

Manual on regularisations for children, young people and families



 PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS



The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 155 organisations working with undocumented migrants in 30 countries, primarily in Europe as well as in other world regions, 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 15 years 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.

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Cover photo: ©Justin Pogban. Córdoba Acoge. Photo taken by a young migrant who participates in integration programs run by the Spanish organization Córdoba Acoge, of two boys who are also involved in the programmes. The photo was taken in the context of a youth photo contest organised by Red Acoge.

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Foreword

By Melvin on behalf of Young Paperless and Powerful (YPP) undocumented youth project supported by the Migrant Rights Centre Ireland (MRCI)

“Humans are not machines. We need a surface and a purpose and a reason for being”.

Vinnie Paz · Italian American rapper

Growing up undocumented means existing on instinct, looking for stability in chaos, living in the unknown, in limbo and on the edge. It’s impossible to plan our futures and, sometimes, to even see past tomorrow. The level of uncertainty keeps us on the edge a lot of the time – in fight or flight mode.

We are in an environment we call home but we are ‘the other’. From a young age we are carrying the weight of the world on our shoulders, hiding our identity from our closest friends, from teachers, from neighbours. The impact on our wellbeing, sense of self and mental health is huge. We are already figuring out growing up and being ‘different’ because we are from minority backgrounds. The isolation and loneliness that comes with being undocumented on top of this is more than any child or young person should have to bear. From the youngest age, I myself have internalised isolation and anger, because of the impact of racism and exclusion and feeling lost in a broken immigration system. What am I doing here? What is there to live for? These are very heavy questions on young shoulders.

Fear is at the heart of our lives. It can eat you up. Will there be a knock on the door, will we be deported? Will my family be safe? This level of responsibility makes us grow up too soon.

Growing up undocumented means never reaching your full potential. I remember my career guidance counsellor talking me through future career options, and knowing none of them are applicable to me because I couldn’t travel and couldn’t go on to further education. The wasted potential is enormous. When you can’t become documented, university is just too expensive. Employment

options are limited – cash in hand jobs, being used as a machine, expected to be grateful for getting any work and punished for asking for your rights. Working in the grey economy and experiencing poor working conditions and exploitation is a reality for many of us. This can lead to desperation mode and a sense of hopelessness, like all of our efforts are futile.

We have a contribution to make. Growing up in countries we weren’t born in, we are resilient, creative, strong, instinctive, problem solvers. Not being able to regularise hurts us, but it also hurts communities and the economy. It’s a complete waste! Regularisation - the chance to get our papers – means everything: a proper chance in life, a life worth living. It means we could contribute in a meaningful way to society. For me, becoming documented means I could be more truthful in my relationships, it would transform my self-confidence. It means I could make money, go to college. Thrive. Not just survive. The choices would expand immediately. For undocumented young people like me, opportunities to regularise offer an opportunity to grow up and grow up strong. We could give back to society, to our families, to our communities.

This manual is not only useful for policy makers and policy people; it gives hope to undocumented people like us across Europe, and we will use it in our own efforts to make change happen. We are so happy to see it getting published. It raises awareness around the issues for children and young people, normalises regularisations, and values the lives, hopes, ambitions and contributions of undocumented young people and their families.

Preface

As a membership network, PICUM works in partnership with its members on shared priority areas for advocacy, campaigning and service delivery. One of those priority areas is - increasingly – access to secure residence status for undocumented children, young people and their families.

As such, this manual aims to provide tools to organisations working to advocate new or improved regularisation mechanisms and programmes.

Each country profile has been written by key organisations from that country. These organisations are diverse in terms of how they assist undocumented children - often through a combination of helpdesks/ hotlines, individual casework, free legal assistance, community mobilisation, youth empowerment, policy and advocacy, strategic litigation and public campaigning – but all work with undocumented children, youth and families to advance their rights and regularise their status.

Belgium	ORBIT vzw	
France	Réseau Education Sans Frontières (RESF)	
Greece	Aitima Generation 2.0	  Generation 2.0 For Rights Equality & Diversity
Ireland	Immigrant Council of Ireland (ICI) Migrant Rights Centre Ireland (MRCI) Nasc, the Irish Immigrant Support Centre	  
Italy	ASGI - Association for Juridical Studies on Immigration	
Luxembourg	ASTI - Association de Soutien aux Travailleurs Immigrés with a contribution from Katholisches Forum Leben in der Illegalität on Germany	
The Netherlands	Defence for Children the Netherlands	
Norway	Antirasistisk Senter (Norwegian Centre Against Racism)	
Spain	Red Acoge	
UK	Coram Children's Legal Centre	

Executive Summary

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.



Photo © Young, Paperless and Powerful and the Migrant Rights Centre Ireland. Creation of a mural by 'Young Paperless and Powerful', a group of young undocumented people in Ireland.

Introduction

Young people who are born or brought up in countries where they and their parents are not nationals, or do not have permanent residence status, may face barriers to obtaining a secure residence status, especially if they or their parents have resided irregularly. In countries where undocumented children and young people are unable to access health services, are blocked from progressing through their education, and have precarious housing and work as a result of irregular status, it poses further challenges to their full personal and social development. This manual seeks to practically support the development of regularisation schemes relevant to national and local contexts, by setting out and reflecting on several procedures for children and young people to obtain residence status in countries across Europe,² and exploring the various campaigning and advocacy measures surrounding them.

The negative impacts of uncertain, precarious and/or irregular status on the health and well-being of children and young people are most clearly understood by listening to them speak about

their lives.³ This reality is starkly confirmed by academic research⁴ with young migrants, where self-reporting or symptoms of depression, anxiety and stress are common among young people interviewed. These include sleeping disorders, chronic toothache, headaches and in some cases, suicidal thoughts or ideation and self-harm. While many are exceptionally resilient - finding their strengths and happiness, cope, fighting for their rights, and having fun - this cannot delay the urgency to address the strain these young people undergo.

Many of the hardships facing undocumented children and young people are due to the policies which define how people with an irregular migration status are treated. In particular, the constant fear of arrest and deportation, including detention and in some cases separation from family and friends, can take an immense toll on people's mental and physical health. Long procedures, often including refusals and appeals and requiring children to move, are constantly destabilising and create anxiety. Everyday activities such as taking the bus or metro can be wrought with fear. This is aside

2 The manual does not provide a comprehensive overview of pathways to regularise residence status in Europe or in the particular countries included.

3 PICUM, *Hear our voices*, 2016, available [here](#); English PEN, *Brave new voices: A city imagined*, Writing by young people from around the world living in London, 2016; After 18 & Charnwood Arts, *Together: A retrospective of art by young refugees*, 2016; M. Kromhout et al. *Children out of view: A study into the home and living environment of undocumented children*, Hogeschool Utrecht, Defence for Children and the LOS Foundation, 2014; Praxis, *The Cost of Waiting: How waiting in limbo for immigration resolution affects the lives of young asylum seekers and young migrants in the UK*, Brighter Futures Report, London, 2013, available [here](#); J. Manuel, C. Pineda, A. Galisky & R. Shine (eds.), *Papers: Stories by Undocumented Youth*, Portland, Oregon: Graham Street Productions, 2012; RESF, *La plume sans papier*, 2007.

4 E. Chase, "Health and Well-being", *Becoming Adult Research Brief* no. 5, London: UCL, 2017; E. Chase & N. Sigona, "Forced returns and protracted displacement", *Becoming Adult Research Brief* no. 7, London: UCL, 2017; R.G. Gonzales, *Lives in Limbo: Undocumented and Coming of Age in America*, Oakland, California: University of California Press, 2016; E. Chase, "Security and subjective well-being: the experiences of unaccompanied young people seeking asylum in the UK", *Sociology of Health and Illness* 35(6), pp. 358-372; N. Sigona and V. Hughes, *No way out, no way in. Irregular migrant children and families in the UK*, University of Oxford, COMPAS, 2012; R. G. Gonzales, "Learning to Be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood", *American Sociological Review* 76(4), pp. 602-619, 2011; A. Bloch, N. Sigona & R. Zetter, *No right to dream: The social and economic lives of young undocumented migrants in Britain*, City University London and University of Oxford Refugee Studies Centre, Paul Hamlyn Foundation, 2009.

from the impacts on health for those who actually experience arrest, detention and/ or deportation.⁵

While not the focus of this manual, considerable reform of immigration policies and processes, as well as public policies, are therefore needed to ensure that they respect the rights of the child and address the particular needs of children and young people as groups and as individuals.⁶

At the same time, the issues around uncertainty about the future as well as identity and belonging remain while children have a precarious or irregular status. Many undocumented children across Europe are able to attend compulsory education, and as such, are integrated within public life.⁷ However, uncertainty about the future, and resulting tensions around making plans, as well as the exclusion from key rites of passage associated with the transition to adulthood, restrict children and young people's horizons at a crucial time for their development. Young people are unable to get a driving license, get a job, apply for university, or even go with their peers to places that may require ID (e.g. cinema, bars, clubs, some concert venues). They frequently are unable to tell people in their lives about their

status, so experience feelings of secrecy and shame. This situation can have short and long-term impacts on well-being.⁸

Research⁹ on subjective well-being among young migrants has found that, broadly, 'well-being was thought to combine: safety, freedom and choice; legal recognition and integrity; a sense of belonging and identity; opportunities to build futures; good physical, emotional and mental health; strong friendships, ties and connections in country and transnationally.' Secure residence status acts as an anchor for these aspirations.

A secure and long-term residence status is therefore vital to ensure children fully enjoy all of their rights and promote their well-being. Policy measures can both address reasons why children and young people become undocumented or have prolonged periods with uncertain and precarious status (prevention), and ensure that undocumented children and young people can regularise and access a secure and long-term status (resolution).

5 Inter-Agency Working Group (IAWG) to End Child Immigration Detention, "Ending Child Immigration Detention", 2016, available [here](#); UNICEF, *Silent Harm: A report assessing the situation of repatriated children's psycho-social health*, 2012, available [here](#); Bail for Immigration Detainees (BID), "Fractured Childhoods: the separation of families by immigration detention", April 2013, available [here](#); Kalverboer & Zijlstra, "De schade die kinderen oplopen als zij na The langdurig verblijf in Nederland gedwongen worden uitgezet", University of Groningen, April 2006 (in Dutch).

6 For more information, see for example: PICUM, *Protecting undocumented children: Promising policies and practices from governments*, 2015, available [here](#); Karin Johansson Blight, "Children without a voice- Report on children with symptoms of severe depressive devitalisation who have been refused asylum and protection in Sweden", January 2012, available [here](#).

7 PICUM, *Protecting undocumented children: Promising policies and practices from governments*, 2015, available [here](#)

8 Research on adolescents' subjective well-being notes the gradual decrease in well-being reported as children grow older, with significant differences between subjective well-being of children aged 8 and adolescents aged 15, particularly regarding key factors such as happiness with school, appearance, level of choice and autonomy, and the future. Learning and development are identified by adolescents as pivotal to their well-being. The Children's Society, *The Good Childhood Report 2012: A review of our children's well-being*, The Children's Society, 2012 c.f. UNICEF, Special Rapporteur on the Human Rights of Migrants François Crépeau, PICUM, National University of Lanús, OHCHR, "Human Rights of Undocumented Adolescents and Youth", July 2013. An abridged version was published as a chapter in the book, *Migration and Youth: Challenges and Opportunities*, edited by J. Cortina, P. Taran and A. Raphael on behalf of the Global Migration Group, UNICEF, 2014.

9 E. Chase, "Health and Well-being", *Becoming Adult*, Research Brief no. 5, London: UCL, 2017.

Addressing reasons why children and young people become undocumented

Children and young people can be undocumented for a number of different reasons. They are a diverse group¹⁰ and a number of reforms to policies related to migration and citizenship could prevent and address these situations.

For example, some countries issue children of regular migrants with an independent residence permit from their parents. This should have no implications for their or their parents' right to private and family life, nor interfere in any way with parental rights. An independent residence permit serves to recognise that while children are dependent family members, they are individuals that also accrue rights on the basis of their residence in a country, and avoids the common reality that children automatically become undocumented if their parents lose their status (for example due to job loss, personal relationship breakdown).¹¹ This is a policy implemented in Italy, for example (see page 46).

The need for clear and accessible regularisation procedures

Many children have a right to reside, based on their attachments to the country in which they reside, derived in particular from the right to private and family life¹² and/ or the best interests of the child principle.¹³ Children's rights – regardless of their residence status – are well enshrined in international human rights treaties that all EU and EEA countries have ratified¹⁴ as well as the Treaty on the European Union and Charter of Fundamental Rights, and other EU laws and policies.¹⁵

Even a few years can be formative in the personal and social development of children and young people, meaning young people view the country of residence as their home and have strong emotional, personal and social ties to the country. This is evident in a number of regularisation mechanisms included in this manual, which refer to children's best interests (see for example, Italy page 46 and Norway page 62) or private and family life and/ or attachment to the country (see for example, France page 30, Italy page 46 and the UK page 75).

10 Undocumented children are a diverse group, that often change between categories or statuses during the course of their childhood. For example, they may have submitted an application for international protection as a family, which was refused, or applied for an official family reunification scheme through a family member with regular status, but not qualified. As the child's status is dependent on their parents', they too become undocumented if the parent loses their residence or work permit. Children can be undocumented after having entered Europe irregularly and can even be born 'undocumented migrants' because their parents are undocumented. (PICUM website, www.picum.org).

11 Reforming permit systems to prevent parents from also losing status for such reasons, for example possibilities for spouses/ partners to have independent permits, and allowing a period of unemployment/ job search, are also be crucial.

12 As enshrined in Article 8 of the European Convention on Human Rights, for example.

13 As enshrined in Article 3 of the UN Convention on the Rights of the Child and Article 24 Charter of Fundamental Rights of the European Union, for example.

14 Including the UN Convention on the Rights of the Child (CRC), the International Convention Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and the European Convention on the Rights of the Child (ECHR). See also General Comments 22 and 23 of the UN Committee on the Rights of the Child, which provide authoritative guidance address the application of the CRC to the children in the context of international migration.

15 See Article 3 of the Treaty on the European Union and Article 24 of the Charter of Fundamental Rights. Compliance with the rights of the child is a standard feature is the preamble of all EU immigration and asylum legislation. Relevant policy includes in particular the European Commission Communication on the protection of children in migration of 12 April 2016, COM(2017) 211 final, available [here](#).

Other regularisation schemes focus on the number of years of residence. For example, of those in the manual, the number of years of residence required of children, ranges from two years (for some young people turning 18 in France, page 30) to four or five years (Luxembourg, page 52; Norway, page 62; and the Netherlands, page 58) to seven years (the UK, page 74). For some schemes, additional requirements include some years of schooling (e.g., mechanisms in France, Luxembourg, page 52; Norway, page 62; as well as the citizenship criteria in Greece, page 34) or time in the asylum system (e.g., programmes in Belgium, page 24; Ireland, page 38; and Norway, page 62; and the mechanism in the Netherlands, page 58).

Portugal also has a mechanism in law to regularise any child born in Portugal who is living and attending school in Portugal (at any level - pre-primary, primary, secondary school or vocational training).¹⁶ Their parent(s) can also regularize their status if they are involved with and financially supporting their child.

In some countries, in particular France and Italy, the legal framework seeks to avoid situations where children are undocumented. It is approached in different ways: in France, for example, there are legally no 'undocumented children' as there is no requirement for people under the 18 to have a residence permit¹⁷ (see page 30). Italian law, on the other hand, provides for all children to be granted

a residence permit on the basis of being a child (see page 46). If made accessible in practice for all children, including those with undocumented parents, this provision would avoid any situations of children being undocumented. These systems are not without issue, as there remain some restrictions on some social services, fear of enforcement action against parents (in both countries children are protected from deportation but their parents are not), and uncertainty and the need to resolve their status at 18. However, the provisions provide status, security and rights to large numbers of children, and both countries also have a number of regularisation possibilities at 18.

The impacts of irregular status of parents on the well-being of children should also not be overlooked.¹⁸ Many regularisation mechanisms provide for regularisation of the immediate family, parents and siblings, if the child is eligible (see for example, Norway page 62 and the Netherlands page 58), while others have specific regularisation mechanisms for parents (see for example, Italy page 46, Luxembourg page 52, and Spain page 68). 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 Justice (page 82).

However, in many countries, in the absence of policies to facilitate regularisation on these grounds, or

16 Article 122 of the Act 23/2007, 4 July 2007, approving the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory, English translation available [here](#). This mechanism also provides for the regularisation at age 18 of the children of regular migrants that have lived in Portugal since they were 10 years old; adults born in Portugal who have never left the country or have lived there since before the age of 10 years old; and children who are under guardianship in accordance with the Civil Code; among others.

17 Also in Ireland, children under 16 are not required to have permission to reside on an individual basis. However, this is because their right to reside derives from the residence status of their parents; they can still be undocumented. In this case, there is a lack of legislation, which results in children's individual rights being neglected, and a lack of clarity about children's rights and duties. For more information see K. Mannion, *Child Migration Matters: Children and Young People's Experiences of Migration*, Immigrant Council of Ireland, 2016.

18 N. Sigona and V. Hughes, *No way out, no way in. Irregular migrant children and families in the UK*, University of Oxford, COMPAS, 2012; H. Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, New York, 2011; Frank D. Bean et al., *Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education?*, US 2010 Project Research Policy Brief: Discover American in a New Century, New York: Russell Sage Foundation, 2010).

due to barriers to access regularisation mechanisms where they do exist, children and young people are only able to enforce their rights through appeals of return decisions/ removal orders. This manifestly exacerbates the risks, anxiety and stress facing these young people, and requires quality legal representation, which is beyond the means of most, and in many countries not eligible for state legal aid.

Many of these children and young people will end up living, irregularly, regularly, or as citizens, in the country of residence. The public education system is the primary means by which the state shapes the values and competences of resident children, through a common curriculum and social life centred around the school. It makes good social, political and economic sense to foster the full participation of all resident children and clear and accessible pathways to secure residence status after a few years, to intentionally limit periods of irregularity. Wherever they will live, the impacts that this policy framework have on the well-being and development of children and youth contradict the state's legal obligations regarding child rights, and undermine social and development policy objectives in the short and long term.

Regularisation as a common and effective policy measure

A detailed study in 2009¹⁹ 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. The prevalence of regularisation mechanisms and programmes across Europe demonstrates that regularisation is both a common and a crucial policy tool. Alone, it does not provide a solution to irregular migration. It is necessary to

also ensure that there are sufficient regular channels and that those admission schemes better meet the needs of families, employers and workers, and society as a whole. Specifically, reasons for losing status and exploitation should be addressed. At the same time, implementation of human rights protections regardless of status, is vital. There will always be some people who fall outside of administrative frameworks; some irregularity is inevitable.

Regularisation is one of the tools available to governments to address the reality and situation of people without authorisation to reside on the territory. This manual uses the term 'mechanism' to refer to a provision which is more open-ended and long-term, and the term 'programme' to refer to clearly time-limited and more short-term procedures. Both mechanisms and programmes tend to have specific criteria, that can be tailored to the national or local population of undocumented migrants. What is crucial is that, whatever the criteria, they are clear and transparent, and there is a right of appeal.

Other essential characteristics for effective regularisation include that the mechanism or programme is accessible in practice (not too bureaucratic/ burdensome with administrative and financial requirements) and does not rely too heavily on a sponsor (whether a partner or employer, this dependence can lead to exploitation). Further, they should grant a secure status; short-term status leads people to fall directly into irregularity again and increases precarity and anxiety. Rights and access to services should be ensured during application process.

Aside the imperative for, and benefits of, regularisation of children, young people and families

19 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.

discussed above, there are several positive outcomes from regularisation measures. These include economic benefits (through increased tax revenues and social security payments), increased information about the resident population and labour market, increased trust of state authorities among migrant communities, reduced inequality and social exclusion, empowerment of migrants and their families and reduced vulnerability to exploitation and abuse, better regulation and coverage of working conditions and health and social services.

A common concern is that introducing regularisations encourages more irregular migration. However, there is very limited evidence²⁰ of any increase in irregular migrants arriving to a country in response to a regularisation measure being introduced, and all previous regularisation procedures have excluded recent arrivals through their criteria. Any such result is insignificant both in terms of numbers of people affected and when considering the numerous benefits that regularisation measures bring from the individual and community level, to the state. In the UN Secretary General's 2017 report providing input to future global migration governance, notably the elaboration of a Global Compact on Migration,²¹ he lists regularisation initiatives as among the pragmatic actions that should be taken to address the presence of irregular migrants, considering that "some degree of regularisation is virtually always preferable to a situation in which irregular migrants are marginalised and authorities cannot account for them."

There are also a number of initiatives taken by cities to facilitate the regularisation of their irregularly resident populations, for example, providing or funding the provisions of information, counselling and legal assistance, and acting as intermediaries and providing documentation to support regularisation applications.²² From the global to the national to the local level, regularisation is a recognised and valued policy tool.

