, Italy: the regularisation scheme leaves many behind, blogpost

44 In the end the programme applied to 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.

45 Sweden is phasing out this programme. See: PICUM, 2022, Turning 18 and undocumented: Supporting Children in their Transition into Adulthood, Annex 2

46 Euronews, 1 February 2022, 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 illegally staying third-country nationals in the Member States of the European Union, policy brief, p. 3

50 PICUM, 2018, , Manual on Regularisations for Children, Young People and Families; PICUM, 2020, Insecure Justice? Residence Permits for Victims of Crime in Europe; PICUM, 2022, Turning 18 and undocumented? Supporting Children in their Transition into Adulthood

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'[55] (Article 13) and 'Family Reunification Directive'[56] (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'[57] 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[58] (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[59] (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[60] (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, REGINE Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU, final report, p. 102

54 See also, PICUM, 2020, Insecure Justice? Residence permits for victims of crime in Europe

55 European Parliament and Council of the European Union, 2005, Corrigendum to the corrigendum to Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

56 Council of the European Union, 2003, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

57 Council of the European Union, 2004, Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

58 European Parliament and Council of the European Union, 2009, Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

59 European Parliament and Council of the European Union, 2008, Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

60 Council of the European Union, 2003, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

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,[61] which has been adopted by 18 EU member states,[62] 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."*[63]

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."[64]

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."[65]

The 2022 Progress Declaration[66] 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]

61 UN General Assembly, 2018, Global Compact on Safe, Orderly and Regular Migration (2018), Resolution

62 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 negotiated and adopted the GCM. Kainz, L., and Le Coz, C., 2022, The Winding Road to Marrakech Lessons from the European Negotiations of the Global Compact for Migration, Migration Policy Institute.

63 Under objective 7 'Address and reduce vulnerabilities in migration', § 23(i).

64 Under objective 7, § 23(h).

65 All under objective 5, 'Enhance availability and flexibility of pathways for regular migration'.

66 UN General Assembly, 2022, Progress Declaration of the International Migration Review Forum (2022), Resolution

67 Ibid., § 24.

Governments also committed to "avoiding approaches [to migration] that might create or aggravate situations of vulnerability for migrants,"[68] to "developing national gender-responsive and child-sensitive migration policies and legislation (…)"[69] and to "ensuring that the best interests of the child are a primary consideration in all actions concerning children in our legislation, policies and practices."[70] The declaration also refers to regularisation outright, 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 (…), and regularizing migrants in an irregular situation, in line with national laws."*[71]

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.[72] The note underlines that regularisations and 'adjustments of status'[73] are types of regular pathways[74] 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,[75] criteria,[76] accessibility,[77] affordability,[78] availability,[79] procedural safeguards,[80] individual determination of an application, independent monitoring and review of pathways, the issuing of 'provisional documentation' and regularity while the procedure is pending, full and equal access to the labour market and services after regularisation, and ensuring people on temporary permits can transition to another regular status.

The note echoes the elements listed in this report and should be read by any policy maker, technical expert or advocate when designing a regularisation mechanism or programme.

68 § 55.

69 § 56.

70 § 57.

71 § 59.

72 UN Network on Migration, 2021, Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability, Guidance Note. The network 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."

73 I.e., whereby a person transitions from one residence status/permit into another.

74 Regular migration 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 interests 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 "expanding 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 easily accessible evidentiary 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 a language 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 so people don't rely on (expensive) 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 decisions in writing; reasons for rejections are given; guarantee of a prompt and transparent process; the application of best interests procedures for children; the administrative and judicial review of a negative decision; the suspensive 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.

Impact of regularisation on people and society

Regularisation is a life-changing event for the person and their family. It also has positive impacts on their environment and wider society.

Impact on the person and their family

Living and growing up undocumented means living under stress and uncertainty.[81] Once regularised, people can breathe, plan their lives, and build their future. Once regularised, a person can work officially,[82] study at university and go to the doctor when they are sick. They can go for a coffee or do something as ordinary as take the bus without worrying it could lead to a life-changing confrontation with law enforcement. They can stand up for themself and others when someone tries to abuse or exploit them, without fearing it will lead to detention and deportation. Children can go on a school trip abroad, go to university, get a student job and progress through life at the same pace their friends do. A period of insecure housing comes to an end for many, as they can afford bigger, better spaces or can finally sign leases or get a loan.[83]

> *"It's very stressful living as an undocumented migrant. At any time, you can be ordered to be deported back to your country. This affects your mental state and your ability to sleep or function in society. As an undocumented migrant, you have a sense of being imprisoned, albeit an open prison. After getting my case approved, I felt free. I felt like the sky was the limit and anything and everything was possible. I felt energized and knew I wanted to keep fighting for others who were in the same position as I had been." – Man, 34 years old* [84]

81 PICUM, 2021, Navigating Irregularity: the Impact of Growing up Undocumented

82 Kossoudji, S.A. and Cobb‐Clark, D.A, 2002, Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population, Journal of Labor Economics, 20 (3), pp. 598-628. Kossoudji and Cobb-Clark (2002) find for the US that the 1986 regularisation had a strong positive effect on employment opportunities and wages of regularised workers, with people securing better-paid jobs that better fit their credentials and skills. In ULB, and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999.

83 ULB and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999. For more on the impact of residence status on families' housing situation, see: PICUM, 2021, Navigating Irregularity: the Impact of Growing up Undocumented

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 irregular African migrants to Europe, p. 57

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.[85] 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

85 ULB, Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999.

86 Similar benefits are identified by the UN Network on Migration, in: UN Migration Network, 2021, Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability, §2

87 ULB and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999

88 See key element 9.

89 This was the case in Operation Papyrus, but also the 2000 regularisation initiative in Belgium (Source: ULB and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999)

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 social 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.

90 ULB and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999

91 Reminder: a regularisation initiative is a temporary intensified use of an existing regularisation mechanism. In this case the already-existing provision that allows undocumented people to apply for a temporary residence permit (permit B) was not modified, but transparent criteria allowing the submission of a type B permit application were established and agreed upon. Source: Jackson, Y. Burton-Jeangros, C. Duvoisin, A., Consoli, L. and Fakhoury, J., 2022, Living and working without legal status in Geneva. First findings of the Parchemins study, Sociograph Sociological Research Studies 57b, Université de Genève

92 République et Canton Genève Service communication et information, 2020, Communiqué de presse conjoint du département de la sécurité, de l'emploi et de la santé et du département de la cohésion sociale «Opération Papyrus: Bilan final et perspectives ». Additional information from PICUM member CCSI on 25 September 2022.

93 Jackson, Y. Burton-Jeangros, C. Duvoisin, A., Consoli, L. and Fakhoury, J., 2022, Living and working without legal status in Geneva. First findings of the Parchemins study, Sociograph Sociological Research Studies 57b, Université de Genève

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,[94] 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.

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 of humane and fair regularisation programmes and mechanisms

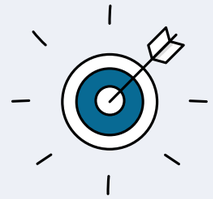
For regularisation programmes, mechanisms, or initiatives to work well and be effective, quick, humane and fair, they must meet the necessary safeguards and have certain characteristics. Based on PICUM and its members' expertise, we identified ten key elements. The bulk of this report fleshes the elements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

Ten key elements for regularisation

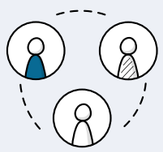
1. Application
Undocumented people themselves can apply, including children.

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

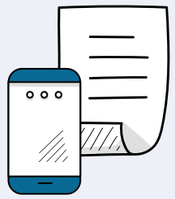


3. Criteria
Decisions are based on clear, objective criteria.

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



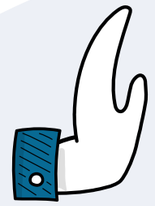
5. Decision-making
Decisions are made in an independent and impartial way and are informed by experts relevant to the criteria assessed.



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.

