How do we achieve evidence and human rights-based policies on undocumented migrants?

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PICUM
PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

Platform for International Cooperation on Undocumented Migrants (PICUM)

Network of organisations working to ensure social justice and human rights for undocumented people

International NGO with nearly 160 members

Diverse members engaged in direct services provision, advocacy

Bridge between local reality and policy at EU and global levels

What does it mean to be “undocumented”?

You **don’t have official permission** to live in your country of residence

- Your residence status **can change over time**
- **Most people come to Europe regularly** and lose their status along the way
- Residence grounds are defined by human rights standards and national priorities

Irregular migration status often entails:

- **Precarious working conditions** – limited access to labour market, often no proper contract or contract tied to single employer
- **Precarious living conditions** – limited social rights (access to decent housing, social protection) and living in poverty
- **Precarious physical and mental health** – with possibly long-term effects
- **Increased vulnerability to abuse** – by intimate partner, employer, landlord…
- **Lack of confidence in public institutions** – health, justice, education …

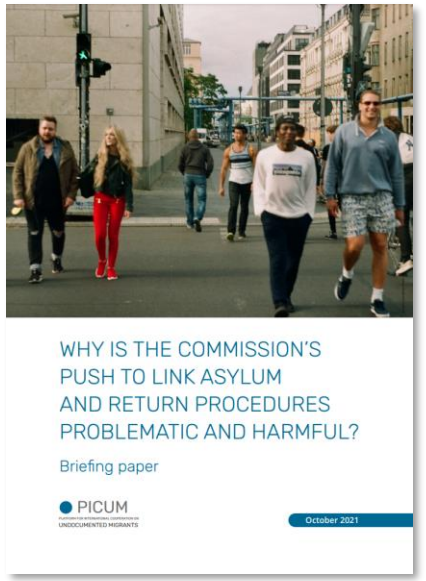
Vulnerability is affected by EU policy responses to irregular migration

"Combating" irregular migration an EU policy priority since 1999

Migration highly politicised, top of political agenda
- Overrides other policy concerns
- Migration policy dominated by security and crisis approaches

Strong deterrence-oriented agenda
- Migration Pact (September 2020): increase in detention at borders; criminalization of solidarity; return

Integration of people with irregular status?
- Integration Strategy (November 2020): no specific mention of undocumented but also no referral to "legally residing"



National developments on irregular migration

Strong emphasis on border control, detention and deportation

- *BVMN (Border Violence Monitoring Network)* 2022 report: prolonged beatings, shaving of heads, forced undressing, sexual assaults and dog attacks on migrants in 13 countries at EU borders

State policies linking access to services with immigration control

- *United Kingdom* "Hostile environment" policy instituted in 2010 to permit sharing of immigration data
- *Germany*: social welfare office has legal obligation to report undocumented patients seeking planned care
- *Sweden*: Nov. 2022 discussions to require schools, health providers, universities to report undocumented migrants

Problematic framing

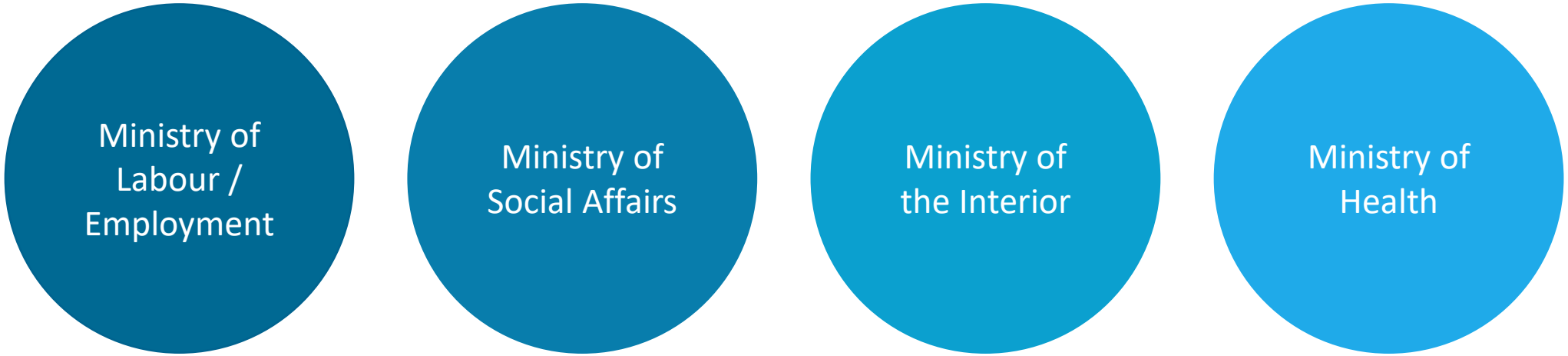
Simplistic narratives and dichotomies that entrench the notion that human rights apply just to some people

- **Global Compact on Migration** – regular v. irregular migrants
- **EU level** – proposed border procedures – fast track asylum or deportation
- **National level**
  - Covid-19 public health issue – but few EU member states issued "firewall" policies *(Lighthouse Reports Nov. 2021)*
  - "Best interests of the child" never to be detained – yet detention of children widespread throughout EU

Security approach and working in silos

Why is migration policy the responsibility of home affairs/interior ministries in many countries?