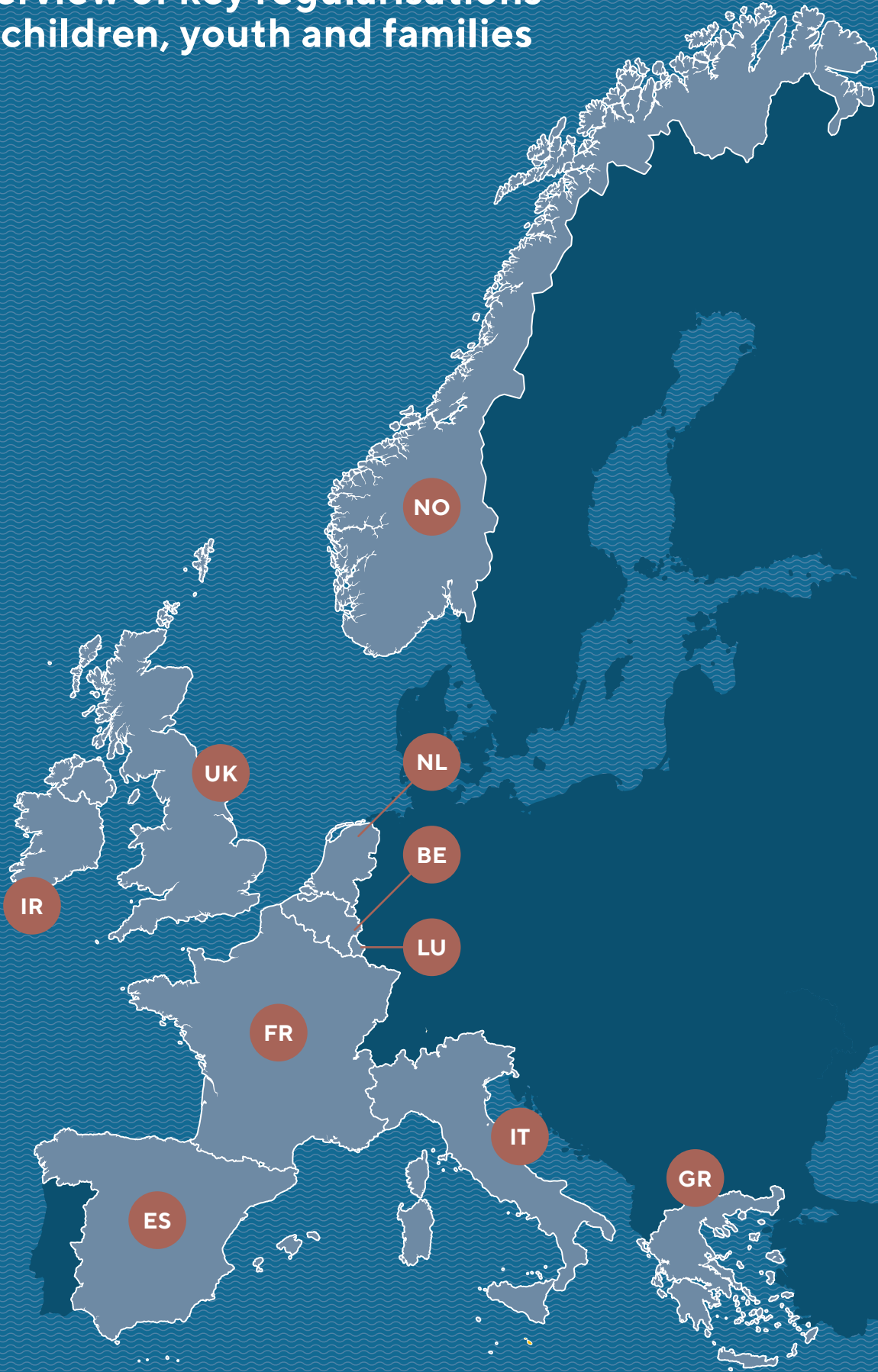
There is no one-size-fits-all strategy or regularisation mechanism or programme. Therefore, the manual highlights key aspects of mechanisms and campaigns that have been found to be effective, as well as others that have been problematic or challenging. It aims to be a source of inspiration and reflection to support advocacy and technical level work on regularisations.

20 See for example: 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, p.46; C. Finotelli & J. Arango, "Regularisation of unauthorised immigrants in Italy and Spain: determinants and effects", *Documents d'Anàlisi Geogràfica* vol. 57/3: 495-515, 2011; Parliamentary Assembly of the Council of Europe (PACE) report "Regularisation programmes for irregular migrants", Doc. 11350, 6 July 2007, available [here](#).

21 Report of the United Nations Secretary-General, "Making migration work for all", 12 December 2017, A/72/643, paras. 36 and 41, available [here](#).

22 N. Delvino, "European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services", Background paper for the 'City Initiative for Migrants with Irregular Status in Europe', Global Exchange on Migration and Diversity, COMPAS, June 2017, available [here](#).

Overview of key regularisations for children, youth and families



Belgium

- Mechanisms in Belgian law enable undocumented migrants, including children, young people and families, to regularise on humanitarian or medical grounds. 1,243 new temporary residence permits, and 13 permanent residence permits, were granted under both mechanisms in 2017 (data is not disaggregated for children). Lack of clear criteria and discretion are the main barriers to access.
- Previous regularisation programmes in 1999 and 2009 resulted in the regularisation of many undocumented families who had been in the asylum system for three years or longer (1999 programme) or through social integration and employment (2009 programme).
- As a result of the regularisation programme in 1999, 25,597 regularisation applications were approved, which represented 70% of the applications submitted. 24,246 applications were approved through the regularisation programme in 2009, representing an acceptance rate of 34%.
- The main method discussed is civil society coalitions, for both campaigning and to support effective implementation and access to the regularisation schemes.

France

- Legally, children cannot be undocumented in France, as there are no residence permit requirements. To a large extent they are treated equally by law as national children, but children of undocumented migrants do face some limitations on their rights and can be deported together with their parents.
- There are a number of regularisation mechanisms - provisions in law and policy - that entitle children to regularise their status at 18, based on private and family life. Criteria focus on the number of years of residence and schooling (different for different groups of children). The permit granted is for one year, which can be extended for 4 years on renewal. Some young people can also acquire French nationality on similar grounds. There is also a mechanism (in policy) for parents to regularise.
- The local government (Prefecture) has the decision-making power on residence permits, and can also issue student permits for young people who do not qualify for the above mechanisms, if they can prove that they are serious and involved at school. It is valid for one year and renewable during the course of one's education.
- In practice, extremely long waiting times at some Prefectures, fees, or discretion can be obstacles to regularisation and discourage some young people from applying. If the Prefect's decision is negative, the young person receives an order to leave the territory in 30 days. Others do not fit the requirements. Another major challenge is the registration of unaccompanied children as adults.
- The main action discussed is mobilising community support to push the Prefecture to issue permits to young people at risk of deportation.

Greece

- Possibilities for undocumented children to regularize their status, aside from international protection and family reunification schemes, are extremely limited in Greece. Access to citizenship is restricted to regularly residing migrant children.
- The example of access to citizenship is included in the manual because of the second generation youth-led mobilisation (including undocumented youth) that contributed largely to more favourable conditions being introduced in 2015.
- After the amended Greek Citizenship Code entered into force in 2015, 19,032 children acquired Greek citizenship under the new provisions in 2016 alone. Many of these children would have become second generation undocumented youth.

Ireland

- Children under the age of 16 are not currently required to register with the immigration authorities in Ireland, but their residence status is derived from their parents – they can still be undocumented.
- There are mechanisms in the immigration legislation, which allow for ministerial discretion to be exercised, to regularise the status of children and young people under “exceptional circumstances”, or by applying for humanitarian leave to remain, but only after they have been issued a Notification of Intention to Deport. Length and type of permission granted also vary and depend on discretion.
- The main action discussed is the coalition building around regularisation of undocumented parents of Irish citizen children.
- Previous campaigning for regularisation of children and families in the protection system for 5 years or more, as well as the ongoing regularisation campaign led by undocumented activists are also presented.

Italy

- Italian law provides for regular residence for (all) children.
- Children of regular migrants can be issued with an autonomous residence permit for “family reasons” valid until the age of 18. This recognises children’s individual rights and avoids them becoming undocumented if their parents lose their status, for example.
- Children cannot be deported, without prejudice to the right to follow their parents when they are deported.
- All children are eligible for a residence permit “per minore età”, valid until the age of 18, according to the immigration law. However, this is not accessible in practice for the children of undocumented migrants.
- There are several other mechanisms in the law to regularise parents: during pregnancy and the first six months of life of their newborn; for child care/ assistance, in the best interests of the child (typically 1 - 3 years); on the basis of the right to private and family life (or other human rights) (typically 6 months – 2 years, with possibility to change type of permit).
- There are a number of barriers to accessing all the mechanisms in practice, including discretion, paperwork requirements, restrictive and wrong interpretation, lack of directives from the Ministry of the Interior, lack of legal information and assistance to migrants, the need to seek protection from the courts for individual cases; and some restrictive interpretations by judges.
- The main action discussed is the training of community paralegals to overcome administrative and practical barriers to accessing the existing mechanisms.

Luxembourg

- There is a mechanism in the law in Luxembourg to regularise children and young people (before they turn 21), and their parents, if the child or young person has completed at least four years of compulsory schooling in Luxembourg, and certain other conditions are met. A permit for a salaried worker or a permit for studies or vocational training (for the duration of studies) will be issued, depending on the circumstances.
- 122 people’s statuses were regularized in 2016, and 72 applications were refused. Most refusals are due to the criteria to not have “evaded” an expulsion measure.
- The strategy leading to the mechanism is discussed, including the cooperation with schools and focus on the impacts of deportations on school children. In addition, the strategy drew on the introduction of similar mechanism in Germany and ceased the opportunity of legal reforms needed to transpose EU law, as well as building on an existing regularisation mechanism.

Netherlands

- There is a mechanism in the law in the Netherlands to regularise children and young people (before they turn 20), and their immediate family, if they have spent at least 5 years in the international protection system while children, and meet some other conditions.
- The total number of applications for the permanent mechanism in 2016 was 270. The rejection rate was 96-99%; in 2016, only 1 residence permit was granted under the mechanism. Most of the applications are denied because they do not meet

the “cooperation” criterion – that the child (and their family) needs to actively cooperate with their departure, in order to qualify for a residence permit.

- More than ten years of public campaigning, community organising and advocacy together with children, to get recognition of the rights and regularisation of children that have resided in the Netherlands for 5 years or longer (“rooted” children), are discussed.

Norway

- There is a mechanism in the law in Norway to regularise people on the basis of strong humanitarian considerations or a particular connection with Norway, and weights the best interests of the child heavily. In practice, this mechanism regularises undocumented children who have resided for more than 4 ½ years and who have attended one year of school in Norway. Between 5 December 2014 and August 2017, 350 children had benefitted from the change in the ordinary rules regarding the weight of the best interests of the child.
- There is also a short-term regularisation programme for children of asylum seekers (either still in the system or refused), who by 30 September 2013 had resided for more than 3 years in Norway, and fulfilled certain criteria. The criteria include that the child is from a country with which Norway has a readmission agreement, and that their asylum application was registered

before the readmission agreement took effect. These conditions severely limit the number of children eligible (estimated as reducing the potential overall scope of the scheme from 752 to 170 children) on the arbitrary basis of their country of origin. Data on the number of children who have been regularised under the program is not available.

- One of the most fundamental barriers to access both the mechanism and the programme is the lack of legal aid.
- The importance of regularisation of long-staying children in cross-party political negotiations, following pressure from a broad range of actors - including healthcare professionals, human rights activists, teachers and friends of the children at risk of deportation and the Committee on the Rights of the Child - is discussed, as well as a campaign to provide legal aid to families.

Spain

- It is not possible for children of parents in an irregular situation to regularise their status. However, it is often possible for a parent to obtain a residence status through the “social rooting” procedure (arraigo social) – based on 3 years of residence and a job offer paying minimum income for at least one year – and then regularise their child through a procedure of family reunification, after one year. However, children are at risk of

becoming undocumented if their parents cannot meet the requirements to renew permits, and remain undocumented while their parents look for work and have first permits.

- In 2016, around 30,000 permits were granted under the “rooting” procedures. The data does not differentiate between “social rooting” (arraigo social), and the other regularisation schemes, “family rooting” (arraigo familiar) for the parents

of Spanish children and “labour rooting” (arraigo laboral) for people in employment. In the same year, 40,000 family reunification permits were issued.

- Unaccompanied children that will not return to their family are documented and under the guardianship of the state.
- There are mechanisms for both children on dependent visas and children in the care of the state to continue their residence at age 18. All can obtain an independent residence and work authorization if they have a job offer paying minimum income for at least one year. The main obstacle is finding an appropriate job offer.
- Young people in care can alternatively renew their residence permit under certain conditions, and young people on dependent visas will continue to have their permission to reside renewed as long as their parents do. It can be difficult for children in care to meet the requirement of having sufficient resources in order to renew their status.
- The use of litigation and advocacy to push forward improvements in procedural safeguards and access to residence status for children and young people through legislative reform is presented.

UK

- There are a number of mechanisms in UK law and policy to regularise undocumented children, young people and adults based on long residence and the right to private and family life, and if they meet certain criteria. The number of years of continuous residence required ranges from 7 for children, to more than half of the life of a young person aged 18 to 25, to 20 years for other adults. Residence permits are generally granted for 2 ½ years and are renewable. Permits can also be granted when there are serious obstacles to reintegration, or in other compelling circumstances at discretion.
- People born in the UK since 1983 have a right to register as British citizens if they have lived in the UK for the first ten years of their life, and are of “good character”. It is also possible for any foreign child to be registered as a British citizen, at the discretion of the Secretary of State for the Home Department, if it is clear that the child’s future lies in the UK.
- There have been 1,560 permits granted to children on the basis of the seven-year rule for children between 2012 (when this leave was introduced) and 2015, and 1,785 grants to those aged 18 to 24 under leave to remain as a young person (half-life) rule. 6,160 children and young people have registered as British between 2012 and 2015 registering under BNA section 1(4). This data, from Freedom of Information Requests, suggests a large gap between the estimated number of undocumented children in the UK (120,000 of which 65,000 are UK born) and the numbers who are able to regularise their status.
- The main barriers for those that are eligible include complex procedures; evidential requirements (for example to show continuous residence); the requirement to present a valid national passport or identity document when applying; the lack of legal aid and quality legal representation when arranged privately; discretion and poor-quality initial decision-making; very high application fees; and lack of awareness of the mechanisms.
- Multiple strategies to advance the rights, and access to regularisation, of undocumented children are discussed, including lobbying, litigation, local government complaints mechanisms and community organising.

How to use this manual

This manual has been prepared by - and for - organisations working on advocating for mechanisms to regularise undocumented children, young people and families.

It provides information about some of the existing mechanisms to regularise status in several European countries, focusing on sharing information about how the procedures work in practice, how the procedures came about and/or key strategies used by civil society.

It does not include details of all the ways that children and young people can access residence status or citizenship in the countries included.

For example, the international protection system is a key pathway to regular status for many children and young people. As procedures to access international protection exist in all European countries, to a large extent regulated by EU legislation and addressed by other organisations,²³ this manual focuses on other mechanisms for children and young people to regularise their status, including some that have targeted children, youth and families that have been refused international protection or been in the protection system for prolonged period of time.²⁴

There is no one-size-fits-all strategy or regularisation mechanism. Therefore, the manual highlights key aspects of mechanisms and campaigns that have been found to be effective, as well as others that have been problematic or challenging.

The manual aims to be a source of inspiration and reflection to support advocacy and technical level work on regularisation in Europe.

In some cases, access to citizenship, and regularisation of undocumented parents of citizen children, is also considered.

Although not accessible for undocumented children, the campaign for access to citizenship for migrant children in Greece is included, as an interesting and recent example of citizenship law reform resulting from the mobilisation of migrant youth.

A catalogue of methods, some key resources in international and European law and policy, and recommendations for ensuring pathways to regularity and citizenship in law and practice for undocumented children, young people and families are also provided.

23 For more information, see for example: Connect, Identification, reception & protection of unaccompanied children – Connect Project Report, 2014, available [here](#); UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1A(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the status of Refugees, HCR:GIP/09/08, 22 December 2009, available [here](#).

24 Likewise, mechanisms that exist, for example, for people who have experienced human trafficking or who are or would otherwise be stateless, stem from regional legal instruments and are addressed in other reports. For more information, see for example: On trafficking: IOM, The IOM handbook on Direct Assistance for Victims of Trafficking, 2007, available [here](#); OSCE/ODIHR, National Referral Mechanisms, joining efforts to protect the rights of trafficked persons – A practical handbook, 2004, available [here](#). On statelessness: European Network on Statelessness, No child should be stateless, 2015, available [here](#); European Network on Statelessness, Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices, 2014, available [here](#).

Procedures for migrant children and young people to access secure residence status in ten countries





Photo © RESF/TURBULENCES: students in France protest against the deportation of a classmate, supported by the organisation Réseau Education Sans Frontières (RESF) and the association Turbulences.

How can undocumented children regularise?

There are mechanisms in the Belgian immigration law²⁵ for undocumented migrants, including children, young people and their families, to regularise their status on humanitarian grounds (Article 9bis) or medical grounds (Article 9ter).

Additionally, regularisation programmes carried out in 1999 and 2009 temporarily provided additional opportunities for undocumented children and their families to apply for residence permits. See below for more information on these temporary regularisation schemes.

Humanitarian regularisation – Article 9bis

For residence permits on humanitarian grounds, the law stipulates that applications should usually be submitted from the country of origin, but can - in exceptional cases - be submitted while present in Belgium. For an application to be considered admissible from within the territory, the person has to meet the following criteria:²⁶

- Able to prove exceptional circumstances, for example:
 - the application from within Belgium is necessary to avoid a violation of the prohibition of torture, inhuman or degrading treatment,

or the right to private and family life; or

- they are in an ongoing asylum procedure; or
- the application from within Belgium is necessary due to medical or administrative issues and other circumstances²⁷.

- Has identification documents, or official exemption from this obligation.
- Has declared their residence in Belgium. The application is filed through the local municipality (*gemeente / commune*) and proof that local residence has been verified by the local authorities is required for the application to be processed.

While the criteria for an admissible application are clearly defined, the “humanitarian grounds”, the criteria on which a humanitarian permit will be granted, are not. Officially, the Secretary of State is authorised to assess the applications and consult a committee consisting of lawyers, a judge and social workers. However, in practice it is the Immigration Office that decides on the applications for regularisation. The Secretary of State and Immigration Office have a large degree of discretion to decide on each individual case.²⁸ For adults, filing an application for residence on humanitarian grounds costs €350. For children (i.e. people under 18), there is no application fee²⁹.

25 Immigration Law 15.12.1980, available [here](#).

26 Agentschap Integratie & Inburgering, *Wat zijn de voorwaarden voor een ontvankelijke 9bis-aanvraag?*, available [here](#).

27 Other circumstances can be related to circumstances in Belgium and/or in the third-country of concern. For example, if returning to the third country to file the application would lead the person to lose their job or their children to miss an academic year, these are considered legitimate circumstances to file an application from Belgium. War or obligatory military service in the third country are also considered legitimate circumstances. See Agentschap Integratie & Inburgering, *Buitengewone omstandigheden*, available [here](#).

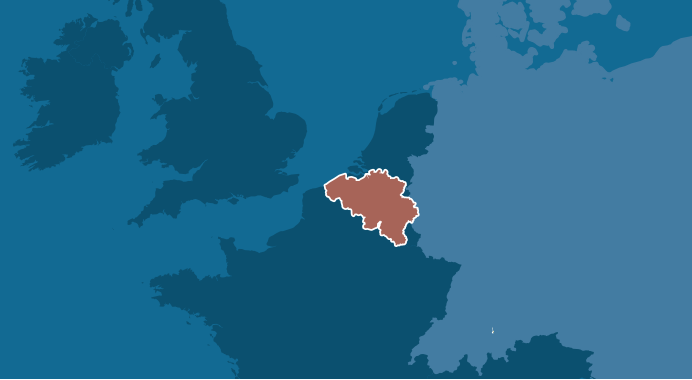
28 See Agentschap Integratie & Inburgering, *Discretionaire bevoegdheid 9bis en criteria van de instructie van 19 juli 2009*, available [here](#).

29 Federale Overheidsdienst Binnenlandse Zaken, *Contribution covering administrative costs of an application*, section 5, available [here](#).

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Medical regularisation – Article 9ter

To apply for regularisation on medical grounds, the applicant needs:³⁰

- An official medical file, including details of the illness, severity of the case and required treatment(s), to show that that expulsion from Belgium would lead to life threatening circumstances.
- Proof of identification. This can be an official document or a combination of other documents proving identity (for example a marriage certificate, driver's license or expired identification documents). Unlike the application for regularisation on humanitarian grounds, an exemption from the obligation to prove identity is not possible.
- Has declared their residence in Belgium. The application is filed through the local municipality (*gemeente / commune*) and proof that local residence has been verified by the local authorities is required for the application to be processed.