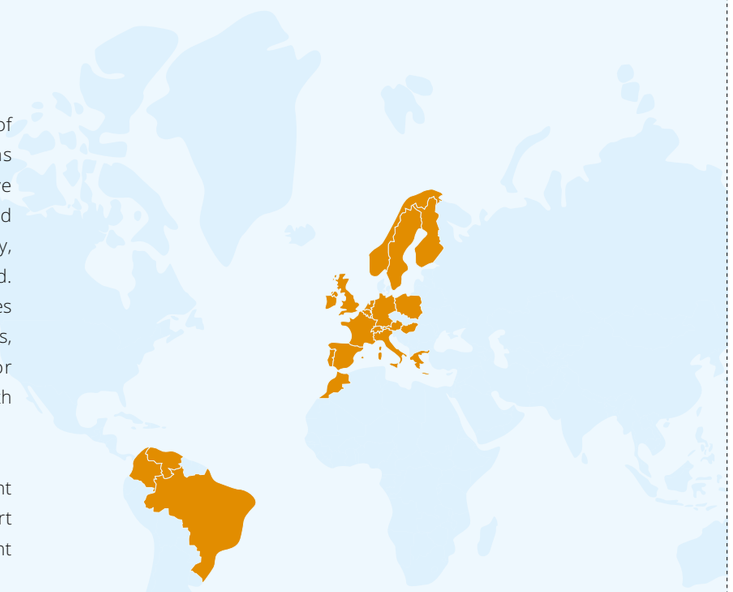
8. Temporary status
A temporary status that gives access to services, justice and the labour market is issued during the application process.



9. Residence permit
The resulting residence permit is secure and long-term; gives access to service 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.

Regularisation programmes and mechanisms in action: practices from across the world



This report elaborates on different elements of regularisation 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 regularisation 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 regularisation programme[95] in 2020, in the first track, employers[96] 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

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 sectors/types 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.

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[97] or sold labour contracts, in amounts of up to 7,000 EUR.[98]

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.[99]

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.[100] 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.

97 PICUM, 14 December 2021, Italy: the 2020 regularisation scheme leaves many behind, blogpost

98 Caritas International, 2021, Demystifying the regularisation of undocumented workers, policy paper

99 PICUM, 2 April 2020, Geneva: Operation Papyrus regularized thousands of undocumented workers, blogpost

100 Decree Law, 21/10/2020 n°130, G.U. 19/12/2020,. It is known as "decreto Lamorgese."

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.

> *"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 sh*t – it's not a good experience."* – *Constance, a parent, UK*[101]

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.[102]

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.[103] However, the firewall principle[104] 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.

101 Thomas, S., Jolly, A. and Goodson, L., 2020, "It was like they cut off all my dreams": Emotional health and wellbeing of undocumented children in London. London: Barnado's, p. 15

102 Technical.ly, 2 October 2018, 5 ways Pittsburgh's public servants are using human-centered design [checked on 3 October 2022]

103 Also UN Network on Migration, 2021, Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability, Guidance Note, pp. 12-13.

104 PICUM, 2020, Data Protection and the Firewall: Advancing Safe Reporting for People in an Irregular Situation; PICUM, n.d., Firewall and labour. Fighting exploitation, promoting decent work; PICUM, n.d., Firewall and health. Creating safe spaces, addressing health and inequalities

Civil-society involvement in the design and implementation of regularisation programmes and mechanisms

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,[105] were involved from the earliest stages in the development of Operation Papyrus (**Geneva, Switzerland**).[106] 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.[107]

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 organizations. Public consultations are also held, so organisations which are not part of the forum can provide input and suggestions.[108]

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.[109]

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.[110] 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.

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

106 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, 2 April 2020, Geneva: Operation Papyrus regularized thousands of undocumented workers, blogpost

107 Information provided by PICUM member CCSI on 25 September 2022.

108 Email exchange with PICUM member Fundación Cepaim: Convive on 30 August 2022.

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

110 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 less 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 (formerly) undocumented people, so they can meet local realities. Requirements which may seem harmless 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 work at. The second track of the programme[111] excluded job seekers whose residence permit lapsed before 31 October 2019, a seemingly random date.[112]

The two main[113] 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[114] 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,[115] 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.[116] This means that many requests are declared inadmissible and never get analysed on their merit. 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[117], 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'.[118] In addition, case law backs up the Immigration Office's position that integration is not sufficient grounds to receive a residence permit.[119] From 2013 to 2016, 10 temporary residence permits, 111 extensions and 106 permanent residence permits were issued based on article 9bis (humanitarian grounds).[120]

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

112 PICUM, 14 December 2021, Italy: the 2020 regularisation scheme leaves many behind, blogpost

113 Belgian law includes a third regularisation mechanism for unaccompanied children who do not apply for asylum. See PICUM, 2022, Turning 18 and undocumented: supporting children in their transition into adulthood for more on the 'durable solutions' procedure.

114 Articles 9bis and 9ter of the Immigration Act, respectively.

115 Circular, 21 June 2007, Omzendbrief betreffende de wijzigingen in de reglementering betreffende het verblijf van vreemdelingen tengevolge van de inwerkingstredin van de wetten 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 reasons why the person could not apply from abroad. Including for young undocumented people who were living in Belgium as children, with or without a secure residence status. The following case law refers specifically to former unaccompanied children whose application was deemed inadmissible: RvS, 9 december 2009, nr. 198.769; RVV 24 april 2015, nr. 144.068; RVV 15 oktober 2015, nr. 154.617; RVV 27 mei 2016, nr. 168.554

117 Dienst Vreemdelingenzaken, 2009, Instructie m.b.t. de toepassing van het oude artikel 9,3 en het artikel 9bis van de vreemdelingenwet

118 RvS 9 december 2009, nr. 198.769.

119 RvS 27 september 2016, nr. 235.858; RVV 30 november 2018, n. 213.212; RVV 5 juli 2017, nr. 189.419

120 Council of Europe/GRETA, 2017. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, § 145

Examples of clear criteria in Geneva, Spain, and Poland

The regularisation mechanism that formed the basis of the regularisation initiative[121] '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 for families with school-aged children, or 10 years for others; being employed; being financially independent; obtaining a certified A2 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.[122]

Applications for one of the four Spanish '*arraigos*',[123] 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) [124] e) having been in Spain for a minimum period of three years,[125] f) having family ties with other foreign residents[126] or, alternatively, present a report by the Autonomous Community[127] that shows the person's social integration, and g) submitting a signed employment contract[128] or a business plan if the person is self-employment.[129]

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.[130]

121 As a reminder: regularisation initiatives are temporary regularisation campaigns that put into 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 LEtr and 31 of the Ordinance on admission, residence and the exercise of a gainful activity (OASA; RS 142.201)

122 PICUM, 2 April 2020, Geneva: Operation Papyrus regularized thousands of undocumented workers, blogpost

123 Arraigo social, laboral, familial 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: Govierno de España, n.d., Spanish voluntary return and reintegration programme, 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 The contract must meet certain conditions, most notably guarantees at least the minimum interprofessional salary or the salary established, where appropriate, in the applicable collective agreement. Agricultural labourers may present two or more contracts with different employers, and several contracts in the same or different occupation, working partially and simultaneously for more than one employer, could also be accepted.

129 Gobierno de España, Autorización residencia temporal por circunstancias excepcionales. Arraigo social. [checked on 21 October 2022]

130 Fagasiński, M., Górczyńska, M and Szczepanik, M., 2012, *Wychodząc z cienia: Badanie prawnych, politycznych i społecznych konsekwencji programu regularyzacyjnego*,The Act of 28 July 2011 on legalizing the stay of certain foreigners in the territory of the Republic of Poland (Wychodząc z cienia: Badanie prawnych, politycznych i społecznych konsekwencji programu regularyzacyjnego), Polish Helsinki Foundation, cited in: OSCE ODIHR, 2021, Regularization of Migrants in an Irregular Situation in the OSCE Region. Recent Developments, Points for Discussion and Recommendations, p.9

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"[131] – is meant to protect the individual from the worst, and help sustain a prosperous society. However, some policies prevent or effectively punish people from/for 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.[132] 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.[133]

'Sufficient resources' not required in Finland

Finland does not require people to have 'sufficient financial resources' when they apply for a residence permit on humanitarian grounds or a permit based on 'obstacles to leave the country'.[134]

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).[135] However, people who cannot meet that criterion "due to physical, mental or psychological illness, disability or age" are exempted from it.[136] The article also allows people to receive housing benefits and lists four 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 the work'; and care givers of close relatives.

