

Manual on regularisations for children, young people and families

Executive summary



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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Importance for rights and well-being

Uncertain, precarious or irregular status has negative impacts on the health and well-being of children and young people. As well as facing the risk of being deported, undocumented children and young people have restricted access to further education, training, employment and vital services. Having an irregular or precarious status gives rise to issues around identity and belonging, and planning for the future, at a critical time in young people's development.

Many children and young people have a right to reside in their country of residence, based on their connections to it. However, without clear and accessible mechanisms to regularise their status, they are only able to enforce their rights through appeals of return decisions/ removal orders. This manifestly exacerbates the risks and anxiety facing these young people. Clear status determination procedures that provide children and young people with a secure and long-term residence status are crucial to ensure they fully enjoy all of their rights and to promote their well-being.

A common policy tool

Regularisations are a common policy tool with numerous benefits for states, individuals and families, and the communities and economies they live in. Almost all EU member states have regularised undocumented residents in the past 22 years, through regularisation mechanisms, programmes, or a combination of both. A detailed study in 2009¹ found that 24 out of the 27 EU member states at the time had used regularisation mechanism or programmes since 1996, and some several times.

Out of the ten countries included in the manual, eight have regularisation mechanisms in their laws for children, young people or families. Ireland also has a mechanism in policy. The implementation of time-bound programmes in Norway, Belgium, Ireland and the Netherlands is also discussed.

In some countries, the legal framework seeks to avoid situations where children are undocumented. In France, there is legally no 'undocumented child' as there is no requirement for people under 18 to have a residence permit. Italian law provides for all children to be granted a residence permit on the basis of being a child, though children of undocumented migrants cannot access it in practice. While these systems are not without issue, they do – in theory at least – provide for children to be regularised almost unconditionally. Both countries also have a number of regularisation possibilities at 18.

Other regularisations require a certain number of years of residence. The number of years required of children in the schemes in the manual ranges from two years (for some young people turning 18 in France) to four or five years (Luxembourg, Norway and the Netherlands) to seven years (the UK).

For some schemes, additional requirements include some years of schooling (e.g., mechanisms in France, Luxembourg, Norway, as well as the citizenship criteria in Greece) or time in the asylum system (e.g., programmes in Belgium, Ireland and Norway, and the mechanism in the Netherlands). These factors are common criteria as indicators of a child's connections to a country. A number of mechanisms included in the manual explicitly refer to children's best interests (e.g., Italy, Norway), or private and family life or attachment to the country (e.g., France, Italy, the UK).

1 A. Kraler & M. Baldwin-Edwards, Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU, ICMPD, 2009. See also K. Brick, "Regularisations in the European Union: A contentious policy tool", Migration Policy Institute, 2011.

Access to citizenship is also provided in some countries for children that meet certain conditions, regardless of status (e.g., the UK), and for children who have been in the care of the state (e.g., France, Spain). This can be a major pathway to regularisation for young people that are – in all but administrative terms – citizens. In the UK, 6,160 children and young people registered as British citizens under BNA section 1(4) between 2012 and 2015, which is 2,815 more than were regularised under the “7-year rule” and “half-life rule” regularisation mechanisms in the same time period.

The impacts of a parents’ irregular status on their children should not be over-looked. Many mechanisms also regularise parents and siblings, if the child is eligible (e.g., Norway, the Netherlands). Some countries have specific regularisation mechanisms for parents (e.g., Italy, Luxembourg, Spain).

In all EU countries, it should also be possible for the primary carer(s) of EU citizen children to regularise their status based on their child’s EU citizenship and case law from the European Court of the Justice. A number of countries have translated these obligations into laws or policies (e.g. Spain).

Some measures that reduce the incidences of children and young people becoming undocumented are also included in this manual, and are a critical part of the package of policies needed. For example, in Italy, children who are dependents of regular migrants are provided with independent permits, so their status is not linked directly to their parents.