Evidence must show that necessary medical treatment is not available and accessible in the country of origin and the file must contain new elements that have not yet been put forward in other applications. The medical file is examined by the Immigration Office and one of their medical professionals assesses whether the application is grounded.³¹

Applications for regularisation on medical grounds are always free of charge, both for adults and children.³²

Unaccompanied children

Once identified by the Guardianship Service (*Dienst Voogdij/ Service des Tutelles*), unaccompanied children go through a special procedure, if they do not apply for international protection (or are not identified as victims of trafficking). The outcome of this procedure will be one of the following three durable solutions³³:

1. Family reunification in the country of residence of the parents if they are residing regularly (preferred option).
2. Return to the country of origin or another country where the child may reside regularly, with guarantees of adequate accommodation and care (whether provided by, parents, other caregivers, or governmental or non-governmental institutions).
3. Residence permit to stay in Belgium.

If residence in Belgium is considered the most appropriate durable solution, a one-year residence permit (A card) is provided, which will need to be renewed every year. After three renewals, a permanent residence permit is provided (B card). If the unaccompanied child turns 18 prior to obtaining a permanent residence permit, the file is transferred to the department dealing with long-term residence of the Immigration Office.³⁴

Unaccompanied children can also file an application for a permit on medical or humanitarian grounds, through the above mechanisms.³⁵

30 Agentschap Integratie & Inburgering, *Wat zijn de voorwaarden voor een ontvankelijke 9ter-aanvraag?*, available [here](#).

31 Ibid. Also see Court of first instance Brussels, case nr.16/6964/A, 30 June 2017, available [here](#).

32 Federale Overheidsdienst Binnenlandse Zaken, *Contribution covering administrative costs of an application*, section 6, available [here](#).

33 Article 61/14, 2° Immigration law 15.12.1980.

34 Agentschap Integratie & Inburgering, *Hoe verloopt de bijzondere verblijfsprocedure voor een niet-begeleide minderjarige vreemdeling (NBMV)?*, available [here](#).

35 It is possible to apply for multiple procedures at the same time.

How does it work?

The duration of the residence permit granted for medical or humanitarian grounds is determined on an ad hoc basis, but is usually a one-year permit. An application for regularisation of a family can be filed by one of the parents and a positive decision will grant residence status to all immediate family members - parents and children.

Once obtained, it is up to the person to apply for renewal or prolongation of the residence permit (usually annually). An amendment to the Immigration law³⁶ which entered into force in 2016 stipulates that proof of integration, for example, following an integration course or having employment in Belgium, is also required to renew a permit.

Generally, the main obstacles to regularisation on the basis of medical or humanitarian grounds come from the lack of transparency in the procedures. There are no clear requirements set by the Belgian government, in order to know who qualifies for regularisation on these grounds, and decisions to reject applications are usually poorly explained. Additionally, costs for legal assistance, as well as the application fee for adults applying on humanitarian grounds, are another obstacle for most applicants.

According to official statistics from the immigration office for 2017³⁷, 2,549 applications for regularisation were filed on humanitarian grounds (Article 9bis) and 1,431 on medical grounds (Article 9ter). 1,243 new temporary residence permits were granted under both mechanisms, while 13 permanent residence permits were provided³⁸. Also during

2017, 117 residence permits on medical grounds were renewed, while 37 renewal applications were rejected. No residence permits on humanitarian grounds were either renewed or denied renewal in 2017. These statistics do not distinguish between children and adults.

In practice, applications by unaccompanied children for regularisation on medical or humanitarian grounds are generally more successful than applications by children who are with their parents. This is likely because decisions are at the discretion of the Secretary of State or Immigration Office, and when parents are present, the authorities feel less responsibility for the situation of the child. The procedures lack proper implementation of a best interests of the child assessment, both in cases involving unaccompanied children as well as undocumented children accompanied by a parent.

Past successful campaigns

1999 Regularisation campaign

An additional four categories of undocumented migrants could temporarily apply for regularisation in Belgium between 10 and 30 January 2000, if they could prove irregular residence in Belgium on 1 October 1999.³⁹ One of these categories specifically addressed families with children, who could apply under this scheme if they had applied for a refugee status and had been awaiting a decision on their application for three years or more.

36 Immigration Law 18.12.2016 (Wet tot invoering van een algemene verblijfsvoorwaarde in de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen), Art. 4 § 3.

37 Federale Overheidsdienst Binnenlandse Zaken, Aanvragen om machtiging tot uitzonderlijk verblijf, maandelijkse statistieken – December 2017, p.2 & 5 available [here](#).

38 It is unclear on what grounds one can obtain a permanent residence permit. At instances, an application for regularization on medical grounds could possibly result in a permanent permit in cases of an incurable disease. Additionally, it is possible to obtain a permanent residence permit in cases of exceptionally long asylum or regularization procedures, however, this instruction is not legally binding (see instruction document (Vademecum regularisatie instructie 19 juli 2009, van 21 september 2009), available [here](#)).

39 Law 22.12.1999 (Wet betreffende de regularisatie van het verblijf van bepaalde categorieën van vreemdelingen verblijvend op het grondgebied van het Rijk), available [here](#).

The programme resulted from close cooperation and campaigning of civil society organisations (CSOs) in Belgium. A coalition of 32 Belgian CSOs supported the campaign “Let’s acknowledge people without papers” (*Laten we een gezicht geven aan mensen zonder papieren / Donnons un Visage aux Sans-Papiers*⁴⁰) that was initiated by the umbrella organisation CIRÉ. The campaign gained public attention due to the death of Semira Adamu, a Nigerian woman who died in 1998 after being suffocated by police officers while being deported to Nigeria.⁴¹

Due to the favourable political landscape at the time, implementation of the regularisation scheme was quite effective. A special commission was established - consisting of a lawyer, human rights expert and civil servants - to process applications independently from the Immigration Office. This commission assessed each file and submitted opinions to the Minister of Internal Affairs, who would take the final decision. Around 37,000 applications were filed by 31 January 2000, concerning the regularisation of around 50,000 persons, of which 23,000 were children. Most applications were filed on humanitarian grounds (77%) while 24% were filed by families on the basis of long asylum procedures (the category mentioned above). By June 2005, around 70% of applications - 25,597 files - were granted regularisation.⁴² The civil society organizations involved in the campaign also supported applicants to submit strong applications, with the necessary documentation.

2009 Regularisation campaign

From 15 September until 15 December 2009, another time-bound regularisation programme was implemented. The political landscape was more divided compared to 1999-2000, so it took more public pressure for the regularisation to be agreed. As well as advocacy by civil society organisations, strikes, occupations and other collective actions for undocumented migrants were organised.

This regularisation programme was framed as a solution to undeclared work, while stimulating and rewarding integration into Belgian society. Those who could either prove sufficient social integration (proving local ties) or future employment were considered for regularisation.⁴³ Generally, the national government was less clear about the criteria that needed to be met in order to qualify for regularisation and the Immigration Office was left with large discretionary power.

Proving social integration was generally easier for families with school-going children since they could prove local ties with the community. For those applicants who applied on the basis of future employment, the situation often did not improve after the regularisation campaign in 2009. Employers either lost interest while applicants awaited their decision (which could take months) or applicants continued to earn below the minimum wage after being regularised.

40 See CIRÉ, *Donnons un Visage aux Sans-Papiers*, 2006, available [here](#).

41 T. Swerts, “Democratie in de marges. Het ‘Middenveld’ en mensen zonder papieren”, *Oikos* 71, 2014. See also <http://www.statewatch.org/news/2003/dec/09semira-adamu.htm>.

42 Algemene Directie Werkgelegenheid en Arbeidsmarkt, *De Immigratie in België: Aantallen, stromen en arbeidsmarkt – Rapport 2006*, 2006, p. 52.

43 J. Tieleman, “Regularization Campaign in Belgium: A Breakthrough”, *Migration Online*, November 2009, p. 3.

Out of the 70,482 applications filed, 24,246 applications were positively assessed by May 2011.⁴⁴ The percentage of files approved was at 34%, significantly lower than in the regularisation campaign in 1999.⁴⁵

At the same time, new regulations (not time-bound) were also put in place to enhance regularisation for parents of children with a European and/or Belgian nationality (also see textbox, page 82).⁴⁶

Tips and Learning

- Close cooperation between the various national and local civil society organisations can ensure effective campaigning and proper implementation of regularisation schemes.
- Assisting applicants in their applications for regularisation increases their likelihood of success, and reduces both the number of applications from likely ineligible applicants and refusals based on insufficient evidence, for example.
- It is important that regularisation campaigns also push for necessary policy changes in order to address the structural reasons for people being undocumented.
- Having an assessment of regularisation applications by an independent authority (e.g. judicial or special committee) can ensure a more robust and holistic assessment, and consideration of the best interests of the child.
- Campaigns also need to raise awareness among the general public that regularisation and integration of undocumented migrants is in the best interests of society at large.

44 G. Torremans, "Zes jaar na regularisatiecampagne wachten nog veel aanvragen op behandeling", *Mondiaal Nieuws*, 3 November 2015, par. 3, available [here](#).

45 It should be noted that the availability of data about the applications of regularisation campaign 2009 is limited, the Secretary of State of Asylum and Migration replied in 2012 to a parliamentary question that the relevant department did not keep track of applications filed under this campaign specifically (see Belgische Senaat, Zitting 2011-2012 –25 Januari 2012 - Schriftelijke vraag nr. 5-5374, available [here](#)).

46 J. Tieleman, "Regularization Campaign in Belgium: A Breakthrough", *Migration Online*, November 2009, p. 3-4.



*Drawing by Tatev from the Ik Blijf Hier ('I Stay Here') campaign group of Defence for Children the Netherlands
©Defence for Children the Netherlands.*

France

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How can undocumented children regularise?

Until the age of 18 years, there are no residence permit requirements in France. Therefore, there is no such thing as an “undocumented child” in France. Legally, children are protected from irregular migration status.

They are included in the general systems for protecting children’s rights and have equal access, by law, to services such as education and health care. By law, unaccompanied children should be taken into the care of the Child Welfare Services (*l’aide sociale à l’enfance – ASE*) and cannot be deported. Nonetheless, children whose parents or primary caregivers have irregular migration status face some limitations on their rights and are always at risk of deportation with their parents.⁴⁷

How can undocumented young people regularise?

When they turn 18 years old, young people must ask for a residence permit at the local government (*Prefecture*) of the area (*département*) they live in. The Prefecture has the decision-making power on residence permits. There are several grounds for young people to get a residence permit by law.

The following categories of young people are entitled to receive⁴⁸ a residence permit at age 18, under the **Code for Entry and Residence of Foreigners in France and the Right of Asylum (CESEDA)**, to safeguard ‘private and family life’:⁴⁹

- Young people who were born in France and can prove uninterrupted residence in France since at least the age of 10, and five years of schooling in a French establishment. They have to apply between the ages of 16 and 21.
- Young people who can prove habitual residence in France since at least the age of 13 (or 10 for Algerians and Tunisians) and are living with their father and/or mother. They have to apply before they turn 19.
- Young people who, as unaccompanied children, were taken into care by the Child Welfare Services (ASE) before they turned 16 and are involved in a formal training plan at the moment they apply for documents. They have to apply before they turn 18.

The permit is for one year and renewable; on renewal, this residence permit may be extended for 4 years.

47 For more information, see for example, PICUM, Building strategies to improve the protection of children in an irregular migration situation in Europe. Country Brief: France, 2012; GISTI, *Sans-papiers, mais pas sans droits*, 6e édition, 2013, <http://www.gisti.org/spip.php?article3139>. Children also risk deportation if they are declared to be adults.

48 Unless they are considered a threat to public order.

49 Article L313-11 of the Code for Entry and Residence of Foreigners in France and the Right of Asylum, available [here](#).

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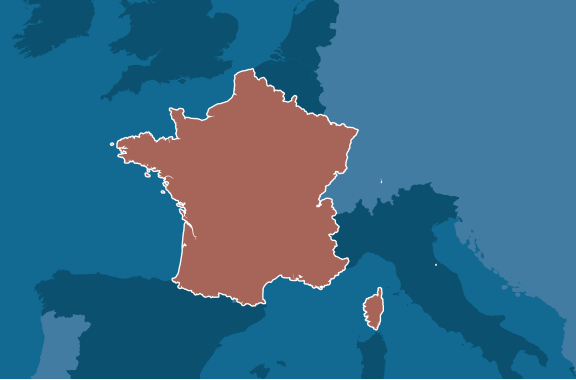
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This regularisation mechanism constitutes the transposition of Article 8 of the European Convention on Human Rights, protecting the right to private and family life, into French law.

Young people who have been in the care of the Child Welfare Services (ASE) for at least 3 years before they turn 18 (since before the age of 15), can also **acquire French nationality directly**, in accordance with the Civil Code.⁵⁰ Declarations of French nationality from these young people cannot be refused on grounds of insufficient integration,⁵¹ and are made directly to the district court,⁵² so are not subject to the discretion of the Prefecture.

It is important to reflect with the young person on the implications if their country of origin does not allow dual nationality. Loss of their other nationality could have legal, practical and personal/ identity related ramifications for the young person.

A **circular**⁵³ was issued in November 2012 specifying the conditions to deliver residence permits. It is slightly more favourable than the CESEDA, but it is not justiciable before courts and its use can be stopped at any moment by the government. Currently this circular is used, and allows for the following young people to also receive a one-year renewable residence permit for “**private and family life**”:

- Young people who arrived in France between 13 and 16, if they can prove 2 years of schooling at age 18, and they live with their father and/or mother. They have to apply before they turn 19.
- Undocumented parents if they can prove living in France for 5 years and at least one of their children has been attending school for 3 years.

All the other young people - and particularly those who arrived after 16 and live with a relative - depend on the discretionary power of the Prefect. If they prove that they are serious and involved at school, the Prefect may deliver a student residence card. It is valid for one year and only renewable during the course of one's education. It is still very difficult to obtain a change of status on the residence permit, notably, the right to work. Some young people may thus become undocumented again when they graduate even if they have been living in France for many years.

How does it work?

Undocumented young people must apply for a residence card at the Prefecture. According to how the prefecture is organised, they may have to queue for hours, or even the whole night, before being allowed to enter the Prefecture. This is exhausting, and some give up.

50 Article 21-12 of the Civil Code, available [here](#).

51 See Cour de Cassation, 4 October 2005, available [here](#); Cour de Cassation, 11 July 2006, available [here](#); Cour de Cassation, 22 February 2007, available [here](#); Cour de Cassation, 18 May 2005, available [here](#).

52 Article 26 of the Civil Code, available [here](#). Article D221-1.2 of the Judicial Organisation Code, available [here](#).

53 Circulaire n° NORINTK1229185C, Paris, 28 November 2012, available [here](#).

There is a fee of €50 to submit an application. The response time differs according to the Prefecture. An acknowledgement of the application (*récépissé*) is delivered while their application is examined. This acknowledgement may provide the right to work, but this again depends on the Prefecture.

If the application is successful, a further fee is required for the residence permit. The cost ranges from €19 for young people who have been under the care of the Child Welfare Services, to €609.⁵⁴

If the Prefect's decision is negative, the young person will receive an order to leave the territory within 30 days.⁵⁵ These young people, and the many others who do not fit the requirements of the Law or the circular, become undocumented, and obtaining a residence permit is very difficult. The Réseau Educations Sans Frontières (RESF) has a methodology to mobilise community support, to influence the Prefecture to use its discretionary power to grant permits for some (see below).

Another major challenge is for unaccompanied children registered as adults. While they should be placed under the care of the Child Welfare Services (ASE), many local authorities ask for bone tests to determine the child's age. In many cases, children are then declared "adults" and thus left without any support, including access to health care, shelter, and school. This also prevents them from getting a residence permit at 18. Limited financial means and political will on the part of some local authorities to support unaccompanied children underlie this practice.

Mobilising community support

The Réseau Educations Sans Frontières (RESF) defends the right to education for all, in good

social and health conditions. They consider the best way to ensure enjoyment of rights is through regularisation.

RESF also believes that, to be protected from deportation, it is important to be visible and highlight your situation, so the community can help and try to protect you. If you are isolated, the government is more likely to be able to deport you without any community reaction, as people might not know what has happened to you, and strong community solidarity and mobilisation is effective in convincing some Prefectures to regularise people.

How can local solidarity groups take action?

When they hear about a student being threatened with or at risk of being deported, the school community - teachers, parents, school social workers, school nurses, classmates, etc. - can work together to try and get documents for the family by communicating around how the young person and their family are part of the community, showing solidarity and denouncing any attempts to deport them. Possible ways to communicate this are:

- petitions
- widely informing people through the media
- asking for help from elected officials
- having undocumented families or students be "sponsored" by elected officials or teachers or parents or other regular citizens, meaning they publicly align themselves with the family with the aim to stop them from being deported
- organising demonstrations.

Caution: nothing is done without the young person's agreement.

54 Taxes et droit de timbre sur les titres de séjour : https://www.gisti.org/IMG/pdf/tableau_taxes_2.pdf.

55 Article L511-1 of the Code for Entry and Residence of Foreigners in France and the Right of Asylum, available [here](#).

Key steps

1. Inform teachers and classmates.

First, the young person needs to tell their classmates that they are undocumented and at risk of deportation. This is often very difficult because they have spent years hiding their irregular status and pretending they are “just like the others”. They should not do it alone. RESF supports the young person to explain the situation to an adult (a teacher or a social worker), to close friends, and possibly a few others in the class. Those people relay the information to other teachers and students.

When aware that one of their peers is at risk of deportation, other students are generally eager to act against what they consider as an injustice.

2. Write a petition asking for a residence permit for the young person and have it signed by the whole school community.

The aim is to raise awareness to make sure the young person is not isolated. If many people know of the young person’s situation, they will pay attention and react if the young person disappears. They thus protect the young person by preventing a discreet deportation.

3. Widen the support.

A petition alone will not make the Prefecture issue a residence permit. An action showing the high school students’ determination may be necessary (e.g. sit-in protest in the school yard; rally in front of the Prefecture; “sponsorship” by teachers or elected officials). Support from elected officials is welcome; they can act as intermediaries between the school community and local government administration, provide personal support to the young person and family, and for their public visibility. Media have an important role giving visibility to the community actions and the case.

4. Ask for an appointment at the Prefecture

An appointment at the Prefecture is requested by the teachers and/or RESF, to hand over the petition, discuss the young person’s situation, and ask for a residence permit.

5. In cases of emergency, i.e. arrest and detention of the young person, bombard the Prefecture and Ministry of the Interior.

A campaign of emails and faxes is launched, denouncing the situation and asking the Prefecture and the Ministry of the Interior to release and regularise the young person.

Tips and learning

- Bringing the situation of young undocumented people to light changes the attitudes of people in the community about undocumented people: they realise that their classmate, their children’s friend, the parents you meet every day, their pupil are undocumented, feel the injustice and show solidarity.
- This can also have a huge impact on the well-being of undocumented young people, to have their school community rally around them and not have to hide an aspect of their situation from their friends.
- Pointing out individual cases enables people to understand better the general situation and react. Once they know about the young person’s situation they are more likely to react quickly when needed, and also share the story to mobilise others. The goal in the long term is to reduce the number of orders to leave the territory issues, and if possible change the law.
- Elected officials have an important role: by giving visibility and support and by helping to change the law.
- The fact that the Prefecture has the decision-making power on residence permits plays a crucial role in the efficacy of local community mobilisation, but some of the methodology and learning can be relevant for others.



How can undocumented children regularise?

Possibilities for undocumented children to regularize their status in Greece are extremely limited. The main grounds for children to gain a residence status are:

- Family reunification as a dependent of a parent.
- International protection (as a refugee or beneficiary of subsidiary protection).
- Humanitarian reasons (criteria include unaccompanied minors, whose applications for international protection are finally rejected). This mechanism grants a 2-year residence permit for humanitarian reasons, according to Law n. 4251/2014⁵⁶ (Immigration and Social Integration Code), as amended by Law n. 4332/2015.

According to the Children's Ombudsman report for the year 2016, published in April 2017⁵⁷, only 29% of the total number of child applicants for international protection were recognized as refugees or beneficiaries of subsidiary protection. More specifically, 841 children were finally granted refugee status and 56 were granted subsidiary protection status. It can also be difficult for non-EU migrant workers to get a work permit in Greece.

How can migrant children access citizenship?

The Greek Citizenship Code (Law n. 3284/2004), as amended by Law n. 4332/2015, introduced new provisions regarding the acquisition of the Greek citizenship by foreign children.

It requires the long-term and regular residence of the child and/ or parents as a precondition for the acquisition of the Greek citizenship by their children. However, the amended regulation recognises the right to Greek citizenship for a number of children who have grown up in Greece, who were previously excluded from this right.