131 The World Bank, The World Bank In Social Protection [checked on 21 June 2022]

132 This and other permits are stamped 'NRPF' (No Recourse to Public Funds), meaning that permit holders cannot access public funds classed as such for immigration purposes, unless an exception applies. Source: NPRF Network, Benefits. Public funds, exceptions, claiming benefits as a mixed household, and eligibility rules for EEA nationals [checked on 19 October 2022]

133 See also PICUM, 2022, A snapshot of social protection measures for undocumented migrants by national and local governments

134 Sections 51 and 52 of the Finnish Immigration Act.

135 Article 25b of the German Residence Act. See text box 'Private and family life as grounds for stay' for more on this permit. Note that the German government plans on amending this permit.

136 Art 25b§3.

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.

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.[137]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[138]; foreigners who could prove a professional activity, but no employment contract[139]; foreigners who could not prove five years of residence in Morocco but who had a college education or equivalent.[140] In contrast, unaccompanied children or 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.[141]

Spain reformed its legal framework in 2021, facilitating access to a secure residence permit for (former) unaccompanied children. Up 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.[142]

137 One year (2017) compared to one month (2014).

138 The 2014 programme required two years of marriage.

139 The 2014 programme required two years or more of regular employment contracts.

140 OHCHR & DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

141 The 2014 programme targeted the following people: a) spouses of Moroccan nationals who were married for at least two years; b) spouses of regularly-residing foreigners after four years of marriage; c) children from these two categories; d) foreigners with at least two years of regular employment contracts; e) foreigners with five years of continuous residence in Morocco; f) foreigners with serious illnesses who had been living in Morocco for at least one year. Source: Circular 8303 of 16 December 2013 governing the exceptional operation to regularize the residence situation of foreigners, cited in: OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

142 PICUM, 18 November 2021, Spain adopts law to facilitate regularisation of young migrants, blogpost; PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood

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.[143] 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]

Private and family life as grounds for stay

A person whose deportation would violate Article 8 ECHR could qualify for a permit in **The Netherlands**. The Dutch government must consider the following in their assessment: age on arrival in the Netherlands; the period of residence in the Netherlands in comparison to the period spent in the country of origin; periods of regular residence in the Netherlands; the relationship of the applicant and their family with the Netherlands, the country of origin and third countries; issues which would interfere with the exercise of family life outside the country; and medical circumstances.[146]

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.'[147] 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,[148] 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.[149] (Note that the German government plans on amending the permit to make it more accessible.[150])

143 ECtHR, 26 April 2018, Hoti v. Croatia, §122. See also European Court of Human Rights, 30 April 2022, Guide on Article 8 of the European Convention on Human Rights Right to respect for private and family life, home and correspondence

144 Council of Europe, September 2005, Twenty Guidelines on Forced Return, guideline 2 §2; PACE, 2006, Human rights of irregular migrants, §12 (12). For more on article 8 in the framework of returns, see PICUM, 2022, Barriers to return: Protection in international, EU and national frameworks, pp. 12-13.

145 ECtHR, 23 June 2008, Maslov and Others v. Austria, §63; ECtHR, 20 September 2011, A.A. v. the United Kingdom, §49.

146 OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice; Vedder H, n.d., Minimumnormen beroep op artikel 8 EVRM; information provided by PICUM member Stichting Los on 3 October 2022.

147 Called the *'Aufenthaltsgewährung bei nachhaltiger Integration'* or residence permit for sustainable integration.

148 Based on past schooling, training, income, or the family's situation.

149 Section 25b of the Residence Act.

150 ProAsyl, FAQ: Fragen und Antworten zum Chancen-Aufenthaltsrecht [checked on 27 October 2022]

In **Venezuela**, administrative and judicial decisions on return and regularisation include the concept of 'arraigo' – bonds with the country. That means that the length of stay (de facto residence), the bonds of employment, and family and emotional ties that someone has developed in Venezuela and the best interests of any children involved in the decision must be taken into account.[151]

When children and young people are concerned

Children certainly benefit from a secure residence status. Particular attention should go to children who are growing up and young people who have grown up and spent time in the country. Governments should consider issuing residence permits to children based on their best interests (see box 'Decisions regarding children' on page 37). They should also consider shorter periods for children, families with children and those who have grown up in the country[152] when deciding on a minimum timespan spent before issuing them a residence permit based on social or personal ties (both in the case of programmes and mechanisms). The longer a child[153] spends in a country without a secure residence status, the longer they are exposed to the damaging effects of the livelihood and existential insecurity an irregular status brings.[154] The longer a child has spent in a country, the greater they are attached to it and the more their development and sense of identity will be damaged should they be deported.[155]

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 stay.[156] 'Operation Papyrus' (Canton of Geneva, Switzerland) required half the length of stay for families with children compared to others.[157]

151 Decision 594/2018. Source: OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

152 PICUM, 2022, Turning 18 and undocumented. Supporting children in their transition into adulthood in Europe

153 Or adult.

154 PICUM, 2021, Navigating irregularity: The impact of growing up undocumented in Europe

155 Kalverboer, M.A. & Zijlstra, A.E., 2006, De schade die kinderen oplopen als zij na langdurig verblijf in Nederland gedwongen worden uitgezet, Rijksuniversiteit Groningen

156 Department of Justice Ireland, 2002, Regularisation of Long Term Undocumented Migrant Scheme [checked on 1 July 2022]. The government required three (or four) years or irregular stay prior to 31 January 2022, when the six-month application period started.

157 PICUM, 2 April 2020, Geneva: Operation Papyrus regularized thousands of undocumented workers, blogpost; Jackson, Y. Burton-Jeangros, C. Duvoisin, A., Consoli, L. & Fakhoury, J., 2022, Living and working without legal status in Geneva. First findings of the Parchemins study, Sociograph Sociological Research Studies 57b, Université de Genève

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.[158] Young people (*adults*) who have lived in Portugal since before their 10th birthday can regularise their stay.[159]

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.[160] Children born in the UK are also eligible for British citizenship but must turn ten first.161

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.[162]

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 regularize their situation.163 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. 54

159 Article 122 of Law 23/2007.

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 22 March 2022]. See also See PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood, pp. 60-62

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 emphasized: a) the child's need for stability and continuity, b) which languages 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 care situation upon return, and g) the social and humanitarian situation upon return." Own translation. Source: Regjeringen.no, 8 December 2014, Forskrift om endringer i utlendingsforskriften (varig ordning for lengeværende barn og begrunnelse i vedtak som berører barn) [checked on 13 September 2022]. See also PICUM, 2018, Manual on regularisations for children, young people and families, pp. 62-67

163 Article 122, §1, B) of the REPSAE, in conjunction with article 61, §1 and §4 of the RD 84/2007 as amended by order number 1563/2007 of 11/12. See also: Servicio de Estrangeiros e fronteiras, Applying for residence in Portugal. Special situations: article 122, paragraph 1, subparagraph B) – Minors who were born and have remained in national territory, and who attend pre-school or school at basic, secondary or professional level [checked on 3 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 regularize on that basis.[164] The entire family regularizes, 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[165] and then stayed in the Netherlands for at least five years before turning 18.[166] The measure was adopted to prevent the children from being the victim of long asylum procedures and/or the decisions of their parents.[167] However, many children and young people remained undocumented because of how the measures were designed and implemented (see further).[168]

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 argued. 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