And under-addressed in other policy areas?



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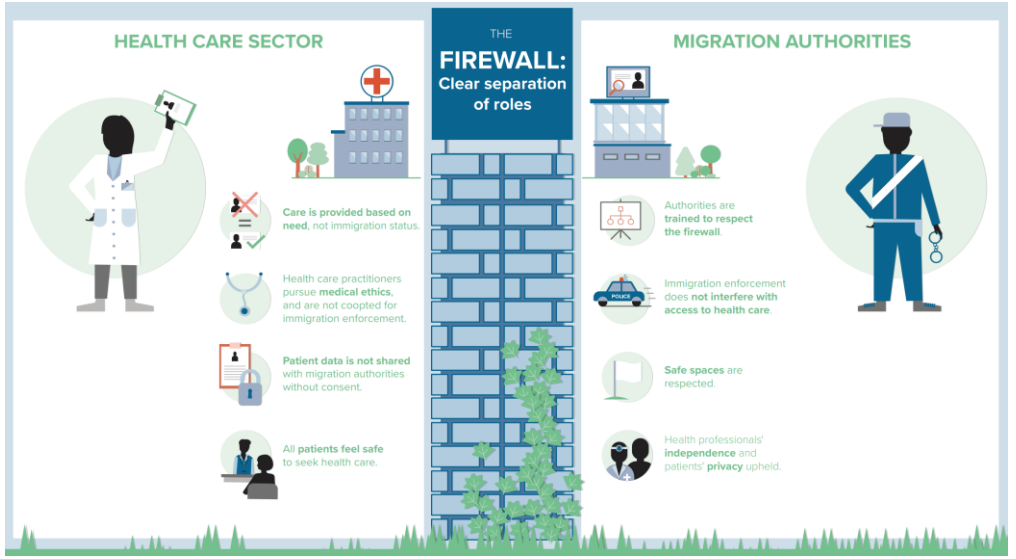
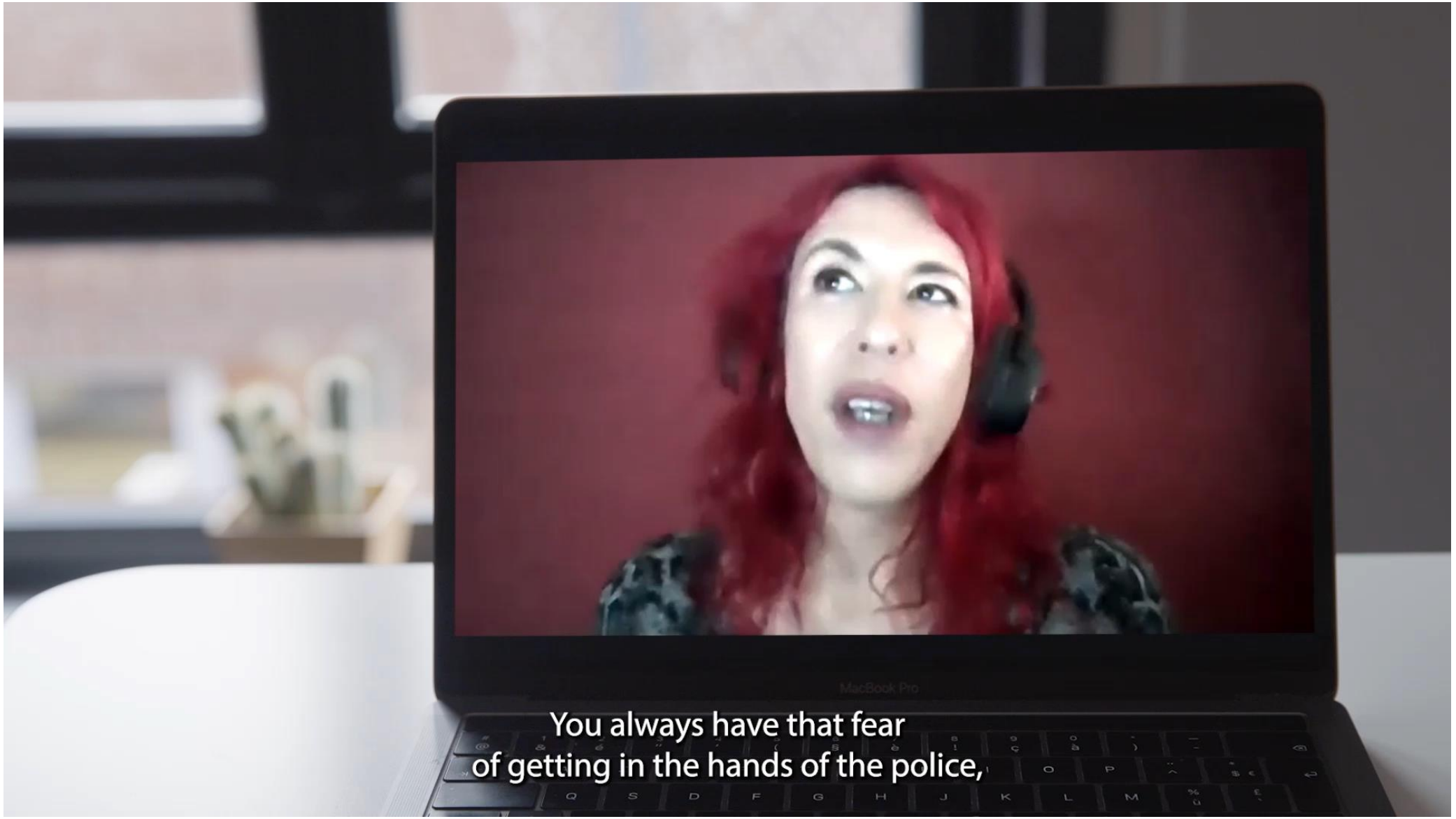
Existing policies that are on the right track