1. Every child born in Greece automatically acquires Greek citizenship if they do not acquire another citizenship by birth or their citizenship is unknown.⁵⁸
2. A child born in Greece can acquire Greek citizenship when they are registered in the 1st level of Greek primary school, if both of their parents are regularly residing in Greece and at least one of their parents has resided regularly in Greece for 5 consecutive years before their birth. If a child was born before the completion of the aforementioned 5-year residence of one of their parents, the child's right to citizenship is established after the completion of a 10-year consecutive and regular residence of their parent.⁵⁹

56 Article 19A, Law n. 4251/2014 (Immigration and Social Integration Code), amended by Law n. 4332/2015.

57 <https://www.synigoros.gr/resources/20170420-ekthesi-mixanismos.pdf>

58 Article 1(2), Law n. 3284/2004, amended by Law n. 4332/2015.

59 Article 1A, Law n. 3284/2004, amended by Law n. 4332/2015.

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3. A child who permanently and regularly resides in Greece can acquire Greek citizenship when he/she successfully finishes 6 years of Greek primary school education and 3 years of Greek secondary school, or 6 years of Greek secondary school education.⁶⁰

4. A person who permanently and regularly resides in Greece can acquire Greek citizenship when he/she graduates from a Greek higher education institution or a Greek technological educational institution, if he/she holds a Greek high school baccalaureate.⁶¹

How does it work?

After the amended Greek Citizenship Code entered into force, 19,032 children acquired Greek citizenship under the terms of the provisions of the Articles 1A and 1B - points 2, 3 and 4 above - in 2016 alone.⁶²

Youth-led campaigning and advocacy

Generation 2.0 for Rights, Equality & Diversity (G2RED) started operating in 2006 as an informal group of second generation young people advocating and raising awareness about the situation of people born and/or raised in Greece with migrant parents.

At the time, the only way to acquire citizenship was through a very long and expensive naturalisation process that could only be started from the age of 18. Naturalisation was only possible for adults holding a residence permit for at least ten consecutive years, who passed an integration test and on payment of a 1,500 euro fee.

When G2RED began, they launched the project called “Equal Citizens: There Are More Greeks Like Me” and a blog where articles were published, in order to raise awareness and demand access to citizenship. Moreover, meetings with political parties were organised.

In 2010, Law 3838⁶³ introduced some important changes to the nationality law. For example, it provided for children born in Greece to migrant parents, who met certain conditions, to be granted citizenship, and for eligible adults with a residence permit to acquire it retrospectively. A time limit for the procedure to end was imposed and the State was obliged to justify the rejection of an application. Two years later, however, the act was declared unconstitutional and the majority of the clauses were deleted. The only changes maintained concerned the naturalization process, where the fees were reduced from €1,500 to €700, and the years of previous regular residence required reduced from ten to seven. A clause that enabled the third generation to access citizenship also remained. In particular, there was a provision stating that if at least one of the child’s parents is born and raised in Greece and has permanent residence, the child becomes automatically Greek.

60 Art. 1B(1), Law n. 3284/2004, amended by Law n. 4332/2015.

61 Art. 1B(2), Law n. 3284/2004, amended by Law n. 4332/2015.

62 <http://www.ypes.gr/UserFiles/f0ff9297-f516-40ff-a70e-eca84e2ec9b9/StatsCategory2011-2016-070217.pdf>

63 Law n. 3838/2010 amendment of Law n. 3284/2004

The most important change for the second generation happened in 2015 with the law 4332/2015, which provided a pathway to citizenship *ius culturae* – on the basis of cultural participation. As described above, in order to become a Greek citizen, the person has to attend a Greek school for a certain amount of time (elementary and middle school, or middle and high school, or high school and bachelor's degree) or be born in Greece to people with long-term residence status.

The “Equal Citizens: There Are More Greeks Like Me” campaign lasted for a long period of time, in two stages from 2006 to 2013 and from 2013 to 2015. It consisted primarily of:

- organising events and presentations in various cities throughout Greece.
- organising events to empower communities, bringing together the youth to mobilise them to speak out.
- publishing videos and blogs with second generation youth voices.

This campaign put continuous pressure on the relevant ministries and services, and succeeded in putting the citizenship issue on the political agenda. However, this was when the media started to cover it in an inappropriate way. Because of lack of knowledge or political reasons, words and images associated to the second generation in the media were negative and false. For example, very often they were represented as persons behind fences. Not only were the images not representing reality, but also stimulating negative emotions among readers, such as ‘are the second generation criminals?’ Associating the word “migrant” with the second generation was also common and false; the second

generation are not migrants, as have been born and/or raised in the country.

G2RED was constantly advocating and rebuilding the image of the second generation through presentations, articles and interviews. The “Equal citizens” campaign showed the true faces of the second generation. The campaign showed them as your school mates, your neighbours; normal people just like you. The campaign video⁶⁴ was released in 2014, before the elections, to remind all the political parties of the fundamental need to address the situation of the second generation and the citizenship issue. The cause was also disseminated through the campaign ‘Your Vote Can Unite’, in collaboration with ENAR – European Network Against Racism, linked to the European Parliament elections in 2014. After the Greek elections in 2015, the law on citizenship passed.

Tips and learning

The fact that G2RED has, from the beginning, been a grassroots organization of second generation members claiming for their own rights is a very important privilege for the organization, and has contributed to its impact.

This has been a crucial element of the G2RED campaigns, that the second generation advocate for themselves. Despite and because of their everyday life difficulties, the second generation were making their own voices heard, without delegating the campaign to people who are not personally involved in the topic.

64 The campaign video can be found here: https://www.youtube.com/watch?v=_Wcb0_M00bk%20

When, from 2010, the issue of citizenship was more widely discussed, G2RED was the only organization that had already dedicated years of work on the topic. Its members knew the situation of the second generation well and, for this reason, the organisation was fully trusted, both by the communities and by the political parties and the state. The presence of G2RED at important events, along with the continuous debate with members of political parties and the parliament, enabled an increase in awareness among decision makers.

Another key element of G2RED's method is to challenge and reconstruct the dominant narrative. It was not only important for the topic to gain importance in the political agenda, but also that myths about the second generation were dispelled among citizens who were badly informed.

The use of media allowed G2RED to show the true faces of the second generation and represented a point of strength for the campaigns. Story-telling was key. Through its various activities, the organization started sharing the stories of its second generation members. Even if the difficulties of everyday life were present in the texts, they avoided any self-victimization: the stories aimed to raise awareness of the topic, not pity. The stories were published on the website, and also in some of the most important newspapers in Greece, in order to give even more visibility to the issue.

The words and images used were carefully selected. The word "migrant" was not used in association with second generation, and stories focused on creating a positive representation of everyday people, young and old, women and men, working and not, attending Greek schools, having Greek friends, going for a

walk, falling in love, dreaming big; people just like everyone else, building their lives in the country, who just happen to have different origins.

Ireland



By Katie Mannion » Immigrant Council of Ireland

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How can undocumented children regularise?

In Ireland, children under 16 are not required to have or be issued with permission to reside on an individual basis. Their right to reside derives from the residence status of their parents; they may still be deemed undocumented and subject to deportation with the parent(s). For unaccompanied children, the typical practice has been not to issue a proposal to deport until after the young person has 'aged out'.

All foreign nationals (non-EEA nationals), unless born in Ireland, are obliged to register with the Garda National Immigration Bureau (GNIB) at the age of 16.⁶⁵

- **Children whose parent or parents have permission to reside** in Ireland can attend at their local GNIB office with their parent and their identity documents in order to register. Children are exempt from the €300 registration fee.⁶⁶
- **In more complex situations, such as where the deadline for registration is missed, or where a child is in the care of the State**, a letter can be written to the relevant section of the Irish Naturalisation and Immigration Service (INIS), Department of Justice to request permission to reside. There are no specific forms, procedure

or guidance as to content and replies are not time-bound. However, letters of application should provide details and evidence of a child's length of residence, attendance at school, family circumstances and other relevant issues. It is also possible to write to INIS to request a change of status. In the case of children in care, letters should be written by social workers when a child turns 15 to allow enough time for a response. All these applications are granted at the discretion of the Minister for Justice and varying forms of residence permission may be granted depending on the circumstances of each case.⁶⁷

- **For children and young people whose parents are in irregular immigration situations** in Ireland, there are no clear, formal pathways to regularisation. While there are a number of relevant pieces of legislation, general immigration rules remain largely on an administrative footing with heavy reliance placed on Ministerial discretion.⁶⁸

In practice, to seek regularisation, an individual or their representative writes to the relevant section of INIS requesting permission to reside setting out their relevant circumstances. Many people have reasons based in law or policy to reside regularly but have become undocumented for different reasons. For example, undocumented persons can apply for

65 Section 9 of the Immigration Act 2004; Section 35(b) Employment Permits (Amendment) Act 2014 provides for the deletion of the exception to the duty of registration in respect of those under 16 years. That provision has not yet been commenced. The Migrant Integration Strategy published in 2017 commits to enabling registration of "non-EEA migrants aged under 16 years" by 2018, p.23, available [here](#).

66 See "Introduction of a Fee for Certificates of Registration issued to non-EEA nationals", [available here](#).

67 There is little information provided about such applications by the authorities. See: <http://www.inis.gov.ie/en/INIS/Pages/about-registration-system>. See also: Immigrant Council of Ireland, *Immigration Status in Ireland: What do I need to know*, 2018, available [here](#).

68 Relevant legislation: Aliens Act, 1935; Aliens Order, 1946; Immigration Act, 1999; Illegal Immigrants (Trafficking) Act, 2000; Immigration Act, 2003; Immigration Act, 2004; Employment Permits Acts 2003 to 2014; European Communities (Free Movement of Persons) Regulations, 2015; International Protection Act, 2015.

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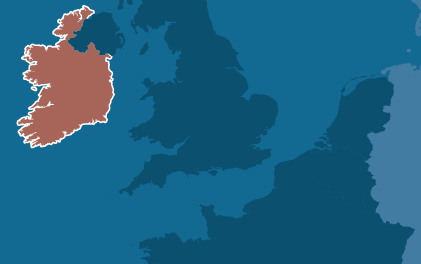
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permission to reside as the family member of an Irish citizen⁶⁹, EU national⁷⁰ or migrant worker⁷¹, where relevant. Victims of trafficking can apply for permission under an administrative scheme for victims of trafficking⁷², while other persons may seek international protection.⁷³

How does it work?

Where individuals cannot apply under a specific immigration scheme for residence permission, they can make a written application to the Minister for Justice seeking exercise of the Minister's discretion to grant permission to reside because of the individual circumstances of the case. For example, many children in the care of the State make such applications and are granted Stamp 4 permission "in exceptional circumstances". Alternatively, individuals can apply for humanitarian leave to remain after they have been issued with a Notification of Intention to Deport under Section 3 of the Immigration Act 1999,⁷⁴ as a consequence of detection or because the individual made the state aware of their irregularity.⁷⁵

After having been served with a notice of intention to deport, the individual has a period of 15 working days to lodge an application against the decision⁷⁶, and apply for a permit on humanitarian grounds.

Relevant factors to be considered include the person's age, the length they have lived in Ireland, their family and domestic circumstances, their connections to Ireland, their character, their employment prospects, humanitarian considerations and representations made on their behalf. If the application is unsuccessful, a deportation order will be issued against the applicant.

As such, it is reactive regularisation mechanism, and young people have to risk provoking their own deportation in order to apply for regularisation.

Type of permission granted

When a child or young person is granted permission, they are usually provided either with a Stamp 4, which is generally granted for 1, 3 or 5 years (depending on ministerial discretion) and enables full access to the labour market, or a Stamp 3, which is a dependent stamp generally granted for 1 year or up to the expiry of the parent's permit or whichever is lesser, and does not allow access to the labour market.

The INIS does not publish guidance on the appropriate immigration permission or stamp to issue to children resident in the State. This has resulted in permissions being issued to young people in

69 INIS, *Policy Document on Non-EEA Family Reunification*, December 2016, para. 1.8, available [here](#).

70 Article 6, Directive 2004/38, implemented in Ireland by S.I. No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015, available [here](#).

71 INIS, *Policy Document on Non-EEA Family Reunification*, December 2016, para. 1.9, available [here](#).

72 *Administrative Immigration Arrangements for Victims of Trafficking*, para. 12-13, available [here](#).

73 *International Protection Act 2015*, Art. 15, available [here](#).

74 Available [here](#).

75 The government is not obliged to issue a removal order when informed of a person's irregular residence, and sometimes does not.

76 Article 3(3)(b) *Immigration Act 1999*, available [here](#).

an inconsistent manner as well as inappropriate stamps being granted.⁷⁷

Best interests

The weight attributed to the best interests of the child in immigration decisions is not always clear. The Irish Constitution was amended in 2015 to expressly include a provision on the rights of the child.⁷⁸ It requires that the best interests of the child be considered as the “paramount consideration”, but only in limited circumstances⁷⁹ which do not include immigration decisions. In 2015 the Irish Court of Appeal found that the amended Constitution did not require the best interests of the child to be a primary consideration in deportation cases, but that best interests should be given due and proper regard in such decisions as part of fair procedures.⁸⁰

What are the barriers? What works well?

The absence of a legal framework with clear pathways to regularisation when a person is in an irregular situation is the most significant barrier to regularisation. The absence of official information on the obligation to register at the age of 16 results in young people becoming undocumented. Additionally, the €300 fee for registration applied to those over 18 can present a real obstacle to young people remaining documented.

Legal aid is provided only for international protection applications and is generally not available for immigration matters. While many do not realise that they need to seek legal advice, for others, the cost of getting a solicitor privately is too high. While Independent Law Centres and NGOs can provide legal information, advice and representation, it is not possible, due to funding constraints, for this to be provided in all cases. Many children and young people therefore do not access specialist immigration legal advice about their situation. The barriers faced by migrant children in the Irish immigration system have been outlined comprehensively in a report *Child Migration Matters: Children and Young People’s Experiences of Migration*.⁸¹

How can migrant children access citizenship? And can their parents regularise?

Since 2005, children born in Ireland are entitled to Irish citizenship at birth if at least one of their parents is an Irish citizen, an EEA citizen exercising free movement, or a foreign national parent with ‘reckonable residence’ (Stamp 1, 3, 4 or 5 permission) for three of the four years before the birth of the child.⁸²

Undocumented parents who have an Irish citizen child can apply for permission to remain in the

77 For example, some young people have been inappropriately granted Stamp 2 for international students when their primary purpose in the State is as dependents of their regularly resident non-student parents, rather than for study. INIS has clarified that it is “possible to write in to INIS for a change of status to Stamp 4 as the child/dependent of an Irish national but a person would not be changed to Stamp 4 automatically”. IIN Meeting With INIS, 3rd March 2017.

78 Article 42 A of the Constitution now provides that “the State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights”.

79 Child protection applications by the State and proceedings concerning the adoption, guardianship or custody of, or access to, any child.

80 *Dos Santos & ors v Minister for Justice and Equality & ors*, [2014] IEHC 559; [2015] IECA 210.

81 K. Mannion, *Child Migration Matters: Children and Young People’s Experiences of Migration*, Immigrant Council of Ireland, 2016, available [here](#).

82 Foreign national children are also permitted to apply for Irish citizenship by naturalisation in a range of situations. For more information, see: <http://www.inis.gov.ie/en/INIS/Pages/citizenship-naturalisation-forms>.

State on the basis of parentage of an Irish citizen child, following the European Court of Justice ruling in *Ruiz Zambrano v ONEm*⁸³ (see box page 82). They must complete a specific application form providing relevant personal details and submit evidence of the applicant's identity, the Irish citizen child's identity, the child's residency in the State, the applicant's residency in the State and evidence of the applicant's role in the life of the Irish citizen child.⁸⁴ DNA evidence of the relationship between parent and child will sometimes be requested at the expense of the applicant. Consideration tends to focus on the parent's involvement in the life of the child, rather than on whether the family would be required to relocate outside the EU if permission were not granted to the parent.

Although the application form does not request information regarding any undocumented siblings of Irish citizen children, a cover letter could also outline their presence in the State and request permission to reside as part of the parents' application for residence when they are 16 years old and required to register with the GNIB.

Past successful campaigns – Irish Born Child Scheme

The Coalition Against the Deportation of Irish Children (CADIC) was a campaign which arose from the 2003 Irish Supreme Court decision⁸⁵, handed down on 23 January 2003, which upheld the right of the Minister for Justice to deport non-Irish nationals from Ireland, even if they were parents of Irish children. At the time, all children born in Ireland were

granted citizenship and, prior to this case, it had been administrative policy and practice to grant residence to the parents of Irish citizen children.

Following a change in this administrative policy and practice and this court decision allowing it, over 11,000 families awaiting decisions were in an extremely vulnerable position. By late 2003, over 700 deportation orders had been issued.

In response, children's rights, faith-based, human rights, legal aid and migrant support NGOs formed a coalition to secure the rights of the Irish children, their migrant parents and other close family members. CADIC's key objective was to secure a procedure whereby all families of Irish children could apply for residency through a fair, transparent, human rights compliant system that places the best interest of the child as the paramount factor in the decision-making process. The coalition provided extensive free legal information and advice, engaged in strategic litigation, and conducted considerable advocacy campaigning.

After two years, the Department of Justice introduced the IBC/05 Irish Born Child scheme⁸⁶ through which non-Irish parents of children born in Ireland before January 2005, and so Irish citizens, could apply for residency. A total of 16,993 parents were granted residence status in Ireland under the IBC/05 scheme. Parents were given a renewable 1-3-year permission to remain. After five years of residency, they could apply for long-term residency or naturalisation. CADIC played an important role in achieving that scheme.⁸⁷

83 ECJ 8 March 2011 *Ruiz Zambrano v ONEm* (Case C-34/09)

84 The application form is available [here](http://www.inis.gov.ie/en/INIS/ICC%20Application.pdf/Files/ICC%20Application.pdf), <http://www.inis.gov.ie/en/INIS/ICC%20Application.pdf/Files/ICC%20Application.pdf>

85 *Lobe & Osayande vs Minister for Justice Equality and Law Reform, [2003] IESC 3*, referred to as 'the L & O case'.

86 For more information on the scheme and outcomes, see [here and here](#).

87 For further details, see *Coalition Against the Deportation of Irish Children Evaluation of CADIC Achievements 2006-2007 Final Report – October 2008*, available [here](#).

Tips and Learning⁸⁸

Key elements that made the campaign successful included:

- Having direct legal expertise focused on a specific issue and the capacity to undertake and sustain legal casework.
- Credibility gained from national membership representing affected families across Ireland.
- Combination of immigration and children's rights expertise.
- Commitment and dedication of coalition members willing to give their organisational and personal resources.
- Centralised production of communications and dissemination across a national network of NGOs.
- Providing a single point of contact to engage with Government, and taking a constructive, solutions-based approach, always offering a potential solution to issues raised.

Key elements that made the coalition run successfully included:

- Joining together on a critical, urgent issue about which all members were committed.
- Getting the right members on board (in terms of skills, capacity, unity and authority to make decisions).

- Defining a clear strategy.
- Putting effective structures in place.
- Resourcing the coalition from philanthropy.
- Agreeing the coalition's life span.

Past successful campaigns – Regularisation of children and families in the protection system for 5 years or more

Ireland's asylum process has for many years been characterised by delays and inefficiencies. Despite low⁸⁹ numbers of people entering the State to seek protection, by February 2015 there were 7,937 people in the protection system, of whom 55% were in the system for five years or more.⁹⁰ Of the 7,937 people in the process, 21% were children and 9% were at deportation order stage, pending a decision on a final application for humanitarian leave to remain.⁹¹ A broad coalition of NGOs had long campaigned for reforms to the system, but the case for reform was given a new impetus in 2014 when protests including strikes and hunger strikes began breaking out in 'direct provision'⁹² centres throughout Ireland. Increased media coverage of both the conditions in the centres and the length of time many people had been living in these centres led to an increase in public sympathy.

88 Summarised from Coalition Against the Deportation of Irish Children Evaluation of CADIC Achievements 2006-2007 Final Report – October 2008.

89 The number of new applications for asylum in Ireland are as follows: 956 (2012), 946 (2013), 1448 (2014), 3276 (2015). Figures for asylum applications taken from the Office of the Refugee Applications Commission Annual Reports available [here](#).

90 *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, Final Report (June 2015).

91 *Ibid.* At the time of the publication of the Working Group Report, Ireland was one of the few EU countries not to have adopted a single procedure to apply for international protection. Applications for refugee status and subsidiary protection status were decided sequentially and often took several years. If both applications were unsuccessful then a notice of intention to deport was issued and the applicants could apply for leave to remain as per the procedure described above. Ireland has since, with the implementation of the International Protection Act 2015, introduced a single procedure to deal with asylum applications.

92 Direct Provision is the means by which the State provides for the material needs of people seeking protection. The State provides accommodation on a full-board basis for until such time as applicants are granted status and move into the community, are deported or voluntarily return. Direct Provision was established in 2000, prior to this protection applicants were supported to live in the community. At the time that the system was established, it was envisaged that applicants would spend approximately 6 months in the direct provision centres before a decision was made on their case.