164 Le gouvernement du Grand-duché de Luxembourg Ministère des Affaires étrangères et européennes, Autorisation de séjour d'un ressortissant de pays tiers sur base de l'article 89 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration (Mémorial A- N°255 du 28 décembre 2015)

165 Or whose parents had applied for them.

166 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

167 Tweede Kamer der Staten-Generaal, 21 December 221, Brief van de staatssecretaris van veiligheid en justitie aan de Voorzitter van de Tweede kamer der Staten-Generaal, nr 1597

168 Het Parool, 29 January 2003, 'Te strenge uitvoering kinderpardon' [checked on 12 September 2022]; NOS Nieuw, 27 September 2013, Raoul en Riad Gamidov vallen buiten het kinderpardon [checked on 12 September 2022]; Defence for Children, Dossier: Kinderpardon, webpage [checked on 12 September 2022]; NOS, 29 January 2019, Crisissfeer rondom kinderpardon, waar gaat het om? [checked on 12 September 2022]; Nu.nl, 3 September 2018, Waarom geen Kinderpardon voor Armeense Lili en Howick?, video [checked on 12 September 2022]

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.[169]

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.[170]

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 wishing to appeal on human rights grounds.[171]

Reasons given for unsuccessful applications in Ireland

Unsuccessful applicants to the Irish regularisation programme for long-term undocumented people (2022) were informed of the reasons in writing. People also had 30 days to appeal the decision.[172]

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

wDecisions should be made in an independent and impartial way. The decisions should also be informed by experts relevant to the criteria assessed. Doctors with the relevant specialisation should be involved in decisions on regularisation claims based on medical grounds, while country of origin experts should be involved in the assessment whether the person runs the risk of human rights violations in the country of return (cf. grounds for stay based on non-returnability because of a risk of *refoulement*).

169 E.g., MSS v Belgium and Greece, §290: *"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 Majcher I, 2020, The European Union Returns Directive and Its Compatibility with International Human Rights Law, Brill Neihof, Leiden Boston, p. 163 etc

170 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 49 to 56 and Article 19A (1a) of Law 4251/2014. See: PICUM, 2020, Insecure Justice? Residence Permits for Victims of Crime in Europe for more on these permits.

171 Right to Remain, 18 July 2018, Out-of-country appeals [checked on 3 October 2022]

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

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).[173]

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 Focus on the EU legal framework"[174] 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 child'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 services
- ✓ Whichever durable solution, discussion and development of plan
- ✓ Leads to reasoned, documented decision with right to appeal with suspensive effect.

173 UNICEF, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle, 2019, Guidance to respect children's rights in return policies and practices Focus on the EU legal framework.

174 UNICEF, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle, 2019, Guidance to respect children's rights in return policies and practices Focus on the EU legal framework.

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]

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.

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.[176] 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,[177] 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.[178] 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.[179]

175 Art 142.1 §2 Organic law 4/2000 on Rights And Freedoms Of Foreigners In Spain And Their Social Integration (RELOEX). See also Council of Europe/GRETA, 2018, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, §197-198

176 Department of Justice Ireland, Required Documents Guide – Regularisation of Long Term Undocumented Migrants Scheme, webpage [checked on 12 September 2022]

177 31 January 2022.

In 2013, the Netherlands launched a regularisation programme[180] 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]

178 13 January 2022.

179 Information provided by PICUM member CCSI, 25 September 2022.

180 A mechanism was launched in parallel, which had similar but slightly different criteria. The applicant could not be older than 18 years old (article 2) and people who had not cooperated with the Return Office were excluded (article 2.2).

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. Instances in Dutch: Immigratie en Naturalisatiedienst, Dienst Terugkeer & Vertrek, COA en de Vreemdelingenpolitie.

183 Het Parool, 29 January 2003, 'Te strenge uitvoering kinderpardon' [checked on 12 September 2022]

184 For example, NOS Nieuw, 27 September 2013, Raoul en Riad Gamidov vallen buiten het kinderpardon [checked on 12 September 2022]

185 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 (Germany) will only benefit people who met the criteria by 1 January 2023.

‘Operation Papyrus’ in Geneva, Switzerland

‘Operation Papyrus’ lasted almost two years (February 2017 to December 2018), and people who started meeting the requirements halfway through the initiative could apply. That meant that a family which had lived in Geneva for five years by January 2018, could apply although the scheme was announced in February 2017.[186]

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).[187] Poland’s regularisation programme was open for six months, from 1 January 2012 to 2 July 2012.[188]

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).[189]

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 lead-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.[190]

186 Information provided by PICUM member CCSI, 25 September 2022.

187 OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

188 Fagasiński, M., Górczyńska, M and Szczepanik, M., 2012, The Act of 28 July 2011 on legalizing the stay of certain foreigners in the territory of the Republic of Poland (Wychodząc z cienia: Badanie prawnych, politycznych i społecznych konsekwencji programu regularyzacyjnego), Polish Helsinki Foundation, cited in: OSCE ODIHR, 2021, Regularisation of Migrants in an Irregular Situation in the OSCE Region. Recent Developments, Points for Discussion and Recommendations, p. 9

189 Kerkwerk Multicultureel Samenleven, 2000, Het andere verhaal van de regularisatie: de niet-aanvragers. Een enquête van Kerkwerk Multicultureel Samenleven voorjaar 2000.

190 Resources in Arabic, Cantonese, English, French, Hindi, Mandarin, Portuguese, Spanish, Tagalog, and Urdu were available on a dedicated government website. Department of Justice Ireland, 2022, Regularisation of Long Term Undocumented Migrant Scheme [checked on 18 August 2022]

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[191]

Fee waivers in Belgium

Belgium waives the application fee for children and recognized stateless people and regularisations on medical grounds are free.[192]

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.[193] 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 wrought 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.[194] 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.[195]

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]

193 ‘Gender-based violence’ in Spanish law. LO 2/2009 modified LO 4/2000 on the rights and freedoms of foreigners in Spain and their social integration and introduced Art 31bis. This article contemplates the granting of a residence and work permit to victims of gender-based violence who are undocumented. The protection of women and their children is further clarified in Arts 131-134 of the Royal Decree 557/2011 of 20 April, passing the Regulation of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their social integration.

194 PICUM, 2020, Insecure Justice? Residence Permits for Victims of Crime in Europe, pp. 55-56

195 Ley Orgánica 4/2000. Art. 59bis.

Simplified requirements in Brazil due to instability in Venezuela

In March 2018, the **Brazilian** government simplified documentation required for people from bordering countries, namely Venezuela, who were applying for a temporary permit on humanitarian grounds. The relaxation came because of the instability in Venezuela and the problems people had to collect the necessary documentation. The usual fees were also waived.[196]

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 themselves to be informed, but other actors should 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 Genevese government, including a press conference mid-way through the initiative.[199]

196 OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

197 Kerkwerk Multicultureel Samenleven, 2000, Het andere verhaal van de regularisatie: de niet-aanvragers. Een enquête van Kerkwerk Multicultureel Samenleven voorjaar 2000.

