

PICUM Submission to the UN Special Rapporteur on the human rights of migrants

How to expand and diversify regularisation mechanisms and programs to enhance the protection of the human rights of migrants

February 2023

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 164 organisations working with undocumented migrants in 31 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With two decades of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

This submission is based on the report [Regularisation mechanisms and programmes: Why they matter and how to design them](#) which has extensive information on the wide-spread use of regularisation measures, the wide array of grounds invoked, the international and European policy framework, the impact of regularisation on people and society, and many examples of regularisation mechanisms, programmes and initiatives.

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The impact of regularisation on the cultural, social, and economic integration of migrants and their enjoyment of human rights

One of the few studies consulting regularised people and comparing their lives before and after regularisation in Belgium concludes that people's behaviour changed.¹ In addition to enabling people to work officially,² study, and access health care, regularisation enabled them to become more self-sufficient. They were better able to ensure their safety, day-to-day survival, and secure adequate housing (including buying property).³

Regularisation also benefits the right to private and family life as clarified by the European Court of Human Rights (ECtHR)⁴. Once regularised, families can be reunited through official channels for family reunification, and mixed-status families benefit when an undocumented parent, partner, or child of a regularly residing person receives a permit.

Children greatly benefit from a secure residence status. The longer a child⁵ spends in a country without a secure residence status, the longer they are exposed to the damaging effects of irregular status.⁶ The longer a child spends time 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.⁷

Existing work relationships can and have continued after the employee was regularised.⁸ Depending on the conditions of the permit granted, regularised workers can have greater labour market mobility. This enables them to negotiate fair conditions at work, develop in their careers and, if necessary, find employment that better matches their skills and expertise.

1 The research surveyed people regularized in Belgium in 1999. ULB and Centrum voor Sociaal Beleid Herman Deleeck and Centrum voor Gelijkheid van kansen en voor racismebestrijding, 2008, ["Before and after", de sociale en economische positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999.](#)

2 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 economische positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999.](#)

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

4 ECtHR, 23 June 2008, [Maslov and Others v. Austria](#), §63; ECtHR, 20 September 2011, *A.A. v. the United Kingdom*, §49.

5 Or adult.

6 See PICUM, 2021, [Navigating Irregularity: The Impact of Growing up Undocumented in Europe](#)

7 Kalverboer, M.A. & Zijlstra, A.E., 2006, [De schade die kinderen oplopen als zij na langdurig verblijf in Nederland gedwongen worden uitgezet](#), Rijksuniversiteit Groningen. The researchers find that any deportation after five years of living in a country would greatly damage children's wellbeing.

8 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 economische positie van personen die geregulariseerd werden in de uitvoering van de wet van 22/12/1999.](#))

The impact of regularisation on society and the economy

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 entities⁹ and organisations and bodies¹⁰ become more representative. Governments also develop a better understanding of their resident population and labour market and give themselves the opportunity to better regulate working conditions, health, and social services.

Countries' finances also benefit. By the time Operation Papyrus, a 2017-2018 regularisation initiative¹¹ 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 for the cantonal social insurances.¹² The final contribution is higher as 2,883 people were regularised through the initiative in the end.¹³

Ten key elements of humane, fair and effective regularisation measures

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. PICUM and its members have identified ten key elements:

1. **Application.** Undocumented people themselves can apply, including children.
2. **Whole of society.** Civil society, including migrant and refugee-led associations, are involved in the design, 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.

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

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

11 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. 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.

12 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.

13 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

6. **Accessibility.** The procedure is accessible in practice, meaning that it is not bureaucratic, burdensome, or expensive.
7. **Safeguards.** Procedural safeguards are in place, including access to information, legal aid, the existence of firewalls and having the right to be heard.
8. **Temporary status.** A temporary status that gives access to services, justice and the labour market is issued during the application process.
9. **Residence permit.** The resulting residence permit is secure and long-term, gives access to services and the labour market, counts towards settlement and citizenship, and does not depend on anyone else.
10. **Future proof.** The regularisation measure prevents irregular stay and work and is accompanied by support measures.

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

PICUM's [report](#) includes more than 80 practices that meet the above list of key elements – as well as examples from regularisations in recent years which do not meet the key criteria.

The following examples illustrate some of the key elements:

- 'Operation Papyrus', a regularisation initiative that ran in the canton of Geneva from 2017 to 2018;
- Colombia's 2021 regularisation programme for Venezuelan nationals;
- Portugal's temporary regularisation during COVID-19.

We also include the governmental practice of combining individual applications with 'ex officio' examinations (those that are carried out automatically and systematically by the authorities), which help prevent protection gaps.

Operation Papyrus – Swiss Canton of Geneva (2017-2018)

Independent applications (key element 1)

Ensuring people can apply for a residence permit themselves helps prevent or decrease dependency on and possible dangerous power relationships with others. People applying for a residence permit during 'Operation Papyrus' 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.¹⁴

Civil-society involvement in the design and implementation (key element 2)

Several organisations that are members of the 'Collectif de soutien aux sans-papiers de Genève', including PICUM member CCSI (Centre de Contact Swisses-Immigrés), were involved¹⁵ from the earliest stages in the development of Operation Papyrus. 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.¹⁶

Simple, clear and objective criteria (key element 3)

The regularisation mechanism that formed the basis of this regularisation initiative¹⁷ 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 ten 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.