By summer 2014, the government had committed to examining the conditions in direct provision centres and in October 2014, the Minister for Justice and Equality and Minister of State formally announced the terms of reference and the composition of a Working Group (membership included state officials, and representatives from NGOs, UNHCR and asylum-seeking communities) to report to the government on improvements to the protection process, including Direct Provision and supports to asylum seekers.⁹³ After 7 months, the Working Group produced a report, which included the recommendation that all persons - subject to certain conditions relating generally to good character and having evidence of identity - with deportation orders who had been in the system for 5 years or more should have their deportation orders revoked and be granted leave to remain in the state within a maximum of six months. The Working Group also recommended that all persons (subject to certain conditions) who had been awaiting a decision, either for refugee status, subsidiary protection status or humanitarian leave to remain, for 5 years or more should be granted status or leave to remain within six months.⁹⁴

The State committed to implementing most⁹⁵ of the 176 recommendations of the Working Group report. Rather than implementing a wide-ranging scheme or, as later suggested by the chair of the Working Group, former High Court Judge Bryan McMahon, an amnesty⁹⁶, the Department of Justice began re-examining cases of those in the asylum process on an individualised case-by-case basis, a process lacking in transparency or certainty for many of those in the system. It should be noted that the Department of Justice failed to publish any guidelines for the implementation of these recommendations. It was the experience of those working on the ground with those in the asylum system that this caused widespread confusion, frustration and misinformation. While there were clear flaws with this process, it did succeed in regularising substantial numbers of people in the asylum process including those whose applications for international protection had been refused and had deportation orders already issued against them. By June 2016, the State reported that two thirds of those who had been in the system for 5 years had their cases completed⁹⁷ with over 1,500 people granted residence in the State.⁹⁸ The State published a progress report in February 2017 which stated that “almost all”⁹⁹ of the cases identified in the Working Group report had now been processed.

93 Press Release Ministers Fitzgerald and O Riordáin announce composition of Working Group to examine improvements to the Protection process and the Direct Provision system, (2014) available [here](#).

94 *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015*, paras. 3.128, 3.134 – 3.135.

95 The Working Group report also recommended that asylum seekers be granted the right to work, largely in line with the Reception Directives, however the State has steadfastly said no to this recommendation. Ireland is only 1 of 2 EU Member States (the other being Lithuania) which explicitly prohibits employment during the asylum process.

96 McGreevy, “Minister rules out amnesty for asylum seekers in direct provision”, *The Irish Times*, 17 June 2016, available [here](#).

97 Department of Justice and Equality, “Tánaiste and Minister Stanton welcome significant progress on Direct Provision and supports for asylum seekers”, 2016, available [here](#).

98 McGreevy, “Minister rules out amnesty for asylum seekers in direct provision”, *The Irish Times*, 17 June 2016, available [here](#).

99 Available [here](#).

Ongoing campaigns

Young Paperless and Powerful (YPP) is a group of young undocumented activists aged between 15 and 22 who use the creative arts to speak out about their experiences, and to campaign for change for all undocumented children and young people in Ireland.

After working and campaigning with undocumented workers and their families for many years, the Migrant Rights Centre Ireland (MRCI) began to see more and more undocumented children and young people growing up in Ireland impacted by the stress and barriers of having no immigration status. To respond to this MRCI in May 2015 decided to support a group of undocumented young people to come together to share experiences, and look at ways of having their voices and stories heard by people who had the power to change their situation.

Jointly MRCI, YPP and the Justice For the Undocumented (JFU) campaign for the introduction of a regularisation scheme in Ireland. Such a scheme would be time-bound and with transparent criteria addressing the need and realities of undocumented migrants in Ireland.¹⁰⁰ According to such a scheme, it is proposed that any child who has been living in the State for longer than three years can be regularised in conjunction with their parents; such criteria would also apply to those who entered as children and have since reached the age of required registration (16 years). In June 2017, the Justice Committee of the Oireachtas (Irish Parliament) has recommended the introduction of a regularisation scheme which would respond to the recommendations of the UN Committee on the Rights of the Child in 2016.¹⁰¹

100 The Migrant Rights Centre Ireland carried out a survey of 1,008 people living undocumented in Ireland. [Results](#) provide a picture of the undocumented population, as well as estimate of the total number of undocumented people in the country (20-26,000 including 2-6,000 children) and data analyzing the income that would be generated through a regularization, available [here](#).

101 Recommendation from 29 June 2017. The Committee on the Rights of the Child recommended that Ireland adopt a comprehensive legal framework and to “ensure that the said legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations”. Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland*, 29 January 2016, CRC/C/IRL/CO/3-4.



Photo © Young, Paperless and Powerful and the Migrant Rights Centre Ireland

How can undocumented children regularise?

A number of legal provisions, if fully applied, would allow the regularisation of children and their parents and reduce the number of children that become undocumented.

Italian law provides for regular residence for (all) children. Children cannot be deported or pushed back, without prejudice to the right to follow their parents when they are deported¹⁰² and except for reasons related to public order and state security. The 2017 comprehensive law on unaccompanied and separated children (UASC)¹⁰³ added another requirement for the expulsion of UASC: it cannot be ordered if it could cause serious harm to the child.

Depending on their status as accompanied or unaccompanied children they will follow different regularization pathways and will be issued different types of resident permits.

Children of regular migrants – prevention of irregularity

The Immigration Law states that children of regular migrants are issued an **autonomous residence permit for “family reasons” valid until the age of 18**.¹⁰⁴ This avoids migrant children becoming undocumented automatically if their parent(s) lose their status, and provides them the possibility to continue residence in their own right if their parent(s) chose to move to another country.

If regularly resident before, they will be issued different resident permits when they turn 18 depending on their specific circumstances. They can be granted a residence permit on the grounds of work, of education or to look for work. A residence permit for “family reasons” can also be extended in some cases, if the young person is not working or studying but the family continues to take care of them, until they are 21.¹⁰⁵ Specific residence permissions (asylum seeker, international/humanitarian protection, health care) will be issued according to the law as for adults.

102 Children accompanied by undocumented parents or foster persons are entitled to the right to follow the parents/foster persons if the latter are expelled, but this is a right of the child, based on the best interest of the child, which has to be decided by the competent authorities. So, in practice some families (and their children) are expelled. Deportation decisions for adults can be appealed before the Justice of Peace (which is the lowest judicial authority in the Italian judicial hierarchy). However, appeals are often refused if there has been a previous order to leave the territory that has not been followed or in case of criminal record. Article 19 comma 2 and 2 bis D Lgs. 286/98 Italian Immigration Act.

103 L. 47/2017 Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati, available [here](#).

104 Article 31, co. 1 T.U: b286/98. This has changed to follow the European Law 2015-2016 (Lege n. 122 - 7 July 2016). Before children were inserted in their parents' resident permit until the age of 14.

105 Article 30 comma 3 and Article 32 co 1 comma D Lgs. 286/98; Circular Ministry of Interior Prot. n. 17272/7 - 28/3/2008.



Residence permit for “minor age”

Since they cannot be expelled, **all children are eligible for a residence permit “per minore età”, valid until the age of 18**, according to the Immigration Act, as implemented by a 1999 Presidential Decree¹⁰⁶ and amended by the 2017 comprehensive law on unaccompanied and separated children.¹⁰⁷

Unaccompanied and separated children

For unaccompanied and separated children, their protection from having irregular migration status was reaffirmed and strengthened in the 2017 comprehensive law on UASC. They are all entitled to have a residence permit “per minore età” or because they are under the custody of the state (“per affidamento”).

Children of undocumented migrants

Even though according to the Immigration Act, children are protected from having irregular migration status, **in practice, children of undocumented migrants are excluded from this protection**. For accompanied children, applications for residence permits must be made to the police authorities, and only parents are allowed to make the application since they are the child’s legal representatives. Irregular parents risk detention and deportation if they come into contact with the police authorities, so are prevented from accessing their children’s right to regularisation.

While unaccompanied children are granted their documents, as well as the accompanied children of regular parents, **children with irregular parents often remain undocumented**.

As a consequence –at present- the only way to regularize children is through the regularization of their parents.

Under Italian immigration law,¹⁰⁸ there are a number of regularization mechanisms for migrants with children, in particular:

- **residence permit for health care**
- **residence permit for child assistance**
- **residence permit for humanitarian reasons**

Residence permit for health care (cure mediche)

The Immigration Law (TUI)¹⁰⁹ protects parents from being expelled during pregnancy and the first six months of life of their newborn. During this time, women, and their husbands, are entitled to a **residence permit for health care** as provided by the implementation regulation.¹¹⁰ If the father is not married to the mother, they can have this resident permit for the first six months after recognition of the child.

106 Article 28, D.P.R. 394/1999 Decreto del Presidente della Repubblica 31 Agosto 1999, n. 394, e successive modificazioni, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero, a norma dell’articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n. 286, available [here](#).

107 Article 10, L. 47/2017.

108 D. Lgs 286/98 and DPR 394/1999.

109 Article 19 T.U. 286/98.

110 Article 19 T.U. 286/98; Article 28 D.P.R. 394/1999.

How does it work?

Migrants in this situation apply for a resident permit at the Immigration Office, submitting documentation on the pregnancy/ birth. They are prevented from receiving a deportation order.

PROS: Prevents deportation of undocumented families during pregnancy and first six months and facilitates access to maternal health services (including pre-natal, delivery, post-partum and newborn health care).

CONS: It's a temporary permission that can last a maximum of 15 months (9+6 months). It does not allow people to work. The possibility of converting it into an ordinary residence permit is a controversial question. According to a correct interpretation of the law, conversion into a residence permit for "family reasons" should be possible¹¹¹, and confirmed through a directive of the Ministry of Interior (9 February 2009)¹¹². Nevertheless, many Immigration Offices do not accept this application, considering that the resident permit for health care is not a proper one, or considering the person deportable immediately after the child is six months old. Even respecting the correct interpretation of this rule, in order to apply for this resident permit, many requirements have to be fulfilled. When one member of the family is regular, working and supporting the family, the mechanism can work. Otherwise when both parents are irregular, as soon as the baby is six months old, the whole family loses their right of residence.

Residence permit for child assistance (cure minore)

The mechanism provided by Article 31 c.3 of the Immigration Law (TUI)¹¹³ is based on the principle that **parents can regularize their status in the best interest of the child**, applying Article 3 of the Convention on the Rights of the Child. In this case, the parents' status depends on their child's rights and not vice versa, as is usually the case.

The Juvenile Court can authorize irregular migrants to stay in Italy, where there are serious reasons related to the psychological and physical development of their child, taking into consideration the child's age and health conditions. In such cases, the parent is issued a **temporary child-care residence permit**.

Some Courts have adopted a restrictive interpretation of this provision, applying it only where the child has serious health problems. In 2010, the Court of Cassation clarified that this interpretation is illegitimate¹¹⁴, ruling that the psychosocial impact of deportation also has to be considered.

How does it work?

The interested person (mother, father or both of them together) personally or represented by a lawyer, sends an application to the Juvenile Court asking for authorisation to stay in Italy, despite their irregular status, explaining how it is the best interests of the child. The Court asks for information about the applicant from the immigration office of the police (criminal records) and social services (family situation). As a judiciary procedure, legal aid is usually available to submit the application, though a lawyer is not required.

111 Article 30 T.U. 286/98.

112 Circular Ministry of Interior n. 400/A /2009/12.214.30.

113 Article 31 c.3 T.U. 286/98.

114 Corte di Cassazione Sentenza no N. 21799, 25/10/2010.

After receiving this information, the Court decides on the case, generally without even calling the applicant for a hearing. Whether the authorization is given and the length of permit issued depends on different objective factors that the court must consider (i.e. the age of the child, attendance at school, health conditions, social ties and integration). Once the applicant is notified of the Court's positive decision, they can apply for a resident permit to the immigration office of the police. This will be issued for the same length as the authorization given by the Court, which is typically from 1 to 3 years. The child should be granted an autonomous permit for family reasons (as above).

PROS: Currently this is the one of the few ways in which children of undocumented migrants, including those born in Italy, are able to regularise their status while a child (after the age of six months). This permit allows the holder to work, and to access social security benefits. There are no specific requirements on income or housing.

CONS: This residence permit cannot be converted into a different permit. It can be only renewed with a new authorization from the Juvenile Court.¹¹⁵ Several Juvenile Courts implement a restrictive interpretation of this rule, denying authorisation of anyone with a criminal record, regardless of the seriousness of the crime committed. In practice, Immigration Offices require passports in order to issue the residence permit, an insurmountable barrier for some undocumented families. The Immigration Office sometimes issues a permit for the child that is attached to the parent's permit, rather than an autonomous permit until age 18. This

important pathway to regularization is still applied infrequently.

Residence permit for humanitarian reasons

According to the Immigration Law (TUI),¹¹⁶ persons can be authorized to stay in Italy on the basis of humanitarian reasons and constitutional or international obligations, even if they lack the usual prerequisites for regular residence. The implementing regulation completes the rule by establishing the type of residence permit to be granted.¹¹⁷ Since the European Convention for Human Rights (ECHR) is binding for Italy, as well as the UN Convention on the Rights of the Child, the residence permit for humanitarian reasons should be issued on the basis of the right to private and family life.¹¹⁸ A permit typically is granted for a period of 6 months to 2 years.

How does it work?

Applications for residence permits on humanitarian grounds are made to and granted by the Immigration Office of *Questura* (the local police and immigration authority). Documents proving family links or private life in the place, or their absence in the country of origin, must be submitted together with the application.

PROS: If correctly implemented this rule would grant a right of residence to many irregular families with children and single persons. It requires only a long residence and family-social links in Italy (income or accommodation are not a requirement). This permit allows the holder to work, and to access

115 An important decision of the Tribunale di Parma states that the holder can apply for an EU long-term residence permit after being resident for 5 years.

116 Article 5. C.6 T.U. 286/98.

117 Article 11, c. 1, lett. c-ter) D.P.R. 394/1999.

118 Article 8 ECHR.

social security benefits. It can be converted into an ordinary residence and work permit even if there are no other regular family members, and the other family members can get a residence permit for family reasons, when the former fulfills the requirements.

CONS: It is little implemented in practice; there are major procedural barriers. Generally, documents attesting domicile are required, which are almost impossible to provide for irregular residents. Police officers refer people to the international protection procedure (within which it is possible to request humanitarian protection) instead of considering the application directly and autonomously, as the law requires. There is also a lot of discretion. Many Immigration Offices deny this resident permit whenever someone has a criminal record, regardless of the seriousness of the crime committed and without balancing the different interests involved. There are no guidelines from the Ministry of Interior (Home Office) about this.

The Ministry of Interior issued Directive n. 3716¹¹⁹ in July 2015, addressed to decision-makers within the international protection procedure, in order to exemplify cases where humanitarian protection must be recognized. Among other reasons, it explicitly indicates the rights to family life and to private life. Within the international protection procedure this is a positive signal of the official (ministerial) interpretation of humanitarian protection. Another specific directive is needed in order to clarify to Immigration Offices the applicability of this principle within the autonomous procedure for the issue of residence permits for humanitarian reasons.

Main barriers across all the mechanisms

In summary, in Italy there are different legal mechanisms that can be used to regularize families of undocumented migrants. The main barriers to the implementation of these mechanisms are:

- the practices of the immigration offices (discretion, paperwork requirements, restrictive and wrong interpretation, lack of directives from the Ministry of the Interior);
- lack of legal information and assistance to migrants;
- the need to seek protection from the courts for individual cases; and
- some restrictive interpretations by judges (overall Justice of Peace and Juvenile Court) despite reference to several European Court of Human Rights and national court decisions.

What usually works is advocacy on the part of local authorities and appeals to the judicial authorities. Sometimes when an appeal is lodged, Immigration offices will review their decision.

However, if the law was correctly interpreted and implemented, there the intervention of judicial authorities would not be needed.

Training community paralegals

An interesting example of how to overcome these barriers is given by the 2015 project “Out of Limbo”¹²⁰ which aimed to change the policies, regulations and practices that perpetuate the lack of a residence status by undocumented and stateless migrants of Roma origin in Italy.

119 Ministry of Interior – Asylum National Commission, Circular prot. 00003716 - 30.7.2015.

120 <http://www.asqi.it/progetti/out-of-limbo-english-version/>.

The approach was successful and would be applicable for other undocumented migrants/ communities not of Roma origin.

Specific outcomes of the project were to strengthen the legal competences and advocacy capacity of Roma and non-Roma practitioners working with Roma communities and their links with expert lawyers, so that they can play the role of “community-based paralegals”. The community-based paralegals went together with people seeking regularisation to expert lawyers, to look for the best strategy for regularisation, undertake the administrative procedures with the authorities, and support litigation if needed.

Tips and Learning

What worked?

Roma and non-Roma “community-based paralegals” working with Roma communities in different Italian cities were trained to have legal competencies and advocacy capacity, and linked with expert lawyers. They improved their knowledge about legal issues concerning statelessness, regular migration status, Italian citizenship and former Yugoslavian States’ citizenship, as well as advocacy methods.

There were a number of successful strategic litigation cases concerning Roma migrants’ access to a residence status (protection as stateless persons, acquisition of Italian citizenship, issue of a residence permit on humanitarian grounds).

A national conference successfully engaged some of the most significant policy targets.

Practices by local authorities in Rome, Milan and Naples became more favourable to the access of undocumented and stateless Roma persons to a residence status.

What didn’t work?

No improvements have been registered in the policies and practices by local police authorities. The Ministry of the Interior did not draft, as recommended by ASGI, a directive instructing local police authorities to issue a residence permit on “humanitarian grounds” to those that cannot be returned to their country of origin, according to the jurisprudence on the right to private and family life.

Luxembourg

By Laurence Hever

» ASTI Association de Soutien aux Travailleurs Immigrés



How can undocumented children regularise?

There is a permanent mechanism in the law to regularise school children and young people, and their parents, if they have resided for more than four years in Luxembourg. The modified law of 29 August 2008 on the free movement of people and immigration (as amended by the Law of 18 December 2015) provides that a residence permit will be granted on the following exceptional grounds:¹²¹

1. To the parent of:

- a minor child who lives with them in their household and has continuously been enrolled in a school in the Grand Duchy of Luxembourg for at least four years, and
- when the parent can justify that they can provide for themselves and the members of their family; or

2. To an undocumented child or young person who:

- has successfully completed at least four years of compulsory education (between 4 and 16 years age) in a school in the Grand Duchy of Luxembourg,
- applies before the age of twenty-one, and
- can justify having sufficient resources to support themselves.

The following conditions must be met:

- Their presence is not likely to constitute a danger to public order, public security or public health;

- No false or misleading information relating to their identity has been used;
- They have resided in the territory for at least four years preceding the submission of the application; and
- They can show a 'genuine desire' for integration, which can be proved by means such as certificates of language classes or integration classes; and have not "evaded" an expulsion measure.

It is therefore possible to be regularised as a child or young person until the age of 21, with or without parents, if the individual can meet these criteria.

A residence permit for a salaried worker or a permit for studies or vocational training will be issued, depending on the circumstances and provided that certain conditions are met.¹²²

How does it work?

The Ministry for Foreign Affairs states in its 2016 annual report that 122 people's statuses were regularized on the basis of Article 89, which came into force on 1 January 2016. At the same time, 72 people were notified of a refusal decision.¹²³ Most refusals are due to the criteria to not have "evaded" an expulsion measure. This applies to people who have had a planned expulsion that was not carried out, and includes situations where people were not aware that a deportation was planned for them as they were

121 Art. 89, law of 29 August 2008 as amended by the Law of 18 December 2015, available [here](#).

122 See conditions of Article 42 (1) (3) and (4) for work permit and of Article 79 for studies or vocational studies (law of 29 August 2008 as amended by the Law of 18 December 2015).

123 <https://gouvernement.lu/fr/publications/rapport-activite/minist-affaires-etrangeres-europeennes/2016-rapport-affaires-etrangeres-europeennes.html>

not in touch with the immigration authorities (for example, because they moved and did not receive the letter informing them). Just having an order to leave the territory is normally not sufficient reason to be disqualified from the regularisation.

A document which gives information on the steps to be taken to apply, the documents to be attached, etc. is available to download online¹²⁴, through organisations and at the Office of the Directorate of Immigration of the Ministry of Foreign and European Affairs. The biggest Luxembourgish information website, www.guichet.lu, also explains the mechanism and procedure.

The law on the legal profession also provides for the possibility for a free lawyer to be appointed to assist them in the proceedings.¹²⁵ Legal assistance may be granted to any foreign national whose resources are insufficient, for the procedures of access to the territory, residence, establishment and deportation of foreigners and for proceedings relating to applications for international protection within the limits of Article 17 of the Law of 18 December 2015 on international protection and temporary protection. The NGO ASTI also has an “Info-Migrant” helpdesk which helps people to prepare their case.

Focusing on education and adapting existing mechanisms

In 2013-2014 a working group was created with various organisations (ASTI, Caritas, Centre de Santé Mentale (Mental Health Center), Clae, Red Cross) in order to discuss a number of immigration-related topics. The psychological and school guidance service ‘SPOS’ (run by the Ministry of National Education), which is present in secondary schools, decided to join the working group in 2015.