198 PICUM, 2 April 2020, Geneva: Operation Papyrus regularized thousands of undocumented workers, blogpost

199 Information provided by PICUM member CCSI, 25 September 2022.

Governments must also promote existing pathways for stay/mechanisms and disseminate correct, detailed information in a variety of languages, formats and for a variety of levels of literacy. Making information available online is not enough to reach people who would not know how to look for it. Casting a wide information net is especially important for undocumented people who may keep to themselves for fear of detention and deportation, or because they live and/or work in relatively isolated conditions. It is then important to disseminate information in shops, public transport hubs, stations and stops, schools, religious and community spaces and social and regular media channels. Schools and employers of undocumented workers should be particularly prioritized as they can be important sources of information and moral or practical support.[200]

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 Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche 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 weak but important social ties with Belgian society that helped them regularise their stay compared to men. They noted 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 18 August 2022]

202 Email exchange with PICUM member Immigrant Council Ireland, 15 August 2022.

203 If their residence permit depends on an abusive partner's residence status.

204 Refugee Aid Good Practice, 2022, 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

In the UK, advice and casework for non-asylum immigration matters is very limited, as non-asylum matters are generally outside the scope of legal aid (esp. in England and Wales).[206] That means that only a limited number of organisations which have an 'Immigration accreditation' (as opposed to an 'Asylum and Protection' accreditation) can provide legal aid.[207] In London, where the most undocumented people live and the most legal aid providers are, demand vastly outstrips supply. According to one study (2021), state-recognized legal aid[208] can serve approximately 10,000 immigration and asylum cases per year, while there are an estimated "397,000 people who are undocumented, of whom at least 238,000 are likely to be eligible to make an application to regularise their status."[209]

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.[210] 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).[211]

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.[212] 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. 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.[213]

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

207 Refugee Aid Good Practice, 2022, No access to justice: How legal advice deserts fail refugees, migrants and our 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

209 Wilding, J., Mguni, M. & Van Isacker, T., 2021. A Huge Gulf: Demand and Supply for Immigration Legal Advice in London

210 Or reside regularly in Greece.

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

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

213 By virtue of article 41(2). Source: Majcher I, 2020, The European Union Returns Directive and Its Compatibility with International Human Rights Law, Brill Neihof, Leiden Boston

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 on the human rights of migrants, "Administrative law must provide similar guarantees when the consequences of the decision can be similar or worse. […] Fast track processes [must] incorporate appropriate procedural safeguards, including the opportunity to be heard [for migrants]."[214] The right to be heard is a crucial aspect of due process and fair appeal procedures.

For children, being heard helps ensure that decisions can be made in their best interests. Children's right to be heard and participate in procedures and decisions affecting them is enshrined in the UN Convention on the Rights of the Child (guiding principles, article 12). And "to effectively exercise the right to be heard, children have the right to counselling (access to a lawyer), to information, to interpretation when needed."[215]

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.

Firewalls

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.

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

214 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

215 International Commission of Jurists - European Institutions, 2018, Access to Fair Procedures Including the Right to Be Heard and to Participate in Proceedings Training Materials on Access to Justice for Migrant Children, Module 1, FAIR Project , p. 5.

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' or 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 their life in dignity. It also makes them vulnerable to poverty, exploitation, chronic stress and mental ill-health.[219]

It can take years before the Dutch Immigration Office (IND) takes a decision on applications for the 'no fault'-permit ('*buitenschuldstatus*'), which is meant for people who cannot return for external reasons.[220] During that time, applicants have access to very few rights,[221] little protection and remain undocumented.[222] France does not

216 Article 22, paragraph 12d to 12f, Legislative decree No. 109 of 16 July 2012 (Rosarno Law) as amended by L. 1° dicembre 2018, n. 132.

217 Directive 2009/52/CE of the European Parliament and of the Council 18 June 2009 implementing the Directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals.

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 cooperation with authorities, and can be extended until reception of back payments of remuneration (Articles 6(5), 13.4 and 15 and European Commission Communication COM(2021) 592 final, Brussels, 29.9.2021).

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 sick to travel. A pre-requisite is that all doubts about the person's identity have been solved.

221 Undocumented people in The Netherlands have access to urgent medical aid, legal aid, and basic accommodation (called 'bed bad brood'). Undocumented children must attend compulsory education. Sources: Amnesty International, Ongedocumenteerden en uitgeprocedeerden [checked on 20 October 2022]; Stichting Los, Basisrechten [checked on 20 October 2022]

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

issue a temporary residence permit during the Statelessness Determination Procedure. This means that people do not receive any support and risk being baselessly[223] 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 usually[225] 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 are 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.[228]

223 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 rarely be returned. For more on this (in France and elsewhere), see European Network on Statelessness, n.d., Still stateless, still suffering. Why Europe must act now to protect stateless persons; Flemish Refugee Action, Detention Action, France terre d'asile, Menedék – Hungarian Association for Migrants and The European Council on Refugees and Exiles, 2014, Point of no return. The futile detention of unreturnable migrants

224 See: Forum Réfugiés - Cosi, September 2021, L'apatridie et la rétention administrative en France

225 May not be the case for subsequent asylum applications. See: EASO, 2021, EASO Practical Guide on Subsequent Applications, EASO Practical Guide Series, pp. 22-24.

226 Article 15 of the Reception 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 JCWI, 17 September 2022.

227 The fact that a victim's ultimate residence permit depends on the perpetrator's conviction is a bad practice. See: PICUM, 2020, Insecure Justice? Residence Permits for Victims of Crime in Europe for more on this. See also chapter on EU legal framework above.

228 Council of Europe/GREVIO, 2019, Report submitted by Spain pursuant to Article 68, §1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, p. 63. See also: PICUM, 2020, Insecure Justice? Residence Permits for Victims of Crime in Europe, pp. 55-56

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** law[229] 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]

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, 2018, Manual on regularisations 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, Coronavírus. Preocupadas, 20 associações questionam Governo sobre direitos de imigrantes [checked on 17 August 2022]

236 UN Network on Migration, 2021, Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability, p. 15

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]

237 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 Statelessness Index, March 2021, France

Colombia's 2021 regularisation programme for Venezuelan nationals[239] 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.[240]

A five-year residence and work permit is issued to some people[241] who regularize through the '*arraigo familiar*' in **Spain**.[242] The five-year permit can be issued to the parents or guardians of Spanish (or European[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.[244]

Italy's special protection permit *('protezione speciale')* is valid for 24 months, after which it can be converted into a work permit.[245]

The **UK**'s temporary residence permits (*'limited leave to remain'*) based on the Appendix Private Life[246] last 30 or 60 months (2,5 or 5 years).[247] However, as residence permit applications are very costly in the UK,[248] 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.[249]

In **The Grand Duchy of Luxemburg**, the temporary permit for medical reasons is transformed into a permanent residence permit after two years.[250]

239 Called 'Temporary Status for Venezuelan Migrants pursuant to Decree 216 of 2021 and Resolution 0971 of 2021.

240 Mejía Hernández, A., 2021, Understanding migration as an asset: the Colombian case, OECD development matters

241 Descendants of Spanish nationals 'of origin' can also regularize through this mechanism, but receive a one-year permit.

242 A one-year permit was issued until a legal reform in 2022.

243 Parainmigrantes.info, Arraigo Familiar en 2022: Nuevos Supuestos y Requisitos [checked on 20 October 2022]; Immigration Lawyers Spain, Arraigo Familiar in Spain: A Complete Guide [checked on 20 October 2022]; Table provided by PICUM member Fundación Cepaim: Convive.

244 Namely: ascendants over 65 years of age, or dependents under 65 years of age, descendants under 21 years of age, or dependents over 21 years of age, of a Spanish citizen, or of his or her spouse or common-law partner.

245 For more on this permit, see PICUM, 2022, Barriers to return: Protection in international, EU and national frameworks, pp. 23-24. The permit is not always converter into a work permit, as people who ask for the 'protezone speciale' directly to the *questura* don't always receive it. It is always converted for people who receive the permit following an *ex officio* consideration after a rejected asylum claim. Source: Information submitted by PICUM member ASGI, 4 October 2022.

246 Previously based on §276ADE(1). The grounds for stay based on private life remain the same: having lived continuously in the UK for 20 years or more; be underage and having lived in the UK continuously for at least 7 years and it not being reasonable to be expected to leave the UK; be aged 18 to 25 and having spent at least half of ones life in the UK; and having lived in the UK for less than 20 years while there would be "very significant obstacles for the applicant's integration into" the country of return.

247 Applicants can choose either length, but a 60-month permit requires a double application fee.

248 For anyone older than 24, the limited leave to remain puts them on a ten-year route to settlement, during which they will pay between £10,000 and £15,000 as well as lawyer's fees. As each person on an application must pay fees, undocumented families will pay a multiple of this. Sources: PICUM [forthcoming], Administrative fees in residence procedures in Europe: Pricing undocumented people out of a residence status?; Gardner, Z and Patel, C, 2021, We are here: Routes to regularisation for the UK's undocumented population, The Joint Council for the Welfare of Immigrants, see pp. 37-41.