Lower thresholds for children (key element 3)

Operation Papyrus required half the length of stay for families with children compared to other regularisation programs.¹⁸

Feasible and reasonable elements of proof (key element 3)

A list of documents that constituted proof was also published, reducing uncertainty for applicants, and making the process less arbitrary.¹⁹ Any documentation that related to the children (such as insurance plans, enrolment in school, etc) was understood to also prove the parents' stay.²⁰

14 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

15 For more information on CCSI, visit <https://ccsi.ch/>

16 Information provided by PICUM member [CCSI](#) on 25 September 2022.

17 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)

18 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

19 PICUM, 2 April 2020, [Geneva: Operation Papyrus regularized thousands of undocumented workers](#), blogpost

20 Information provided by PICUM member [CCSI](#) on 25 September 2022.

Realistic response timelines (key element 6)

'Operation Papyrus' lasted almost two years, and people who started meeting the requirements halfway through the initiative could apply. That meant that a family that had lived in Geneva for five years by January 2018, could apply although the scheme opened for applications in February 2017.²¹

Accompanying integration measures (key element 10)

Operation Papyrus included measures 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.²² In addition, the Canton of Geneva launched public campaigns to encourage formal employment of domestic workers and labour market controls²³ to ensure working conditions were being met once workers were regularised.

Negative impacts of denying people access to support (key element 10)

To renew a permit initially issued during Operation Papyrus people will have to show that they still meet the original criteria, including financial independence (i.e., not having debts or be on welfare). But denying people access to supports or punishing them when they do by taking away their residence status can keep or push them in precarious situations and poverty. It also risks discriminating against parents, young people, and people with disabilities who need support and denies people access to vital social protection, including when they have been paying into the social protection system.

Colombia's 2021 regularisation programme for Venezuelan nationals

Secure and long-term permit (key element 9)

By the end of 2020, more than half (56%) of Venezuelans in Colombia were undocumented. Colombia's 2021 regularisation programme for Venezuelan nationals²⁴ was launched, amongst others, because the government saw that earlier schemes issuing two-year permits were not working. One million Venezuelans could benefit from this regularisation,²⁵ making it the largest

21 Information provided by PICUM member [CCSI](#) on 25 September 2022.

22 PICUM, 2 April 2020, [Geneva: Operation Papyrus regularized thousands of undocumented workers](#), blogpost

23 It must be noted that repeated workplace controls were one of the reasons why employers sacked regularised workers in Belgium, who then lost their residence permit and became undocumented once again. De Standaard, 1 February 2014, [Uitgebuit en met lege handen. Het fiasco van de economische regularisatie](#) [checked on 12 September 2022]; De Standaard, 1 February 2014, ['Mijn baas zei dat hij controle kon missen als kiespijn'](#) [checked on 12 September 2019]

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

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

regularisation measure today. The programme provides a temporary residence permit that is valid for ten years.²⁶

Preventing people from falling out of status (key element 10)

This programme provides a ten-year temporary residence permit, during which people can apply for Colombia's indefinite residence permit which requires five years of residence.²⁷ The temporary permit thus provides ample time for people to decide, prepare, apply for, and acquire the indefinite permit.

A secure residence status during the Covid-19 pandemic in Portugal (key element 8)

Twenty civil society organisations (mostly socio-cultural associations of Bangladeshi, Brazilian, Nepali and Pakistani people) had expressed their concern about the situation of migrants in Portugal in the face of the COVID-19 pandemic.²⁸ In March 2020, the Portuguese Immigration and Borders Service (SEF; restructured since²⁹) 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.³⁰ This included applications for regularisation for work purposes. The stub that people received when submitting their regularisation application was sufficient evidence of eligibility, essentially functioning as a temporary residence permit.³¹ The measure was extended to 30 April 2021³² and benefitted some 356,700 people.³³

Closing protection gaps: 'ex officio' (automatic) examinations (key elements 1 and 10)

A promising practice, implemented by Italy, is to ensure both an ex officio examination as well as the possibility to apply independently.³⁴ In Italy, the International Protection Commission must

26 Mejía Hernández, A., 2021, [Understanding migration as an asset: the Colombian case](#), OECD development matters

27 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

28 Publico, 20 March 2020, [Coronavírus. Preocupadas, 20 associações questionam Governo sobre direitos de imigrantes](#) [checked on 17 August 2022]

29 See: ECRE, 2022, [Overview of the Main Changes since the Previous Report Update \(Portugal\)](#) [checked 17 August 2022]

30 Publico, 28 April 2020, [Governo regulariza todos os imigrantes que tenham pedidos pendentes no SEF](#) [checked on 17 August 2022]

31 PICUM, 2020, [Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19](#), p. 6

32 Social Europe, 6 December 2021, [Regularising migrants: Portugal's missed chance](#) [checked 17 August 2022]

33 UN Network on Migration, 2021, [Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability](#), p. 15

34 PICUM, 2022, [Barriers to return: Protection in international, EU and national frameworks](#)

examine whether an individual meets the grounds for a special protection permit ('protezione speciale'³⁵) when rejecting their asylum application.³⁶ This consideration increases efficiency by reducing the number of necessary judicial procedures³⁷ and is useful as individuals are often not informed of the possibility to apply to this permit, particularly when they find themselves at external borders or socially isolated.

Recommendations for governments

- Review and (re)design regularisation mechanisms and any ongoing programmes with the listed ten key elements in mind, 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.

35 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.

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

37 European Parliament, June 2020, [The Return Directive 2008/115/EC European Implementation Assessment, Study](#), p. 53-54.