One of the subjects discussed was the number of undocumented secondary school pupils who are at risk of forced return. At the time, the immigration law¹²⁶ provided that any person who could prove 8 years of irregular residence and work in Luxembourg could get a residence permit. A second paragraph stated that any young person, who had turned 18, could be granted a residence permit if they could prove 6 years of school education in Luxembourg.

However, in practice, since around 2014, the immigration authorities were no longer processing regularisation applications under the law (although the law stood).

Therefore, the working group focused on developing a proposal for a regularization mechanism.

On 18 December 2014, a meeting was held, on request of the organisations and the SPOS, with

124 Le Gouvernement du Grand-Duché de Luxembourg, “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, available [here](#).

125 Articles 37 et 37-1, Law of 10 August 1991 on the legal profession.

126 Article 89, law of 29 August 2008 on the free movement of people and immigration. This is the article that has been amended to include the current regularisation mechanism.

the Directorate of Immigration of the Ministry of Foreign Affairs. One of the points raised during this meeting was the deportation of 34 people, including 18 children, to Macedonia and Albania on 27 November 2014, following an enforcement action linked with a secondary school where five of the Albanian children were studying, the day before. One student was arrested near the school.¹²⁷

The organisations' strategy focused on education. The organisations and secondary schools asked that young people who had already four years in the Luxembourgish education system to be able to finish their studies. They emphasised, in particular, the situation of young applicants for international protection whose applications were refused, given that – due to prolonged asylum procedures – there were a significant number of children who had been studying for four years before their applications for international protection were refused. A regularisation mechanism for this group, and their parents, had also recently been agreed in Germany, and was to be implemented from the beginning of 2015 (see box 56), so the organisations presented those developments, as well as the ongoing legislative reform necessary as part of the transposition of the EU Asylum Package, as a key opportunity for Luxembourg to also take action.

They also underlined the need to provide a shorter pathway to residency than the 6-8 years required under the existing regularisation mechanism (see above).

Aside from this meeting, the organisations were

not involved in the drafting of the current regularisation provision, which was included in the wider legislative reform on international protection adopted on 18 December 2015, and replaces the previous regularisation mechanism.¹²⁸

Tips and Learning

A key element of the strategy was the comparison with the German proposal for a regularisation mechanism, because it was a clear and well-structured model, which Luxembourg could potentially copy in its entirety. The provision drafted by the government of Luxembourg was broader than the one adopted in Germany, and was strongly welcomed by the organisations involved, particularly as it replaced the previous mechanism, which was also not limited to former/ current applicants for international protection.

The stakeholders involved were the organisations working with migrants and asylum seekers: ASTI, Caritas, Centre de Santé Mentale (Medical Health Center), Clae, and Red Cross, as well as the SPOS of three secondary schools (Service de Psychologie et d'Orientation Scolaire: Psychological and school guidance service).

There was no public campaigning or debate around regularisation per se, but the sensitivity of public opinion and teachers to the risks and experiences of deportation of students having spent many school years in Luxembourg undoubtedly also influenced the decision to modify this article. There were

127 Media reports state she was arrested at the entrance to the school, while a press release from the Immigration authorities, states that in no case have either the immigration authorities or police proceeded with an arrest in or at the entrance of any school establishment. See Luxemburger Wort, 27 November 2014, available [here](#); L'essentiel, 27 November 2014, available [here](#); Luxemburger Wort, 4 December 2014, available [here](#).

128 The government's draft law on international protection and temporary protection (draft published 19 February 2015, law adopted 15 December 2015) amended the law of 29 August 2008 on the free movement of people and immigration. The current regularisation mechanism replaces the previous one (Article 89).

several articles in the media in November 2014 in particular, which emphasised the negative impact on children of the fear and threat of deportation, as well as the experience of having classmates deported.

There had already been for about five years a tacit agreement that school children would not be deported during the school year.

This is currently the only article in the amended law of 29 August 2008 on the free movement of persons and immigration that allows for regularization on the basis of clear criteria.

In Focus: Regularisation of school children and their parents in Germany

by Marie von Manteuffel

» *Katholisches Forum Leben in der Illegalität*

Since August 2015, the German immigration law¹²⁹ has included a mechanism for some school children and their parents who have had “Duldung” status, or who are still waiting for a final decision on their application for international protection, for more than four years, to get a residence permit.

The concept of “Duldung” is a peculiarity of German law¹³⁰ and means that deportation has been temporarily suspended. It does not mean that the person has a residence permit; they remain obliged to leave Germany. The person is known to the authorities and has been granted a postponement of their deportation for a certain period of time. The length of the period depends on the circumstances in the specific case.

A “Duldung” status is issued if the request for international protection was refused, but there are reasons why continued residence in Germany is necessary. The law states examples of such reasons as: a severe illness that either leads to an inability to travel or that cannot be treated in the country of origin, or the lack of a passport or substitute document. The “Duldung” can be withdrawn at any time if the reason for which it was granted ceases to apply.

For school children or young people to qualify for a residence permit, the applicant must meet the following conditions:

- They have been resident in Germany for four years without interruption, either with a “Duldung” status, with permission to remain pending a decision on their application for international protection, or with a temporary residence permit;
- They have achieved “successful attendance”, meaning with adequate grades, for four years in a German educational institution (compulsory education or equivalent), or they have acquired a recognized school or vocational qualification;
- They apply for the residence permit before the age of 21;
- Their future integration into German society seems likely (based on indicators such as well-advanced language skills in German and no criminal record, but not clearly defined);
- The suspension of deportation of the family is not due to doubts about the identity or nationality of the young person or their parent(s), or information that has been provided.

129 Article 25a of the German immigration law (Aufenthaltsgesetz).

130 Article 60a of the German immigration law (Aufenthaltsgesetz).

For their parents to also be regularised, there are additional criteria that must be met: the suspension of deportation must not be due to obstacles to departure that the authorities consider the family could have reasonably overcome; and they must have gainful employment.¹³¹

If the conditions are met, the child or young person and their parent(s) may be granted a temporary permit. The duration is not fixed, but should at least enable the child to finish their schooling.

The conditions in the German mechanism correspond to a large extent to those in Luxembourg. However, in Germany, the applicants already need to have gained a minimum “status” (either have had “Duldung” status or still be in their asylum procedure for four years). This reduces the scope of applicability of the mechanism to young migrants and their parents.

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131 This refers to a minimum income requirement, depending on the size of the family, so as to not require social welfare assistance.

The Netherlands

By Jantine Walst » Defence for Children the Netherlands



How can undocumented children regularise?

As of 1 May 2013, there has been a permanent mechanism in the Netherlands called The Children's Pardon (*kinderpardon*), which regularises children considered "rooted" in the Netherlands, under the following conditions:¹³²

- Have applied for asylum at least 5 years before turning 18 and have resided in the Netherlands at least 5 years after this asylum application;
- Have not been out of contact with the Immigration and Naturalisation Service (IND), the Reception Agency for Asylum seekers (COA), the Repatriation and Return Service (DT&V), and in case of unaccompanied minors, Nidos (the guardianship authority for unaccompanied minors) for more than three months;
- Must actively "cooperate" with their departure;
- Are not older than 19 when apply.

The child's immediate family i.e. their parents and siblings, are also regularised at the same time, if they are still part of the family. This means there should be current "family ties"; for example, if a child applies for a permit and his sister is already 18 and lives together with her boyfriend in another house, then they are not considered to have current family ties any longer. The sister will not be granted a permit, although her younger brother and parents would be.

There are also contra-indications. If one of the parents is, for example, considered to be a threat to public security then the child will not be granted a

permit. Furthermore, if the child or other members of the family cannot prove their identity, then a residence permit will not be granted. All members of the family should have actively cooperated with their departure.

How does it work?

Prior to the permanent mechanism, the "children's pardon" was a temporary procedure, from 1 February 2013 – 1 May 2013. When the mechanism was made permanent on 1 May 2013, it became much more difficult to access than the temporary procedure was, following the introduction of new criteria - especially that the family should have actively cooperated with their departure.

The total number of applications for the permanent mechanism in 2016 was 270. The rejection rate was 96-99%; in 2016, only 1 residence permit was granted under the mechanism.

Most of the applications are denied because they do not meet the "cooperation" criterion – that the child (and their family) needs to actively cooperate with their departure, in order to qualify for a residence permit. However, it is unclear how this criterion can be fulfilled, particularly when – by definition – children and families are in a procedure to get a residence permit. The immigration services do not provide details regarding their decisions, so it is not possible to know why some are successful and others not. In practice, this "cooperation" criterion makes the children's pardon similar to the mechanism

132 Besluit van de Staatssecretaris van Veiligheid en Justitie van 30 januari 2013, nummer WBV 2013/1, houdende wijziging van de Vreemdelingen-circulaire 2000, available [here](#).

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under which a permit can be granted to a person who has proven that they cannot leave the Netherlands despite their willingness to, through no fault of their own.¹³³

If a child does not apply for or qualify for the children's pardon, they can also apply for a residence permit under Article 8 of the European Convention on Human Rights, the right to private and family life. Many children do apply on these grounds, but few are successful.

Public campaigning and advocacy with children

The children's pardon was introduced by the government as a response to many years of public campaigning and advocacy for recognition of the rights and regularisation of children who resided in the Netherlands for 5 years or longer ("rooted" children). Public campaigns with children telling their stories and community organising have been key. Defence for Children International- the Netherlands (DCI-NL) has led this work. The campaigning has gone through five main stages:

1. Wij willen blijven (We want to stay)

An initial youth group supported by Defence for Children International- the Netherlands called "Wij Willen Blijven" ("We want to stay") was set up in 2006. The group united approximately 2,100 children, and took a test case¹³⁴ complaint against the government, arguing that children's development is damaged by long periods of insecurity over their future. The judge rejected the complaint in 2007¹³⁵. Defence for Children and "Wij Willen Blijven" appealed against this judgment¹³⁶. This appeal was rejected.

Also in 2006, research at the University of Groningen concluded that children's well-being can be seriously damaged if they are deported after having lived for five years in a country.¹³⁷

2. The General Pardon & the case of Hevien

Despite the negative judgement, the children of "Wij willen blijven" were one of the deciding forces behind the "General Pardon" in 2007, a temporary regularisation scheme for asylum seekers and their families who had resided in the Netherlands for more than six years and met certain other criteria, including uninterrupted residence in the Netherlands for that period.

In 2009, a campaign focused on a girl, Hevien, who was excluded from the General Pardon because her family crossed the border to Germany when they were evicted from accommodation for asylum-seek-

133 Paragraph B8/4 of the Vreemdelingencirculaire (B) 2000, available [here](#).

134 Available [here](#).

135 Rechtbank 's-Gravenhage 11 July 2007, 269728 – HA ZA 06-2426, ECLI:NL:RBSGR:2007:BB3303, available [here](#).

136 Rechtbank 's-Gravenhage 16 February 2009, 105.007.138/01 (C07/01273), pleitnotitie, available [here](#).

137 Kalverboer & Zijlstra, *De schade die kinderen oplopen als zij na langdurig verblijf in Nederland gedwongen worden uitgezet*, April 2006, University of Groningen, available [here](#).

ers.¹³⁸ The case received a lot of visibility through support from her school and her headteacher, who organised a tour around the country in an auto rickshaw (*tuk tuk*) and demonstration in The Hague to raise awareness.¹³⁹ Hevien was granted a residence permit, but there was still no solution for other children who were excluded from the General Pardon.

3. Wij blijven (We're staying)

Therefore, in 2011, a new campaign called “*Wij blijven*” (“We’re staying”) was launched. This resulted in The Hague submitting a motion calling for residence permits to be granted to “rooted” children.

4. The temporary Children’s Pardon

The temporary children’s pardon entered into force on 1 February 2013 (and ran until 1 May 2013). A new campaign called ‘a fair children’s pardon’ was launched in 2014, focusing on the criteria of the temporary procedure.

Many children were excluded from the temporary scheme because they had not always been in contact with the Immigration and Naturalisation Service (IND), the Reception Agency for Asylum seekers (COA), the Repatriation and Return Service (DT&V), and in case of unaccompanied minors, Nidos (the guardianship authority for unaccompanied minors).

Many mayors supported the campaign. Despite the fact that these children had not always been under the State’s surveillance, they were known in their municipalities (schools etc.). Also, many children had been made homeless by the State, as they no longer had a right to reside in reception facilities after their asylum procedure ended; many children

and families found shelter in the municipalities. Therefore, the mayors considered it to be unfair to exclude them from regularisation.

In the 2012 elections, many political parties made statements about a regularisation for children in their programmes. When the PvdA (socialist party) became part of the government, they pushed for it to become a reality. In 2012, a proposal for the “The Children’s Pardon (*kinderpardon*)” was tabled and adopted in January 2013. This was translated first into a temporary programme that ran from 1 February 2013 to 1 May 2013. The criteria were less restrictive than the current permanent mechanism. As currently, children had to have lived in the Netherlands continuously for more than five years before turning 18, have previously claimed asylum, and not have left the central government’s supervision for more than three months. They had to be under the age of 21 at the time of the agreement (compared to 19, in the permanent mechanism). In total, 3,280 requests under the temporary procedure were lodged, 1,540 persons were regularised (children and family members), 1,630 applications were rejected and 120 applications were withdrawn.¹⁴⁰ Hundreds of children were rejected or did not apply as they did not meet the requirements, which were already quite limited.

5. Ik blijf hier (I will stay here)

Defence for Children - the Netherlands (DCI-NL) has launched a campaign “*Ik blijf hier*” (“I will stay here”) and petition calling for a law establishing the right to a residence permit for all children that have been residing in the Netherlands for more than five years after they applied for a residence permit.

138 Note, since 2011, families whose applications are refused cannot be evicted from reception centres all together; after their procedure ends, they are placed in so called ‘family locations’ pending return or deportation.

139 More information available [here](#).

140 Parliamentary Papers (Kamerstukken II) 2015/16, 19637, nr. 2190, p.2, available [here](#).

Children's voices are central, through petitions, blogs and stories. About 200 children are currently registered with the campaign. Defence for Children makes their stories known to the public and puts their situation on the government's agenda. This campaign for a broader and more accessible regularisation for children is supported by a broad range of civil society. For more information and to get involved see DCI-NL's website.¹⁴¹

Tips and learning

- **Local level mobilisation and voices are key.** Showing the faces and stories of the affected children to the public has been critical to getting communities to mobilise and increasing support among the public and politicians. A major challenge is to keep up pressure after 10 years, as people become tired of the issue. Focusing on the people with links to the children, for example through petitions, and having schools and mayors to speak out, can create strong local networks. However, not all children have such networks as they have moved frequently.
- **The media can be helpful in certain cases.** The campaigns have normally been launched through a national news programme. Media campaigns have been launched around individual cases of children and families that have exhausted their appeal rights and are about to be deported. Much care has to be taken in the selection of cases to publicise: to ensure that the child and family can handle the attention, and that the case is very strong, so will advance the cause. Also, it is important that the spokesperson in the media knows all the legal details of the case: you should know what you are talking about.
- **A combination of structural change and individual case work.** The current campaign mobilises a group of children and their communities around a broader regularisation to be formalised in law. At the same time, it is important to support individual children and families to regularise, even if through discretionary decisions.
- **Children want to tell a positive story.** It is important for many of the children to get involved in youth groups and campaigning. They want to do something about their situation, and tell a positive story – they do not want to be pitied, but recognised for who they are and their potential. It is important to empower them, e.g. through media training, to tell their stories.

141 Information about the "Ik blijf hier" campaign available [here](#); videos about the "Ik blijf hier" campaign available [here](#); poster of the "Ik blijf hier" campaign available [here](#).

Norway

By Maria Wasvik » Antirasistisk Senter based on background information from the Norwegian Organisation for Asylum Seekers

How can undocumented children regularise?

There is a regularisation mechanism in Norwegian immigration law for “long-staying children”, undocumented children who have resided for more than 4 ½ years and who have attended one year of school in Norway.

There is also a “one-time-solution”, a short-term regularisation program for children of asylum seekers (either still in the system or refused), who by 30 September 2013 had resided for more than 3 years in Norway, and fulfilled certain criteria.

Long-staying children – ordinary rules

The ordinary rules for long-staying children were changed as of 28 February 2014, when a new regulation was added to Section 38 of the Immigration Act, ‘Residence permit on the grounds of strong humanitarian considerations or a particular connection with Norway’. The amended rules gave more concrete examples than in the previous version, regarding which immigration management concerns should be emphasized (e.g. concerns around the veracity of information provided regarding identity), and which are less important. The best interests of the child were listed as an important concern, in general terms, when considering cases of families with children, but no indication was given regarding how the various concerns should be weighed against each other.

On 5 December 2014, the regulations were further amended to specify 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, e.g. the parents collaborating on verifying their identity.

The current law reads:

“In assessing strong human considerations pursuant to section 38 of the Act, children’s attachment to Norway shall be given special emphasis. The length of the child’s stay in Norway, in relation to the child’s age, should be a fundamental consideration.”¹⁴²

How does it work?

The child or family has to make an application to the Immigration Appeals Board (UNE) for a residence permit under Section 38, making the case regarding the child’s attachment to Norway. In most cases, this takes the form of an appeal against an order to leave the territory. The child has a right to participate in the proceedings and be heard by the authorities before the decision is made.

The practice of the immigration authorities is that children who have lived in Norway for more than 4 ½ years and gone to school for at least one year, are able to get a permission to stay on the grounds of being “long-staying children”. The immigration authorities are obliged to formally include in the

142 Act of 15 May 2008 (as amended) on the entry of foreign nationals into The Kingdom of Norway and their stay in the realm (Immigration Act) Section 38 Residence permit on the grounds of strong humanitarian considerations or a particular connection with Norway, Ch. 8 §8-5 IRL, available [here](#) and [here](#).

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decision an explanation on how the different elements in the case, including the best interests of the child, were weighed against each other.

The permission that is granted under the Immigration Act §38, due to strong human considerations, is a permission with less rights than those provided to people granted refugee status, for example.

In many cases a period of residence longer than 4½ years is required because of immigration management concerns, for example, if the family was considered as not having cooperated on clarifying their identity or having actively avoided return. Reasons why a family might be considered as not cooperating vary significantly (for example, ranging from not being truthful about their identity, to not providing identity documents even if they had tried to obtain them). If granted a permission, their parents and siblings will also get one.

It is only in very special cases, for example when there are very serious health conditions, that permissions may be granted to children who have been in Norway for less than 4 ½ years, and are not of school age.

One of the most fundamental barriers is the fact that these families are not provided with any legal aid. This was equally the case for the families who received negative decisions and were deported before having a chance to appeal after the rules were changed.

The Norwegian Organisation for Asylum Seekers (NOAS) has supported many children and families to appeal negative decisions after the change in regulations in 2014. Despite the weight to be given to the child's best interests, they have found that in many cases the child's best interests are still not properly safeguarded:

1. Children are not heard. NOAS found that in only 9 out of 104 cases did the children get a chance to explain themselves directly to the decision makers, even though they have a right to be heard, and their explanation is crucial for the assessment of the case.
2. The immigration appeals board (UNE) imposes more stringent requirements for children to be considered sufficiently affiliated with Norway than what is actually provided by the regulations.
3. UNE exaggerates the importance and weight due to immigration management concerns, and puts less weight on the conditions that would imply permission to reside, the best interests of the child.¹⁴³

Long-staying children of asylum seekers – “one-time solution”

The regulation¹⁴⁴ came about in 2014 and grants temporary residence permits to asylum-seeking children whose applications for asylum were lodged more than three years prior to 30 September 2013,

143 NOAS, “Utlendingsnemndas praksis overfor lengeværende barn”, 2016, available [here](#).

144 G-03/2014 Entry into force of new sections 8-13 of the Immigration Regulations - one-time solution for long-term children, available [here](#).

providing they also fulfil the following conditions:

- Their parents must cooperate in documenting their identity,
- They must originate from a country with which Norway has a readmission agreement, and
- Their asylum application must have been registered before the readmission agreement took effect.

Close family members of the child (parents and siblings), can also be regularized under this scheme.

How does it work?

The families have to lodge an appeal/ application with the Immigration Appeals Board (UNE) to apply for a permit under the scheme. No legal aid is provided.¹⁴⁵

Norway has effective readmission agreements with 28 countries. After the “one-time solution” was agreed, the Norwegian immigration authorities said publicly that the conditions relating to readmission agreements alone would limit the number of children who could benefit from it from 752 to 170. The majority of children are thus excluded from regularization simply on account of their country of origin, a distinction that is arbitrary and does not address the actual situation.

For example, since the readmission agreement between Norway and Ethiopia dates from 2012, Ethiopian families with children that fulfil the other criteria could get a residence permit, but since the agreement with Afghanistan is from 2005, only children who came as early as 2005 or before could benefit. Since there is no agreement with Iran, Iranian children were excluded from the arrangement, regardless of how long they have resided in Norway.

Whether or not the parent(s) had to show identity documents in order to meet the requirement that they have cooperated in proving their identity, or could show that they had tried to obtain the necessary documents, was also an issue. In some cases, it depended on whether the Immigration Appeals Board (UNE) believed the parents were credible and had made an effort.