249 Let us Learn!, Justice for Kids Law and We Belong, 2019, Normality is a luxury. How 'limited leave to remain is blighting young lives'; We Belong, 2020, Mental Health Check

250 European Migration Network, 2021, Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway, EMN study

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."[251] 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.[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' statuses in Germany[253] and the Deferred Action for Child Arrivals (DACA) programme in the USA, but these suspensions exist elsewhere too. Spain[254] and Germany[255], 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.[256]

While suspensions of deportation can by themselves be lifechanging if they include access to services and the labour market,[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.

251 Home Office, 25 February 2016, Immigration Rules part 11: asylum. Asylum (paragraphs 326A to 352H)

252 E.g., a temporary residence permit of family or private life, which requires young people to have lived in the UK for more than half of their lives. For more on this and other UK permits, see PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood, Annex 2.

253 Handbook Germany, Tolerated stay ('Duldung') [checked on 12 October 2022]; see also PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood, Annex 2.

254 Art. 57.6 of Organic Law 4/2000.

255 Typically, six weeks before and twelve weeks after delivery, during which time they do not have to pay the costs of antenatal and postnatal care. Source: PICUM, 2016, The sexual and reproductive health rights of undocumented migrants: Narrowing the gap between their rights and the reality in the EU, p. 18

256 In Belgium, undocumented women can request the extension of their 'order to leave the territory' as of the 7th month of the pregnancy. The order is then suspended until the second month after the suspected birth date but can be extended further for medical reasons. While not a suspension of deportation, it has the same effect as the Spanish and German examples. Source: Agentschap voor Integratie en Inburgering, Zwangerschap en bevalling [checked on 20 October 2022]

257 For insight into the reasons why people apply, see: Luna, Y.M and Montoya, T.M, 2019, "I Need this Chance to … Help My Family": A Qualitative Analysis of the Aspirations of DACA Applicants, Soc. Sci. 2019, 8,(9), 265

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.[258] These types of suspensions essentially relegate people to extreme poverty and undeclared 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.[259] The German government estimates that about 136,000 people have lived with the status for more than five years.[260] 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.[261]

258 Art. 24 §2 of law 3907/2011. See also PICUM, 2022, Turning 18 and undocumented: Supporting children in their transition into adulthood, annex 2 and PICUM, 2022, Barriers to return: protection in international, EU and national frameworksfor technical information. Exceptions exist when the suspension of deportation was ordered by the administrative court or when deportation is not possible because the third-country national has been imposed a temporary condition (or sentence) by a criminal court that requires their presence in Greece until the final adjudication of the case of (or the completion of the sentence). In these cases, a 'Special Certificate of Regular Residence' may be granted, which is valid for one year and is renewed until a final decision on deportation is issued by the Court. This temporary permit does provide access to labour, services and supports. Source: information provided by PICUM member ARSIS on 25 September.

259 Federal Government of Germany, 2020, Answer of the Federal Government of Germany to the Small Inquiry (Kleine Anfrage) of various members of parliament of the Leftist Party, Question 18, p. 28f

260 ZDF Heute, 6 July 2022, Kabinett beschließt neues Aufenthaltsrecht [checked on 7 September 2022]

261 First proposed as part of the government agreement in December 2021. The law was proposed in July 2022. InfoMigrants, 6 July 2022, German interior minister proposes new route to residency for long-term migrants [checked on 7 September 2022]; ZDF Heute, 6 July 2022, Kabinett beschließt neues Aufenthaltsrecht [checked on 7 September 2022]

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".[262] Denying people access to supports, or punishing them when they do,[263] 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.[264]

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.[265] 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.[266] 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.[267] 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.[268]

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.[269]

262 The World Bank, 2022, The World Bank in Social Protection [checked on 21 June 2022]

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 (301/2004) section 89

266 ULB, and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008,"Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999

267 In Belgium. ULB, and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008,."Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999

268 ULB, and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, "Before and after", de sociale en economiche positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999, p. 141, own translation.

269 KISA, 9 February 2021, New citizenship bill brings social racism to light! [checked on 4 October 2022]

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.[270] This includes unaccompanied children who, according to French law, should always be placed in the care of the ASE.[271] Declarations of French nationality from these young people cannot be refused on grounds of insufficient integration.[272] They are made directly to the district court,[273] 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.[274]

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.[275] *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.[276] Once ten years old, the child can apply for British citizenship.[277]

270 Article 21-12 of the Civil Code. The child must be taken into care because of a judge's decision.

271 République Française, Code de l'action sociale et des familles: Chapitre Ier : Service de l'aide sociale à l'enfance. (Articles L221-1 à L221-9) ; République Française, LOI n° 2007-293 du 5 mars 2007 réformant la protection de l'enfance).

272 See: Cour de Cassation, 4 October 2005; Cour de Cassation, 11 July 2006; Cour de Cassation, 22 February 2007; Cour de Cassation, 18 May 2005.

273 Article 26 of the Civil Code. Article D221-1.2 of the Judicial Organisation Code, available here.

274 Article 21-12 of the Civil Code read together with Ministère de l'intérieur, 16 octobre 2012, Circulaire no INTK1207286C procedure d'accès à la nationalité française ; information provided by Utopia 56 on 24 October 2022.

275 Home Office, 2022, Family Policy. Family life (as a partner or parent), private life and exceptional circumstances, p. 52. See also Free Movement, 2022, Can children and parents apply to remain after seven years' residence? [checked on 22 March 2022]

276 Government guidance lists examples of when it might be reasonable for a child to leave the UK with a parent or carer. This includes: the parent or parents, or child, are a citizen of the country and so able to enjoy the full rights of being a citizen in that country; there is nothing in any country specific information which suggests that relocation would be unreasonable; the parent or parents or child have existing family, social, or cultural ties with the country and if there are wider family or relationships with friends or community overseas that can provide support. Source: UK Home Office, 11 August 2022, Family Policy Family life (as a partner or parent) and exceptional circumstances, pp. 49-51.

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

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.[278]

Independent permits in Italy

The Italian Immigration Law[279] 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.

278 De Standaard, 1 Febuary 2014, Uitgebuit en met lege handen. Het fiasco van de economische regularisatie [checked on 12 September 2022]; De Standaard, 1 February 2014, 'Plots moest ik alle loonkosten zelf betalen' [checked on 12 September 2022]; De Standaard, 1 February 2014, 'Mijn baas zei dat hij controle kon missen als kiespijn' [checked on 12 September 2022]

279 Article 31, co. 1 T.U: b286/98, Testo unico sull'immigrazione (Titolo IV, Diritto all'unità familiare e tutela dei minori)

Protect family unity and enable family life

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 protects 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.[280]

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.

Protecting family unity

Luxembourg's mechanism regularizing children who have gone to school for at least four years automatically regularizes the child's parents and their siblings.[281] This prevents mixed-status families.

280 UNICEF, n.d., Family unity in the context of migration, working paper

281 Information provided by PICUM member ASTI, 21 September 2022.

10. The regularisation measure prevents irregular stay and work and is accompanied by support measures.

Regularisation should be accompanied by measures to support the applicants and to address the structural reasons for irregular residence and work.

Regularisation programmes should also be flanked by permanent mechanisms.

Accompanying measures

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,[282] 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).[283] 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.[284]

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.[285] In addition, the Canton of Geneva launched public campaigns to encourage formal employment of domestic workers and labour market controls[286] to ensure working conditions were being met once workers were regularised.

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.