Challenges to access in practice

While regularisations are frequently used by states and have many potential benefits, there is often still a significant gap between estimated numbers of undocumented children and those that are regularised. The examples in the manual demonstrate that restrictive criteria and practical barriers can significantly reduce the scope and utility of the schemes in place, by blocking access to residence status for children that have spent many years in the country and would otherwise be eligible.

This is particularly stark in the Netherlands, where only one permit was granted under the Children’s Pardon mechanism in 2016, largely due to the requirement to actively cooperate with departure, while it is not clear how to do so while in the process of regularisation. In Norway, the requirements that the child is from a country with which Norway has a readmission agreement and applied for asylum before that agreement took effect was estimated to reduce the overall scope of the “one-time solution” programme from 752 to 170 children, on the arbitrary basis of their country of origin.

There are some practical barriers that are quite common and can prevent regularisation of people who would otherwise be eligible. These often include a combination of the following: complex procedures; evidential requirements that are difficult to obtain for people in an irregular situation (e.g., to show continuous residence, a valid passport or identity document); the lack of legal information, legal aid and quality legal representation; discretion, restrictive interpretations, and poor-quality initial decision-making; high application fees; and lack of awareness of the mechanisms. In some cases,

criteria and procedures are not all transparent or clear, which are also barriers to effective access. Another important consideration is the length of residence status granted, ease of renewal and the need to provide stability to children, young people and families.

Bringing about change

The manual explores methodologies of those working for regularisations. Multiple approaches are usually critical for a strategy to bring about change, with different methods used at different times or simultaneously, depending on the context. The catalogue of methodologies includes: community organising, in particular involving and led by young people themselves and together with school communities; case work and litigation, including training community paralegals; coalition building; technical advocacy work; lobbying elected officials; public campaigning and communications, including the voices of children and positive stories; and international comparison and pressure.

Drawing on the learning from the implementation of the schemes included in the manual, the recommendations seek to address many of the challenges which limit how effective regularisations are in practice.

Recommendations

1. Duly consider the best interests of the child.

Before making immigration and asylum decisions affecting children, including decisions on granting, withdrawing or refusing permits to parents, as well as before any decision related to return, duly consider and implement the best interests of the child.

Procedures should ensure robust and individual consideration of the child's situation and hear from the child, with safeguards, and rely on multi-disciplinary and child-specific information.

2. Improve procedures and the management of residence permits.

Prevent children from becoming undocumented by addressing the common reasons why children become undocumented through migration and asylum procedures and permit systems.

This should include granting children that are dependents of regular migrants an independent residence permit until age 18, to prevent them from losing status if their parent does.

3. Ensure regularisation mechanisms uphold the child's right to family life and parental rights.

Regularisation of parents and siblings should be facilitated when a child is regularised, and the regularisation of children when a parent is regularised.

Minimum income thresholds, which often prevent children and families from being regularized, should not be required.

4. Implement permanent regularisation mechanisms, and short-term programmes as needed.

All regularisation schemes should have clear, objective criteria, and enable undocumented children and young people to access secure, long-term residence status with equal rights as nationals.

A number of years of residence should be sufficient grounds for regularisation of children and young people. Other complementary grounds can include social ties, school attendance and the best interests of the child. In order for regularisations to be effective, they need to be accessible in practice, and not bureaucratic and burdensome in terms of administrative and financial requirements. At the same time, support and training should be provided for implementing authorities to promote quality initial decision-making, while also ensuring a right of appeal. A temporary status should be provided during the application process, with access to services.

5. Provide information and legal assistance.

Appropriate and accessible information about possibilities to access secure and long-term residence status should be provided, as well as free, quality legal assistance for all children and young people, at all stages of all procedures.

6. Accessing long-term residence status and citizenship should be based on actual residence.

Criteria for accessing long-term residence status and citizenship should count years of habitual or actual residence, rather than only counting years of residence with regular status or requiring more years of residence when it has been irregular.

This should include accepting multiple types of documentation and attestations as proof of habitual residence, recognising challenges facing irregularly resident children, young people and families to provide such evidence.

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