During the same year, 2014, the government deported around three times as many children as the year before. Because the deportations of children and their families who had lived in Norway for a long time were not formally put on hold, at least 58 of the children deported actually qualified for the “one-time solution”.

Civil society, including NOAS and the Antirasistisk Senter, advocated for the children who had been deported to be brought back to have their cases reopened.

How many have benefitted from both the ordinary rules and the “one-time solution”?

Data on the number of children who have benefitted from these regularisation avenues is not publicly available. According to the Immigration Appeals Board (UNE, on request), as of August 2017, 350 children had benefitted from the change in the ordinary rules for “long-staying children”.

Data on the number of children who have benefitted from the “one-time solution” is not available.

We also know that at least 267 children have received a permission to stay after getting legal aid from NOAS and a group of volunteers,¹⁴⁶ either

145 Under the normal asylum procedure, the applicant is given 5 hours of legal aid to appeal a negative decision to UNE, the appeals board. After this, there is no legal aid, if you want to apply to be part of the one-time solution, or if you want to appeal your case again.

146 NOAS' legal aid assistance group (2017): <https://www.facebook.com/rettshjelpsdugnad/>

through the ordinary rules or the “one-time solution”.

Cross-party political negotiations and portable justice

Child health-care professionals had expressed their grave concerns about the situation and health of migrant and asylum-seeking children having resided for several years in Norway for a long time. In the 2010 report of the Committee on the Rights of the Child, this was a point of concern. The Committee urged Norway to ensure that the best interests of the child, and children’s attachment to Norway, was a primary consideration when assessing asylum cases involving children.

In spring 2012, the previous Norwegian government presented a white paper entitled “Children on the run” noting the particularly vulnerable situation of children in migration. However, the white paper did not include any concrete proposals for law or policy reform concerning the assessment of asylum cases involving children.

Regularisation of long-staying children was important to political negotiations between the government and their supporting parties in 2014. The supporting parties (that were not formally part of government, but necessary for the government to reach a majority) had fought for these children’s rights during the election campaign, while the two parties in government had a more anti-immigration stance. The “one-time solution” was therefore one of the issues used in political bargaining. Given the political context and restrictions in the way the regularisation was implemented, it is not clear whether the government necessarily intended to enable many children to be regularized.

In 2015, the Minister of Justice at the time, Anders Anundsen (the Progress Party), received a formal notification of discontent from the parliament. He almost lost his position after it was discovered that the government had not only failed to inform the police not to deport the long-staying children, but also made the target figure for deportations even higher than the years before.

After a period of political turmoil, the government made it possible for the children and their families who had already been deported to apply to be a part of the “one-time solution” from their country of origin, for a limited amount of time, but without giving them any support, including legal assistance.

NOAS launched legal aid campaign to get funding to provide legal assistance to families applying for regularisation under both the “one-time solution” and under the “ordinary rules”. The campaign is ongoing.¹⁴⁷

A number of families with children who have lived in Norway for more than 5 years still have not been able to regularize their status.

147 <https://www.facebook.com/rettshjelpsdugnad/>

Learning – tips and risks

Several different conditions were crucial for the outcome:

The political situation. In 2013, Norway had a change of government, from a left-centre constellation to a right-wing government, with support from two parties from the political centre. As described above, the negotiations between the governing and the supporting parties were key to the regularisations being adopted. Also, the reckless behaviour of the Minister of Justice, not respecting the deals made with the supporting parties, pushed for a more progressive solution than might otherwise have been achieved.

This political situation arose from eight years of a left-centre government which seemed unwilling to improve the situation for a growing number of children who had spent many years in Norway in a legal limbo. During these years (from around 2008), asylum policies gradually became increasingly important in the public debate, and the Labour party in particular, who were in government, were reluctant to regularise these children's situation. The white paper on "Children on the run" gives indication of this context, as it only superficially addressed the issue without proposing any necessary reforms.

Broad range of actors working together. In addition, it was essential that all parts of civil society were involved in pressuring political parties across the political spectrum to find a solution for these children. This included professionals, human rights activists, lawyers, teachers and friends of the children at risk of deportation, and even some (anonymous) case workers from the immigration authorities. This meant that the issue was reviewed from many different angles, and many different voices were heard in the public debate.

On the right: Drawing by a boy who took part in children's activities of the group Samos Volunteers at the hotspot on the Greek island Samos.

When I grow up I
want to be a...

doctor



name: TABARK

How can undocumented children regularise?

Children of parent(s) in irregular situation

It is not possible for children of parents in an irregular situation to regularise their status, but it is often possible for a parent to obtain a residence status through the “social rooting” procedure (*arraigo social*)¹⁴⁸, and then regularise their child through the procedure of family reunification (below).

The “social rooting” procedure requires proof of residence in the country for at least 3 years (regardless of status), and a job offer of at least 1 year with a “minimum income” (€756,70 per month in Spain 2018), together with other general requirements¹⁴⁹. This procedure is open to people whose applications for international protection have been refused, under the same conditions. This scheme provides a one-year residence and work permit, which can be renewed if the person has made at least 6 months of social security contributions, and as one or several employers.

Reunification of children can then be applied for together with the renewal of their parent’s permit.

It is also possible for some undocumented women who experience gender-based violence to get a residence and work permit,¹⁵⁰ which will also authorise their child(ren) to reside, or reside and work if children are over 16 years old.

Children of parent(s) in a regular situation (third-country nationals)

Children will be documented - included as a dependent on their parent’s residence and work permit - as long as their parents have a sufficient income, according to the established parameters¹⁵¹. The procedure is similar whether the child is in Spain, or is in their country of origin, as long as their parent(s) request family reunification and hold either a renewed permit (reunification is not possible with the first one-year permit) or a long-term permit. If the child is already living in Spain, parents must prove they have been residing for at least 2 years and regularly attending school.¹⁵²

Children can also be documented this way if they are under the legal guardianship of a Spanish national or a migrant in a regular situation. If under parental authority of a person with Spanish nationality, children can also opt for Spanish nationality. This option is valid until they are 20.¹⁵³

148 Article 124.2. RD 557/2011, available [here](#). It is also possible for parents to regularise through the “labour rooting” procedure (*arraigo laboral*) but the criteria are difficult to meet in practice.

149 Lack of criminal record for the past 5 years and a positive integration report from a local authority. Also, it is possible to present 2 consecutive contracts of 6 months each in the case of agricultural activities, and several 1-year contracts which sum up to at least 30 hours per week, for several employers in the same activity.

150 To get the residence and work permit (valid for five years), there needs to be a final decision from the Public Prosecution Service in the woman’s favour. Articles 131-134 RD 557/2011. See also PICUM, *Guide to the EU Victims’ Directive*, 2015, available [here](#).

151 Article 54 Rules of procedure of Immigration law: Royal Decree 557/2011, available [here](#).

152 Schooling is permitted for undocumented children in Spain. For more information see PICUM, *Building strategies to improve the protection of children in an irregular migration situation in Europe. Country Brief: Spain*, 2012.

153 Articles 17 - 22, Spanish Civil Code RD 24 de julio de 1889 (last revised 29/06/2017), available [here](#).

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Spanish children with parent(s) in irregular situation.

Parents of children with Spanish nationality in irregular situation¹⁵⁴ can be granted a residence permit through the “family rooting” (*arraigo familiar*) procedure. In such cases, parent(s) must prove that they fulfil their obligations towards their children, whether they live with them or not. This scheme provides a one-year residence and work permit.

In order for the permit to be renewed, the parent needs to be actively working or have made at least 6 months of social security payments during the validity of the card. Otherwise, renewal is not permitted, and regularisation under this scheme is usually only granted once (with the same conditions and family situation).

Unaccompanied migrant children

Unaccompanied children are under the custody of the Spanish administration. They are provided a residence permit following an assessment of whether the child would be able, and if it would be in their best interests, to return to their family in their country of origin.¹⁵⁵ This includes hearing the children’s views. The administration should document children that have not been repatriated as soon as it is known that they will not be repatriated, and in any case no later than nine months after the time they were put under guardianship of

State. This requirement is not always met, and many children leave the care system at 18 without having been documented. The permit granted is valid until age 18.

Spanish law¹⁵⁶ states that children who have been under the guardianship of the Spanish administration for more than 2 years are entitled to Spanish nationality. In order to do so they must be documented until the time they can apply for it. If they are under 14 years old, the authorities should assist them in making a nationality application, and should accompany them in the process if they are under 18. This is usually not done and children only opt for nationality when they renew their residence permit at age 18.

How can undocumented young people regularise?

Young people with permits dependent on their parent(s) in a regular situation

The renewal of their residence permit will continue if their parents’ permit is also renewed (the one that gave them a right of residence) and they continue to be economically dependent on them.¹⁵⁷ They can work with this permit.

154 Or parents who previously held Spanish nationality by origin, but have lost it.

155 The child will be repatriated to their family in their country of origin, if the assessment finds it in best interest of the child. The assessment includes consideration of whether or not it is possible to contact the family in the country of origin, the family will provide for their living, and it is possible to get their documents. However, in many cases the family is not contacted and documents are missing.

156 Article 20, Spanish Civil Code.

157 Article 59, RD 557/2011. For renewal they must prove they are studying or they live under economic responsibility of their parents.

Young people can also obtain an independent residence and work authorization after 18 years old if they have an offer of employment for at least one year with a salary of at least the “minimum income” (€756,70 per month in Spain 2018).

Young people under the custody of the public administration turning 18

They may renew their residence authorization if they fulfil the following conditions¹⁵⁸:

- Having their own resources, accounting for more than €537,84 per month (public indicator reference established yearly). This can consist of social benefits received from social services, but they don't usually reach this amount. They can also present evidence that a social entity will take care of the young person's needs. What is evidence is required varies locally; in some place a declaration is sufficient, while in others further evidence of financial support must be provided.
- There is a positive report from a local authority.
- Particular consideration will be given to the degree of insertion of the applicant into Spanish society, which will be determined after the assessment of the following aspects:

- A) Respect for the internal rules in the accommodation centers or guardian entity.
- B) The degree of knowledge of the official languages of the Spanish State.
- C) The existence of family ties within the Spanish territory, with Spanish citizens, or regularly resident foreigners.
- D) The time that they have been subject to foster care, custody or de facto guardianship by a Spanish citizen or institution.
- E) Continuity in studies.

F) The existence of an offer or contract of employment.

G) Prior participation in training courses.

Once they reach 18 they can also change their permit to a residence and work permit, if they meet the conditions, as stated above (job offer for at least one year and with minimum salary).

How does it work?

In the case of unaccompanied children, the greatest obstacles regarding documentation are the criteria needed to retain status when leaving care at age 18. In particular, it is difficult to show sufficient resources to renew their residence permit, or to get an offer of employment of at least one year with the minimum salary, in order to change to a residence and work permit. Also, if renewing their residence permit, and not authorised to work, their entitlements to some public health services are restricted by law.¹⁵⁹

Most young adults are not given the opportunity to access Spanish nationality before they lose their status, and so are forced into a vulnerable situation, despite having been under the care and parental authority of the state for four years or longer.

Accompanied children can easily get and remain documented as long as their parents are able to renew their documents, and many undocumented parents are able to regularise and retain their status through the existing mechanisms. In 2016, over 30,000 permits were granted under the “rooting” procedures. The data does not differentiate between the different regularisation schemes (“social root-

158 Articles 197 – 198, RD 557/2011.

159 RD 16/2012. In practice, most services are provided, despite the restrictions in the national law. For more information see European Network to Reduce Vulnerabilities in Health, Legal report on access to healthcare in 17 countries, 15 November 2016, available [here](#).

ing” (*arraigo social*), “family rooting” (*arraigo familiar*) or “labour rooting” (*arraigo laboral*). In the same year, 40,000 family reunification permits were issued.

However, children are at risk of becoming undocumented if their parents cannot meet the requirements to renew permits, and remain undocumented while their parents look for work and have first permits. They equally face difficulties in getting an appropriate job offer to apply for an independent residence and work permit after 18. If they have Spanish nationality, this can also be the basis to regularise their parents in some circumstances.

Litigation and advocacy for legislative reform in 2011

A number of the above provisions were introduced or changed through a reform of the legislation¹⁶⁰ in 2011, after two years of negotiations.

Summary of the changes introduced in the reform:

1. The possibility of regularising undocumented parents of children who are Spanish, as a result of the case law of the Court of Justice of the European Union (*Ruiz Zambrano v ONEm* – see box on page 82), although this is done under the immigration law, and not citizenship or freedom of movement of family members of EU nationals.
2. The possibility for unaccompanied children to maintain their authorization of residence once they reach 18.

3. The establishment of the obligation to grant a permit to unaccompanied children under the custody of the state from the moment it is established that they will not be repatriated. Previously, the permit had to be granted no longer than nine months after the decision not to repatriate. The reform stated this has to be done as soon as possible knowing that repatriation will not be possible, and in any case in a maximum of 9 months since the child was under custody of state.¹⁶¹
4. Introduction of a judicial protection mechanism against the repatriation of unaccompanied children. Until the reform of the legislation completed with the regulation (RD 557/2011), the autonomous communities, who are the ones who hold the guardianship of unaccompanied children, could repatriate them without hearing the opinion of the child. The reform introduced the obligation to listen to the child’s views.

What worked and what didn’t

During the negotiations for the legislative reform, litigation around the right to be heard for unaccompanied children played a key role. Lawyers began to appeal decisions to repatriate children that had been taken by competent authorities (the autonomous communities) without hearing the child’s views. The courts suspended them, in order to listen to the child’s reasons for wanting to return to their country of origin or not. Subsequently, when the Foreigners’ Act was being reformed (2009-2011), the text established an obligation for unaccompanied children to be heard systematically, before deciding on their repatriation.

¹⁶⁰ RD 557/2011.

¹⁶¹ Article 196.1 RD 557/2011.

Civil society also put forward specific proposals during the design of the law in the parliament, such as the provisions introducing ways to allow unaccompanied children to keep their documentation once they have acquired the age of majority.

Advocacy messages centred mainly on highlighting that:

- Children should be seen as children, and not as foreigners.
- Undocumented children were being repatriated to their countries of origin without their due protection, nor their consent, and emphasising their right to be heard. In many cases it was done without providing them with prior information.
- The status and rights of the child should prevail over immigration status and children should therefore be protected by the Spanish administration on an equal footing with children of Spanish nationality.

The legislative reform did not include all the proposals put forward by civil society, but it did improve some aspects of the previous legislation, in a step towards necessary further reforms.

Key recommendations that were not - and still remain to be - addressed, concern several problems with age assessment and determination:

- Use of x-ray scans of wrist bones and treatment as adults for children who arrive without documentation, or who are documented by their embassies as children, but the documents are not seen as credible.
- Lack of possibilities to challenge/ appeal a prosecutorial decision decreeing the age of the child as an adult.

It is frequent to find children who are registered and treated as older than their age according to their passport.



© Carla Reyes. Activist Kwanza Musi dos Santos from youth organisation "QuestaèRoma" (Italy) delivering a session at PICUM migrant youth exchange September 2017, Paris.

How can undocumented children and young people regularise their status?

There are various routes to securing leave to remain (residence status) in the UK available to children and families with irregular status under the British Nationality Act 1981 (BNA), statutes relating to immigration and asylum law¹⁶², and the Immigration Rules¹⁶³ (statements of policy).

The routes to regular status include:

Leave to remain/ Temporary Regularisation under the Immigration Rules:

- Regularisation based on long residence in the UK, and linked to the right to private and family life (Article 8 of the European Convention on Human Rights and Human Rights Act).¹⁶⁴
 - Successful applications under the Immigration Rules will generally result in someone being granted a temporary, renewable residence permit for 2 ½ years. There is a discretion to grant longer periods for children, or in other exceptional circumstances. An application under the Immigration Rules costs £993 and an applicant must pay the immigration health surcharge of £200 per year up front.
- **Seven-year rule for children*** – where a child under 18 has lived in the UK for at least seven years continuously, and it would not be reasonable to remove them. Reasonableness is an assessment of all of the child's circumstances, including their links to their country of origin and to the UK, their family, friends and education as well as any other exceptional circumstances.
 - **Leave to remain as a young person*** – where a young person is aged 18-25 and has spent at least half their life in the UK.
 - **Long residence (for adults)*** – if a person has lived in the UK for 20 years continuously.
 - **Other** – a person may also be eligible for regularisation on the basis of facing very serious obstacles to reintegration in their country of origin.
- All applicants for this form of regularisation must also meet certain suitability criteria. The criteria have a hierarchy of seriousness. In some cases, an application must be refused¹⁶⁵, for example if someone is subject to a deportation order, has committed a criminal offence that has resulted in a custodial sentence of at least 12 months, or is excluded from the Refugee Convention under Article 1F.¹⁶⁶ Other applications will usually be refused if someone has given false

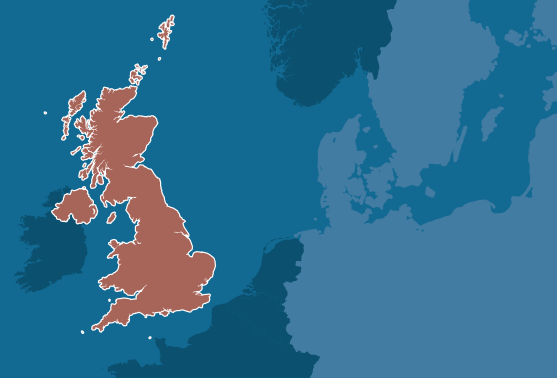
162 See for example the Immigration Act 1971, Immigration and Asylum Act 1999, Nationality, Immigration and Asylum Act 2002, Immigration, Asylum and Nationality Act 2006, Borders, Citizenship and Immigration Act 2009, Immigration Act 2014 and Immigration Act 2016.

163 Immigration Rules are available at <https://www.gov.uk/guidance/immigration-rules>

164 The Human Rights Act 1998 transposes the European Convention on Human Rights into domestic law.

165 Immigration Rules, Appendix FM Section S-LTR.

166 Those who have committed war crimes, crimes against humanity, terrorist acts or other serious criminal offences.



information on their application to the Home Office, for example. An application from someone who owes money to the Home Office as a result of litigation, has ever given false or misleading information to the Home Office or has a health service debt of over £500 can also be refused.

*In these cases, a person will usually only be eligible for indefinite leave to remain (permanent residence status) after completing a **further ten years of regular residence**, provided they continue to meet the suitability criteria.

Leave outside the Immigration Rules:

- Leave may be granted by the Home Office under their discretion. This will mainly be in cases where there is no specific protection concern but there are, for example, particularly compelling circumstances or under an immigration policy concession¹⁶⁷.
- **EU law and derived rights**
 - Rights derived through the UK's membership of the European Union can mean that parents and siblings of an EU citizen (including a British citizen) child, may be granted a temporary status in the UK (see box on page 82). This does not lead to a permanent status. Following the UK vote to leave the EU, the rights for these families to remain in the UK under any settlement agreement remains uncertain.

How can undocumented children access citizenship?

- **Obtaining British Citizenship under BNA Section 1(4)** - an adult or child born in the UK on or after 1st January 1983, who lives there for the first ten years of life, has the right to register as a British citizen, provided they have not been absent from the UK for more than 90 days each year in those years. There is a discretion to allow longer absences¹⁶⁸. The applicant must also be of "good character". A child is not required to have regular status before applying for British citizenship. The right to register under section 1(4) does not expire when a child becomes an adult.
- **Citizenship through a parent whilst still a child** – under Section 1(3)(a) of the BNA a child born in the UK may apply to become a British citizen if their mother or father becomes a British citizen or "settled" (i.e. has indefinite leave to remain/ a permanent residence status) in the UK before their eighteenth birthday.
- **Discretionary registration of a migrant child** – under Section 3 of the BNA the Secretary of State for the Home Department (SSHD) has discretion to register any foreign child as a British citizen, if it is clear that the child's future lies in the UK. The discretion expires when a child turns 18.

167 For example, there is a concession for children who are looked after by social services and whose future is in the UK. They should be granted 4 years temporary leave and then given permanent settlement.

168 British Nationality Act 1981 s1(7).

How does it work?

Data on children granted status/ refused

Although official statistics providing exact numbers are not available, we know that there are thousands of children and young people in the UK with irregular immigration status, and more who have regularised their status but have only temporary residence status. In 2012, it was estimated that there were 120,000 undocumented¹⁶⁹ children in the UK, 65,000 of whom were born there.¹⁷⁰ According to a study carried out by the London School of Economics, two thirds of undocumented migrants have been in the UK for over five years.¹⁷¹ Data collection by local and central government on migrant children and young people who are *not* claiming asylum is extremely limited.

What data there is suggests a large gap between the estimated number of undocumented children in the UK and the numbers who are able to regularise their status. For example, data from Freedom of Information Requests shows that there have been 1,560 permits granted to children on the basis of the *seven-year rule for children* between 2012 (when this leave was introduced) and 2015, and 1,785 grants to those aged 18 to 24 under *Leave to remain as a young person* (half-life) rule. 6,160 children and young people have registered as British between 2012 and 2015 under *BNA section 1(4)*.