284 De Standaard, 1 Febuary 2014, Uitgebuit en met lege handen. Het fiasco van de economische regularisatie [checked on 12 September 2022]; De Standaard, 1 February 2014, 'Plots moest ik alle loonkosten zelf betalen' [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]

285 PICUM, 2 April 2020, Geneva: Operation Papyrus regularized thousands of undocumented workers

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 Febuary 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 "combatting [sic] irregular migration," their residence permit policies' effectiveness should be judged on whether people can retain their regular residence over time. Today, we see regularisation 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)[287], a requirement to renew their permit. This requirement has since been revoked.[288] The fact that government policies and procedures themselves create irregular migrants should be recognized as a major problem and can and has to be addressed by reforming policies and procedures.[289]

Preventing people from falling out of status in Brazil, Colombia and Spain

Colombia's 2021 regularisation 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.[290] 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.[291]

287 IPREM, for 2021, monthly minimum income was 564,9 euros * 4 = 2,259.60 euros. More on IPREM here [checked on 23 August 2022]

288 See: PICUM, 18 November 2021, Spain adopts law to facilitate regularisation of young migrants, blogpost; PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood

289 See for a similar argument: 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, policy brief

290 Acaps, Colombia Venezuelan Refugees [checked on 24 August 2021]; Banulescu-Bogdan, N. and Chaves-González, D., 2021, What Comes Next Now that Colombia Has Taken a Historic Step on Migration?, Migration Policy Institute Commentary

291 Interministerial Ordinance 9, 14 March 2018, Art. 3.; Source: OHCHR and DLA Piper, 2018, Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice

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[292] 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).[293]

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 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 regularisation mechanism for young people who had claimed asylum as unaccompanied children but saw their application refused.[294] Anyone who was younger than 25 years old, studying in either a national programme for upper secondary school or vocational education,[295] 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.[296] 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.[297] 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

292 The reform also changed the access to a secure residence status for unaccompanied children during childhood. See PICUM, 2022, Spain adopts law to facilitate regularisation of young migrants, blogpost

293 Reforming articles 197 and 198 of the Organic Foreigner's Law of 2000. The Royal Decree 903/2021 of 19 October, modifies the Organic Law 4/2000 of 11 January 2000 on rights and liberties of foreigners in Spain and their social integration, after its reform through the Organic Law 2/2009 on the Rights, passed by the Royal Decree 557/2011 of 20 April. See also: PICUM, 2022, Turning 18 and undocumented: supporting children in their transition into adulthood

294 Act (2017: 353) on residence permits for students at upper secondary level. Migrationsverket, n.d., The Swedish Upper Secondary School Act [checked on 13 December 2021]; Migrationsverket, n.d., Swedish Upper secondary School Act – What's new? [checked on 13 December 2021]

295 Studying in either a national programme for upper secondary school or a full-time in an equivalent programme; in vocational education in upper secondary school; or in a vocational programme of the municipality.

296 Act (2018: 755) amending the Act (2017:353) on residence permits for students at upper secondary level

297 Migrationsverket, n.d., The Swedish Upper Secondary School Act [checked on 13 December 2021]

rising unemployment).[298] 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."[299]

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[300] included a safeguard for workers who were issued a permit based on an existing employment relationship (track one).[301] 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.'[302] 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 set up a business.[303] The directive sets a minimum length of nine months[304] to remain to look for work, but some member states issue longer permits[305] (e.g., one year in Belgium,[306] and France[307]). During that time, the person has unlimited access to the labour market.

298 Sverige Radio, 16 June 2019, Kritik mot oklarheter i nya gymnasielagen [checked on 13 December 2021]

299 Scott, H., 29 June 2020, Calling Out the Law with a Lie: Community Perspectives on Precarity, Welfare and Law in Times of Covid-19 in Sweden, blogpost Border Criminologies University of Oxford

300 The scheme covered workers in 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.

301 Decree Law 286/98. See PICUM, 2020, Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19 for more information on this programme.).

302 Article 22, § 11.

303 Article 25 of European Parliament and Council of the European Union, 2016, Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast). Additional conditions must be met, including having health insurance and proving sufficient means of existence.

304 Hungary and Luxembourg issue permits of nine months. Source: Hungary - National Directorate-General for Aliens Policing, 2022, Residence Permit for the Purpose of Job-searching or Entrepreneurship [checked on 16 August 2022]; Luxembourg – Guichet.lu, 2022, Staying in Luxembourg to find a job or start a business after the research work [checked on 16 August 2022]

305 The permit has several names throughout the EU, including 'job search visa' (Belgium), 'job seekers/new business creator permit' (France), 'residence permit for the purpose of finding employment or starting a business' (Luxembourg) and 'residence permit for the purpose of job-searching or Entrepreneurship' (Hungary).

306 KU Leuven, 2022, Non-EEA students: working in Belgium after graduation [checked on 16 August 2022]

307 Campus France, n.d., "Job Seeker/ new business" residence permit [checked on 16 August 2022]

Permit for victims of labour exploitation in Finland

In October 2021, Finland[308] introduced a one-year residence permit for regularly residing people[309] 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 be 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.[310] 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.[311]

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.[312]

308 Ministry of Economic Affairs and Employment Finland, 17 December 2020, Hallitus esittää lakimuutoksia ulkomaalaisen työvoiman hyväksikäytön ehkäisemiseksi – Toimenpiteitä tehdään läpi hallituskauden [checked on 23 March 2022]

309 Only for people who have a residence permit that gives access to the labour market.

310 Article L316-3 of the Immigration Law (CESEDA).

311 For more on this, see: PICUM, 2020, Insecure Justice? Residence Permits for Victims of Crime in Europe; GISTI, 2020, Droit au séjour et violences conjugales et familiales

312 For more on statelessness in the context of migration, see: European Network on Statelessness, n.d., Stateless 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*.[313] 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 their 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.[314]

313 See also Statelessness Index, Spain [checked on 17 August 2022]

314 Diario Constitucional.cl, 13 August 2022, Se reconoce la 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, Landmark judgment from Spain: court grants Spanish nationality to a stateless child born en route (a case of "invisible children"), blogpost [checked on 17 August 2022]

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.[315] 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.[316] 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.[317] 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

315 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., Dismantling the use of big data to deport and the Migration and Tech Monitor

316 For instance, Finland, France (offline at time of writing), Greece, Hungary (for Schengen visas), and Spain (only to follow up on applications).

317 Or instance, people had to select the starting date of their irregular stay in a calendar. They could not proceed with the application if that date did not precede the cut off date (31 Jan 2022) by at least three or four years.

support large numbers of people to do this.[318] 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.[319]

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.[320] Similar issues exist with the Spanish portal:[321] 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.[322] The system regularly gets overloaded, and appointments with the Immigration Office are so difficult to get by that they are sold by nefarious third parties. To ensure people get appointments without having to pay for them, *#tecedounacita* was set up by volunteers who continuously refresh the immigration website to book people's appointments.[323]

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.[324]

In several countries, fees must be paid into a government bank account (e.g., Belgium[325], UK[326]), while undocumented people very likely do not have a bank account.[327] 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.[328]

318 Discussion at meeting of the PICUM Taskforce on regularisation, 4 May 2022.

319 E.g., in Canada, see Canadian Immigration Lawyers Association, 23 March 2022, User experience is an afterthought: Vulnerable refugees and others forced to troubleshoot IRCC's experimental online portals [checked on 2 September 2022]; Molnar, P, and Gill, L., 2018, Bots at the gate. A human rights analysis of automated decision-making in Canada's immigration and refugee system, The Citizen Lab and University of Toronto

320 Ministry of Migration and Asylum Greece, 2020, Applications, Migration.gov.gr [checked on 2 September 2022]

321 Electronic office, Public Administrations Spain, "Internet Prior Appointment" [checked on 2 September 2022]

322 Discussion at meeting of the PICUM Taskforce on regularisation, 4 May 2022.

323 Votar es un Derecho, 2022, #TECEDOUNACITA [checked on 2 September 2022]

324 Discussion at meeting of the PICUM Taskforce on regularisation, 4 May 2022.; Finnish Immigration Service, 2022, Processing fees and payment methods [checked on 13 August 2022]

325 Agentchap Integratie & Inburgering, Bijdrage in administratieve kosten [checked on 25 March 2022]

326 Gov.uk, Pay for UK healthcare as part of your immigration application [checked on 31 August 2022]

Fees and other costs

Given that undocumented migrants usually live in or at risk of poverty, the cost of residence procedures must be better understood to design fair migration procedures.