Across the whole immigration system, there were only 15,713 grants of Indefinite Leave to Remain (ILR) to children in 2015. This figure includes children granted settlement together with their parents under the immigration system for workers, students, etc., so undocumented migrants would form a very small percentage of this.

Barriers to regularisation

Many children, young people and families demonstrate confusion over their residence status in the UK. Many will have made an application to the Home Office, but will be unclear as to the exact content of that application, or their rights to appeal refusals. Others are unsure as to their possible options or may be reluctant to address their immigration status for fear of putting themselves on the government's 'radar'. Some may only engage with the issues of their immigration status when forced to by another 'crisis point' in their lives, such as separation from family or losing their housing.

The undocumented migrants that are eligible to regularise their status under the rules struggle to do so because of:

- Complex procedures
- Evidential requirements - for example the requirement to evidence each year spent in the UK, as well as evidencing 'reasonableness' for those applying under the seven-year rule
- Requirement to present a valid national passport or identity document when applying, which are often expensive or difficult to obtain from the UK
- No legal aid and lack of quality legal representation when arranged privately
- Discretion and poor-quality initial decision-making
- High application fees
- Lack of awareness about the mechanisms, both on the part of children, young people and families, and some professionals working with them.

169 An undocumented migrant is broadly defined as someone without permission (leave) to enter or remain in the UK.

170 N. Sigona and V. Hughes, *No way out, no way in: Irregular migrant children and families in the UK*, University of Oxford, 2012.

171 London School of Economics has estimated that there are between 417,000 and 863,000 undocumented migrants in the UK, two thirds of whom have been present for at least five years. See I. Gordon et al., *Economic impact on London and the UK economy of an earned regularisation of irregular migrants in the UK*, LSE 2009.

Multiple strategies in an anti-human rights context

Historically immigration policy has been reactive, responding to changes to case law and political expediency, instead of to detailed policy or research. The past ten years have seen an erosion of the rights of undocumented young people.

The right to private and family life, as enshrined in Article 8 of the European Convention on Human Rights and the Human Rights Act - is a particularly fiercely contested area of law, especially in the immigration context, and the government has sought to restrict its applicability in cases relating to family migration and criminal deportation.

The Immigration Rules were amended in 2012 to introduce stricter criteria for people applying for leave to remain/ temporary regularisation under the immigration rules. At the same time, significant cuts were made to legal aid, removing immigration advice from the scope of publicly-funded legal advice. This has made it harder and more onerous for undocumented migrant children and families to regularise their status, in particular on the basis of long residence and their right to private and family life.¹⁷²

Primary legislation has also been amended through the 2014 Immigration Act, to limit how a court may consider Article 8, and the weight to be given to relationships formed when someone has any form of temporary leave to remain.

Lobbying

Advocacy and campaigning by migrants' rights groups has had limited impact on a national level. One of the key lobbying successes for undocumented children was the enactment of section 55 of the Borders, Citizenship and Immigration Act 2009, under which the Home Office must have regard to: "...the need to safeguard and promote the welfare of children who are in the United Kingdom."¹⁷³

Litigation

Most success in the UK regarding this area has been through litigation. For example:

- The courts have held that they cannot be bound solely to the (limited) statutory interpretation of Article 8 in the Immigration Act 2014. The full body of Article 8 case law also applies and the courts have emphasized that the best interests of children are a primary consideration and factors relating to immigration control must not form part of the best interests of the child assessment.¹⁷⁴
- Litigation has been used to expand and clarify the parameters of the rules, and there is ongoing litigation over the definition of 'reasonable' under the seven-year rule. It has been argued that the completion of seven years is sufficient to meet the reasonableness test, although the Court of Appeal dismissed this argument (see *MA (Pakistan) & Ors v Upper Tribunal & Anor* [2016] where the Court of Appeal held that the parents' immigration history could be considered in the reasonableness test) but the definition is not a matter of settled law.

172 Coram Children's Legal Centre, *Growing Up In A Hostile Environment: The rights of undocumented migrant children in the UK*, 2013, available [here](#).

173 The UK previously held reservation to the UNCRC, regarding its application for migrant and refugee children. This change reflects the withdrawal of this reservation.

174 See, for example, *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; *AJ (India)* [2011] EWCA Civ 1191; *EA (Article 8 –best interests of child) Nigeria* [2011] UKUT 00315 (IAC).

- The Supreme Court was asked to determine when a migrant young person should be eligible for a student loan to enable them to attend university in the UK. Previously, a student required a settled, permanent permit, before they were eligible for a government loan and ‘home’ rate tuition fees for higher education. In *Tigere v Secretary of State for Business, Innovation & Skills* [2014] the Supreme Court accepted that the applicant young people were settled in the UK in the ordinary sense of the word, if not according to immigration law. This gives recognition to the fact that a young person can be settled and have established links with the UK, even though they do not meet the definition of settlement in the law.
- The Children’s Commissioner for England intervened in a case about the forced removal of an undocumented family, including a vulnerable five-year-old “child in need” born in the UK, where the Home Office had failed to carry out a best interest assessment in respect of the child prior to removal (*BF & RA v SSHD* [2015]). The Court found that the Home Office’s safeguarding duty under section 55 of the Borders, Citizenship and Immigration Act 2009 had been breached and ordered the immediate return of the family.

Local government complaints procedures

Where a child or young person is in local authority care, too often the local authority does not resolve their immigration issues within the care planning process. This has been the subject of a couple of Local Government Ombudsmen cases recently. In one concerning the Royal Borough of Greenwich,¹⁷⁵

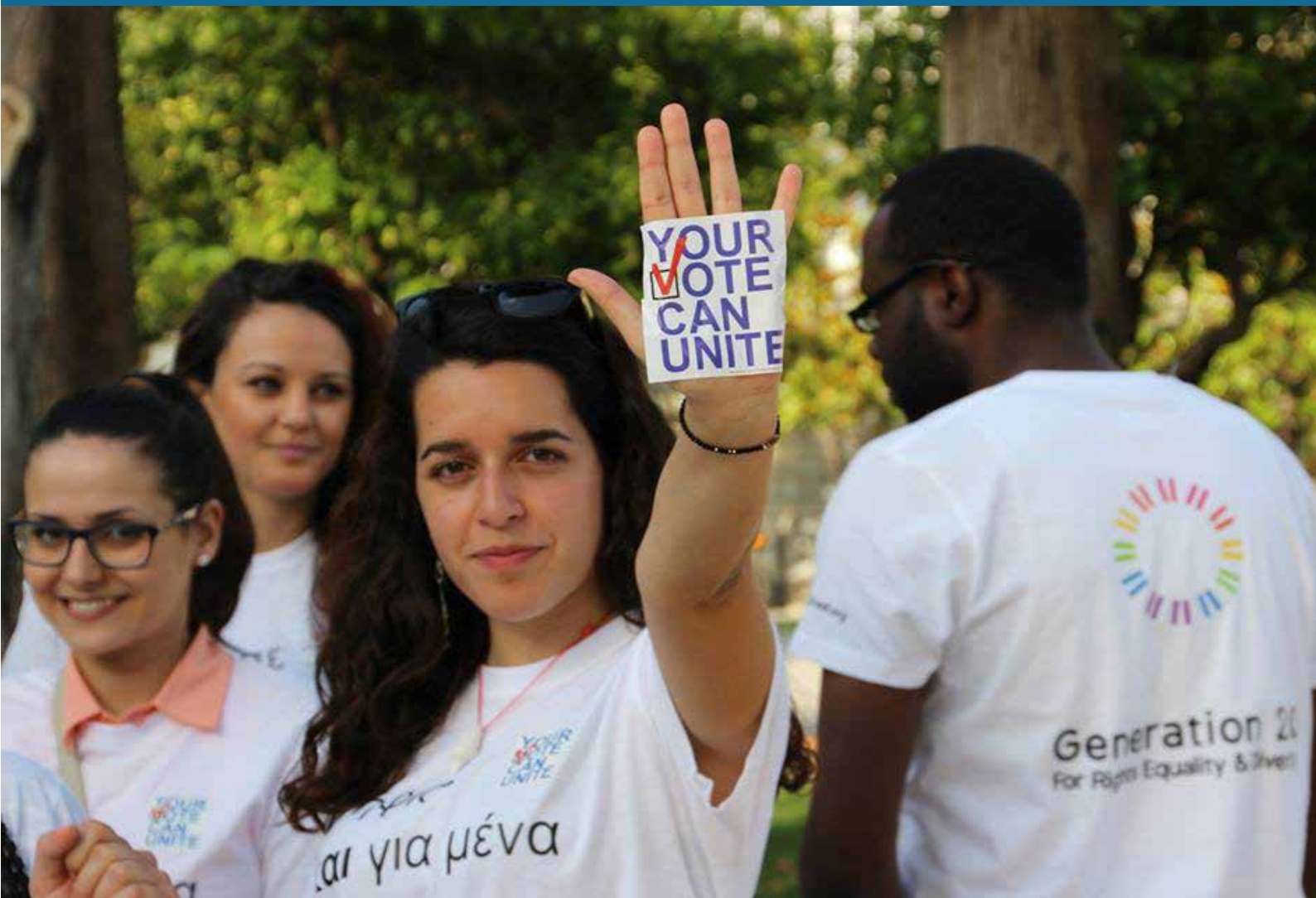
the local authority failed to assist a child in care to obtain representation and regularise her status. Greenwich was found to have failed in its duties, owing compensation of £5,000 and an apology. It was also told to improve practice and ensure staff were sufficiently trained. A similar finding was made against Dudley Metropolitan Borough Council¹⁷⁶ when the local authority failed to obtain quality legal advice for two children in care around citizenship.

Community organising

There are some community organisations that work to provide positive messages on immigration. In the last 2 years, young people’s voices have also been heard more with a few migrant-youth led groups organizing. For example, youth leaders from migrant-youth led group ‘Let us Learn’, together with Citizens UK’s ‘Stand Up Stand Out’ group, supported the London Citizens Mayoral Assembly to lobby for a Deputy London Mayor of Citizenship and Integration. They presented their case in front of 6,700 members of Citizens UK (London) and other key stakeholders. London now has a Deputy Mayor for Social Integration, and the Mayor stated publicly that he believed that citizenship fees were too high for children and young people. Work between civil society and the Deputy Mayor is ongoing.

175 (13 019 106): 19 January 2016, available [here](#).

176 (15 015 327): 19 May 2016.



*Image from the campaign 'Your Vote Can Unite' by Generation2.0 and their partners.
Photo: © Ralph Du Long*

Catalogue of methods

Multiple methodologies are usually critical for a strategy to bring about change, with different methods used at different times or simultaneously, depending on the context.

Below are some of the main methodologies, with some key tips, used by the organisations that contributed to this manual in their efforts to secure regularisation mechanisms for undocumented children and young people.

Different organisations, working together, can play different roles depending on their capacity and expertise.

Community organising

- Actions on local level - involving and led by young people themselves – together with, in particular, schools (teachers, classmates and other pupils), parents, health services, and others in the community are critical to:
 - o Mobilise communities, and build and show solidarity.
 - o Support and empower young people.
 - o Demonstrate people's inclusion and highlight the impacts of lack of status/ deportation on communities and individuals.
 - o Change attitudes about undocumented people (among politicians, the public).
 - o Speak and call for change based on experience.
 - o Highlight and push for more favourable conditions and policies by local authorities/ governments.

Case work and litigation

- Direct legal expertise provides important data and expertise.

- Necessary to undertake and sustain case work/ take complaints to:
 - o get outcomes for individuals and families.
 - o push for structural change - strategically litigating several cases or major cases to higher courts can be a major influence to change the law (for example, if possible to get deportation decisions regularly suspended or cancelled, and especially when the government has to pay legal fees and compensation).
- Crowd-funding and other public campaigns to raise legal fees are increasingly common.
 - o Explore portable justice – facilitating cases for those that have been deported already, and if possible, enabling them to be brought back to Europe.
 - o Training community-based paralegals can be a way to empower the community around their rights and procedures, and support case work and litigation.

Coalition building

Mobilising a broad range of actors can help:

- o Representing a spectrum of society shows broad public support and interest.
- o Coalitions pool together skills, capacity, and authority.
- o A single/ main point of contact for an issue can facilitate contacts and coordinate contacts with government, etc.
- o A common strategy (time-limited), messages and recommendations are more powerful and strategic.
- o Structures and resourcing can be necessary and beneficial, as well as taking investment of resources (take care these are a help not a hindrance).

Technical advocacy work

- o Provide constructive, technical and solutions-focused input to legislative and policy reforms.

Lobbying elected officials

- o Members of parliament and local government can:
 - Have a key role in changing and adopting laws.
 - Bring attention and visibility to an issue.
 - Ask parliamentary questions.
- o If there are cross-party negotiations, they can put the issue on the table.
- o At local level, they have a key role in defining local policies and how national policies are implementing in practice, as well as providing crucial services. With investment and interest in local realities and needs, they can sometimes be more open to finding practical solutions to support inclusion of undocumented migrants.

Public campaigning and communications including voices of children and positive stories

- o It is important to empower children and young people, e.g. through media training, to tell their stories.
- o Use the media carefully – media campaigns around individual cases of children and/or families that are about to be deported have been successful in some cases in mobilising wide support, and even preventing the deportation. In other cases, even when there is public support, governments refuse to change their decision. Much care also has to be taken in selecting the cases to be publicised, to make sure the case is strong, the

cause is likely to be successful, and the child and family can hand the attention and mitigate any possible negative impacts.

- o Tailor your messaging to your national context and target audiences. PICUM has also produced some talking points with key arguments for regularisation to accompany this manual.

International comparison and pressure

- o Review and adapt (as needed) the regularisation mechanisms in other countries.
- o Explore when and how to strategically use the reporting and complaints processes for the UN conventions and special procedures, to get recommendations from international bodies towards the government.

In particular, check when the UN Committee on the Rights of the Child [is reviewing your country](#) and [provide specific information](#) about the problems and proposed solutions regarding undocumented children's status, so the Committee may be able to include the issue in its concluding observations.

The Committee on the Rights of the Child can also consider [complaints](#) from individuals (including by third parties) or initiate an inquiry based on reliable information received, containing well-founded indications of serious or systematic violations of the Convention on the Rights of the Child in a country that has [ratified or acceded](#) to CRC Optional Protocol 3. Follow [guidance](#) on when and how such complaints procedures should be used.

Case law from the Court of Justice of the European

In Focus: How EU law can provide a residence status to parents of EU citizen children

Union (CJEU) has established that third-country national parents of EU citizen children may be able to obtain the right to reside based on the EU citizenship of their child(ren) (a 'derivative right'). Generally, such a right can derive from two different bodies of EU law: EU free movement law or EU citizenship law. In cases where the family concerned has exercised their right of free movement (i.e. families moving to another EU member state from the EU member state where the child has citizenship), EU free movement law may provide the basis for obtaining a right to reside for third-country national parents. In situations where families of EU citizen children are residing in the EU member state of origin, EU citizenship law may provide the basis for a right to reside for third-country national parents.

EU free movement law (Directive 2004/38/EC¹⁷⁷)

In *Zhu and Chen*¹⁷⁸, the case concerned an Irish child and her regularly residing third-country national mother who moved to the United Kingdom (UK) where the mother tried to obtain long-term residency. The CJEU held that the child had a right to exercise free movement to another member state, provided she was not a burden on that member state. Therefore the third country national parent, who was the primary carer of the child, must have the same right, otherwise the child would not be able to exercise her right of free movement.

The CJEU has also confirmed that an EU citizen child has a right of residence in another member state in order to complete their education, where one parent has been a worker in that member state.¹⁷⁹ They have the right to be cared for by a primary carer parent even where that parent is a third country national. The national parent does not need to remain in the member state for this right to apply once the child has entered school.¹⁸⁰

EU citizenship law (Treaty on the Functioning of the European Union - TFEU¹⁸¹)

In cases where families do not move within the EU (and therefore exercise the right to free movement of any citizen member of the family), the court has ruled that it is possible for third-country national parents to derive a right to reside if denial of this right would cause both the third-country national parent(s) as well as their EU citizen child(ren) to leave the Union as a whole.¹⁸² The case *Ruiz Zambrano*¹⁸³ concerned two undocumented Colombian national parents, with two children of Belgian nationality, whose regularisation applications were rejected in Belgium. Subsequently, an application for unemployment benefit by Mr. Zambrano was rejected on the basis that he was irregularly residing. When referred to the CJEU, the court found that the parents derived a right to reside and work in Belgium from the citizenship of their children, as they would otherwise be required to leave the EU. It considered that the de facto expulsion of the

177 Directive 2004/38/EC 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.

178 CJEU 19 October 2004, *Zhu and Chen v. Secretary of State of the Home Department* (Case C-200/02).

179 CJEU 23 February 2010, *London Borough of Harrow v. Nimco Hassan Ibrahim and Secretary of State for the Home Department* (C-310/08) and CJEU 23 February 2010, *Maria Teixeira v. London Borough of Lambeth and Secretary of State for the Home Department* (C-480/08) on the issue of whether Article 12 gives a right of residence.

180 CJEU 30 June 2016, *Secretary of State for the Home Department v. NA* (C-115/15).

181 European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002.

182 The CJEU confirmed their competence in such cases, even though no movement has taken place, based on the anticipated result of the family having to leave the Union. Further, it stated that "Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union" (*Ruiz Zambrano case*, para. 42).

183 CJEU 8 March 2011, *Ruiz Zambrano v. ONEm* (Case C-34/09).

children from the EU goes against their rights as EU citizens (Article 20), in particular, their right to reside in the country of their citizenship.

In *Chavez-Vilchev*¹⁸⁴, this was further clarified. In comparison to the *Ruiz Zambrano* case, this case concerned several families in which only one parent did not have EU citizenship. In *Chavez-Vilchev*, the court concluded that having an EU citizen parent who could be responsible for taking care of their EU citizen child(ren) does not preclude the possibility of dependency of these children on the other third-country national parent. According to the judgement, an assessment of whether there is a relationship of dependency:

must take into account, in the best interests of the child concerned, all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium (para. 72).

The question of which parent should be considered the primary carer only applies in cases where one of the parents is an EU national and could arguably remain with the EU citizen child(ren) in the member state concerned. In such cases, the third-country national parent needs to show that they are the primary carer of the EU citizen child(ren), to obtain a right to reside.

The court also emphasized the importance for national authorities to assess, in similar cases, the dependency of the child(ren) on both the third-country national parent and the EU national parent, to determine who is the primary carer of the child, despite the burden of proof being on the side of the third-country national parent (para. 77).

Considering the development of the case law¹⁸⁵, showing the dependency of the child(ren) on the third-country national parent(s) has proven increasingly important, with less emphasis placed on the right to family life (Art. 8 ECHR¹⁸⁶).

184 CJEU 10 May 2017, *Chavez-Vilchev v. Raad van Bestuur van de Sociale Verzekeringsbank* (Case C-133/15).

185 See also CJEU 6 December 2012, O. S. and L (C-356/22) and CJEU 15 November 2011, *Dereci and others* (C-265/11).

186 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

Regularisation within the political agenda for migration governance

- The **European Commission Communication on the protection of children in migration of 12 April 2016**¹⁸⁷ urges member states to “ensure availability of status determination procedures and resolution of residence status for children who will not be returned, in particular for those who have resided in the country for a certain period of time.”
- **The New York Declaration for Refugees and Migrants**,¹⁸⁸ adopted by the Heads of State of all 193 UN member states on 19 September 2016, includes consideration of regularisation policies in the list of content to be included in the **Global Compact on Migration**. Sufficient consensus on this has led its inclusion in the “zero draft” of the Global Compact,¹⁸⁹ which is the basis for inter-governmental negotiations. One of the actions included is to facilitate access to regularization options.
- In the **UN Secretary General’s 2017 report** providing input to future global migration governance, notably the elaboration of a Global Compact on Migration, he lists regularisation initiatives as among the pragmatic actions that should be taken to address the presence of irregular migrants, considering that “some degree of regularisation is virtually always preferable to a situation in which irregular migrants are marginalised and authorities cannot account for them.”¹⁹⁰
- One of the goals set out in the former **UN Special Rapporteur on migrants 2035 agenda for facilitating human mobility**¹⁹¹ is facilitating the regularisation of migrants who work and are socially integrated.

187 COM(2017) 211 final, available [here](#).

188 UN General Assembly, New York Declaration for Refugees and Migrants, UN document A/71/L.1 of 13 September 2016, available [here](#).

189 Global Compact for Safe, Orderly and Regular Migration, Zero Draft, 5 February 2018, available [here](#).

190 Report of the United Nations Secretary-General, “Making migration work for all”, 12 December 2017, A/72/643, paras. 36 and 41, available [here](#).

191 Report of the United Nations Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, 28 April 2017, A/HRC/35/25, para. 51 and target 2.10, available [here](#).

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.



*Blijf Hier ('I Stay Here') campaign of Defence for Children the Netherlands,
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