Administrative fees are a common policy in migration management and include fees for: applying for a visa; applying for a permit; renewing a permit, translating documents; taking pictures; issuing a permit; and having biometric data taken. Another common cost is paying for a lawyer[333] if no pro bono lawyer can be found or if an undocumented person cannot access pro bono lawyers or expert civil society organisations. A less obvious, but no less impactful, cost is the time an undocumented person must take off work to submit applications in person, meet for interviews or have their fingerprints taken (some governments charge for this too). They may have to travel there, too, and possibly stay overnight.

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[329]) and cash payments (e.g., Finland[330], Poland,[331] and Switzerland[332]).

327 In some countries this financial exclusion appears to be a by-product of the tightening of measures to prevent money laundering, in others it is a calculated policy to deter migration – as in the UK's 'hostile environment policy.'

328 For more on this, see PICUM, 2020, Cash only: measures imposed to counter money laundering are having serious implications for undocumented people

329 Agentchap Integratie & Inburgering, n.d., Bijdrage in administratieve kosten [checked on 25 March 2022]

330 Finnish Immigration Service, 2022, Processing fees and payment methods

331 Email exchange with PICUM member Association for Legal Intervention on 8 March 2022; Migrantinfo.pl, Temporary residence – general information [checked on 20 October 2022]

332 Email exchange with PICUM member on 23 February 2022.

333 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.

Fees in the United Kingdom are exceptionally high and have tripled since 2014.[334] They must be understood as part of the wider 'hostile environment' policy introduced by the government in 2012 to make life exceedingly difficult in the UK for undocumented migrants.[335] People must pay £2,612.20 (+- EUR 3,098)[336] when applying for a limited leave to remain based on private life – the most likely option, including for children and young people who have grown up in the UK. This includes the £1,033 application fee, the £1,560 Immigration Health Surcharge, and a £19.20 biometric information enrolment fee. For anyone older than 24, the limited leave to remain puts them on a ten-year route to settlement, during which they will have to pay these fees at least three more times to renew their permit. People end up paying between £10,000 and £15,000 (+- EUR 11,860 and +- EUR 17,790) as well as lawyers' fees. As fees apply for each applicant, undocumented families will pay a multiple of this.[337]

While the UK may have excessively high fees, several EU member states require people to pay more than 250 euros to apply for temporary residence permits on human rights grounds. This includes Greece (EUR 300[338]), Belgium (EUR 313[339]), Finland (EUR 520 to apply and EUR 430 to extend[340]) and The Netherlands (EUR 349 for some[341] and EUR 1,109 for other grounds[342]). It is disproportionate to require people who depend on goodwill or who make a fraction of the living wage[343] to pay so much money.

Affordable fees in Spain

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.[344] Applications for victims of gender-based violence or victims of trafficking cost EUR 10.94.[345] Applications for the *'arraigo social'*, *'arraigo laboral'* and *'arraigo familiar'*[346] each cost EUR 38.28, while renewals cost EUR 16.40.[347]

334 We Belong, 2020, Mental Health Check

335 The Joint Council for the Welfare of Immigrants, The Hostile Environment explained [checked on 10 Dec 2021]

336 Currency Converter on 27 April 2022. Sources: Gov.uk, 2022, Home Office immigration and nationality fees: 11 October 2021; Gov.uk, 2022, UK Visa and Citizenship Application Services; and NRPF Network, n.d., Immigration options

337 Gardner, Z and Patel, C, 2021, We are here: Routes to regularisation for the UK's undocumented population, The Joint Council for the Welfare of Immigrants, see pp. 37-41.

338 When applying for the 'exceptional three-year residence permit' for third country nationals who have lived in Greece for seven consecutive years. Article 19 of law 4251/2014. See: PICUM, 2022, Turning 18 and undocumented: supporting children in their transition into adulthood, Annex 2. This permit cannot be renewed.

339 For regularisation on humanitarian grounds. Applications on medical grounds are free. Immigration Office, 2022, Retributie [checked on 31 August 2022]

340 For a one-year permit on humanitarian grounds. Children pay EUR 270 to apply and EUR 250 to extend. Section 52 and 53 of the Finnish Immigration Act; Finnish Immigration Service, 2022, Processing fees and payment methods

341 For the 'no fault' permit (buitenschuld) for people whose return is impossible due to external reasons. For more on this permit, see PICUM, 2022, Barriers to return: protection in international, EU and national frameworks

342 For a residence permit on medical grounds or 'schrijnendheid' which can best be translated as direness / destitution. Immigratie- en Naturalisatiedienst, 2022, Leges: kosten van een aanvraag [checked on 22 April 2022].

343 For more on the socio-economic impact of being undocumented, see PICUM, 2021, Navigating Irregularity. The Impact of growing up undocumented

344 Grounds of 'exceptional circumstances' in Spain includes permits for: all *arraigos*, international protection, humanitarian grounds, collaboration with law enforcement, victims of trafficking, and former unaccompanied children who aged out without a secure residence permit. See Spain's Immigration law and Immigration Portal

345 Ibid.

346 These are all temporary residence permits for exceptional circumstances. For more details about the criteria., see: PICUM, 2018, Manual on regularisations for children, families and youth; PICUM, 2022, Turning 18 and Undocumented, Supporting Children in their Transition into Adulthood, Annex 2

347 Government website with fees [checked on 22 April 2022]

Even in countries that apply comparatively low application fees like Spain (see text box), the sum of the overt and hidden costs may prevent people from applying.[348] The dissuasive effect of fees has been noted by government officials[349] and PICUM members in countries with high fees.[350] Administrative fees throw up real barriers for undocumented people and can be the reason why some people do not apply for a residence permit, even though they meet all the (other) requirements. Governments should review their existing residence procedures (regularisation schemes) and, where necessary, redesign them to make them more accessible, including by making them more 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.[351] [352] Fee waiver policies should be rolled out for people living in poverty, children, and victims of crime.

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.[353] 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.[354] In **France**, applying for the statelessness determination procedure is free.[355] 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.[356]

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.[357]

348 Email exchange with PICUM member HumanRights360 (Greece, 28 February 2022) and Refugee Advice Centre (Finland, 11 March 2022). Also mentioned at a meeting of the Taskforce on regularisations on 4 May 222.

349 For example, by a former state secretary for asylum and migration of Belgium. EMN Belgium, 2020, Comparative overview of national protection statuses in Belgium 2010-2019

350 See PICUM [forthcoming], The use of fees in residence procedures in Europe: Pricing undocumented people out of a residence permit?

351 Some countries inflate fees to deter people from applying. In the UK, as part of the broader hostile environment policy, fees are many times higher than the actual processing costs. For instance, an application for an indefinite leave to remain costs £2.389 per applicant, while the processing costs £243 to the British Home Office. Source: Gov.uk, Visa fees transparency data. Table with details of fees and unit costs – 26 February 2022

352 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 to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast)

353 Agentschap voor Integratie en Inburgering, Bijdrage in administratieve kosten [checked 20 October 2022]

354 Bundesministerium für Inneres Österreich, n.d., Gebühren für Aufenthaltstitel für Drittstaatsangehörige [checked on 25 March 2022]

355 For more on this residence permit, see PICUM, 2022, Barriers to return: protection in international, EU and national frameworks

356 NRPF Network, Immigration Application Fees; Home Office, 8 April 2022, Fee waiver: Human Rights-based and other specified applications

357 Department of Justice Ireland, Regularisation of Long Term Undocumented Migrant Scheme [checked on 31 August 2022]

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-re-turnability'), 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.
- Support research and enable peer exchange on existing regularisation mechanisms and programmes, both among member states and with third countries

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 date).
- 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

PICUM
PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

Rue du Congrès / Congresstraat 37-41
1000 Brussels
Belgium
Tel: +32 2 883 68 12
info@picum.org
www.picum.org