Global level: Global Compact on Migration

Global Compact FOR Migration

- First-ever **UN global agreement (2018)** on a common approach to international migration in all its dimensions
- Guiding principles include human rights
- Commitment to develop alternatives to detention and end child detention
- "Firewall" and access to services for all migrants
- **International Migration Review Forum (IMRF) 2022;** upcoming regional reviews in 2024




You always have that fear
of getting in the hands of the police,

EU level: Directives on Victims of Crime and Violence Against Women

- **Victims of Crime Directive (2012)** laying down minimum standards on the rights, support and protection of victims of crime
- Explicitly applies regardless of residence status (Art. 1)
- **Victims of Crime Strategy (2020)** suggests EU member states should exchange good practices on undocumented victims of crime
- **Proposed directive (2022) on violence against women**: currently negotiating; Commission and European Parliament foresee partial or full firewall

National level: Sweden - Rätt till vårdd-initiativet

Mobilisation: Right to Health Initiative (2007-2013)

- Common demand by 64 medical associations, NGOs, trade unions
- Hospitals, cities and regions defying national law with favourable practices

Law on health care for undocumented migrants entered into force on 1 July 2013

- Yet Swedish policy makers currently discussing “duty to denounce”

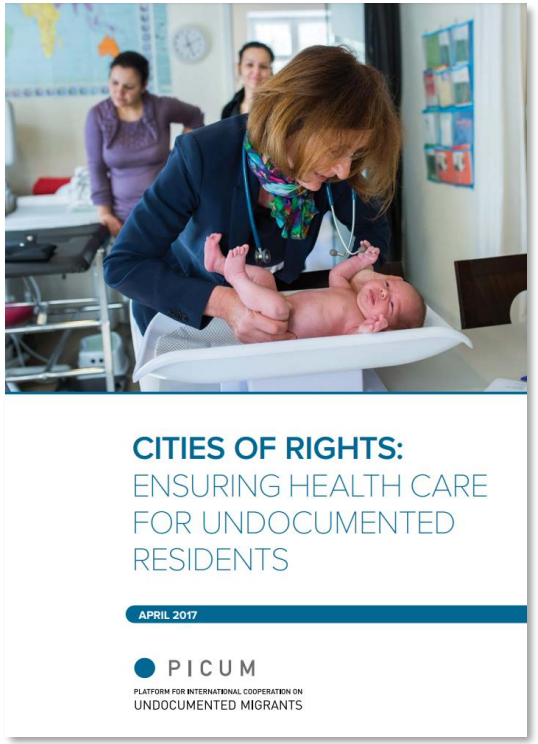
Denmark: law change in December 2022 (modelled after Swedish campaign and law)

Innovative city-level initiatives are multiplying across Europe

Frankfurt: City Health Department running drop-in health centre for undocumented migrants for nearly 20 years in partnership with local NGO

Geneva: Main public hospital adopted a "community care" approach for vulnerable populations, including undocumented migrants and homeless, where "data safety" a priority – provides a model of primary care

Ghent: City adopted simplified procedures for accessing care, and for reimbursement of health professionals



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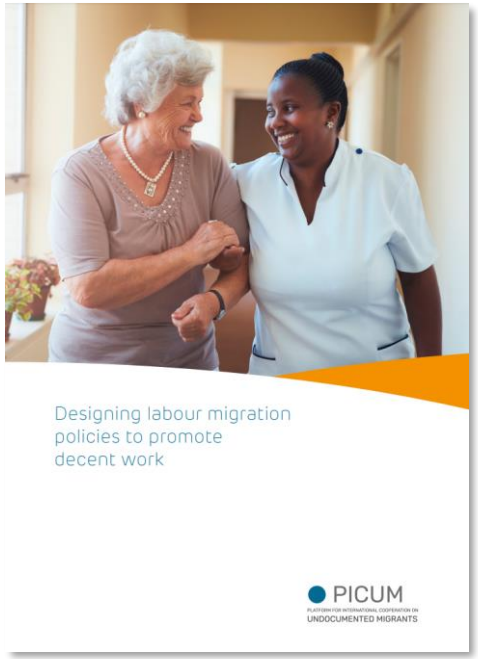
Towards evidence-driven policies

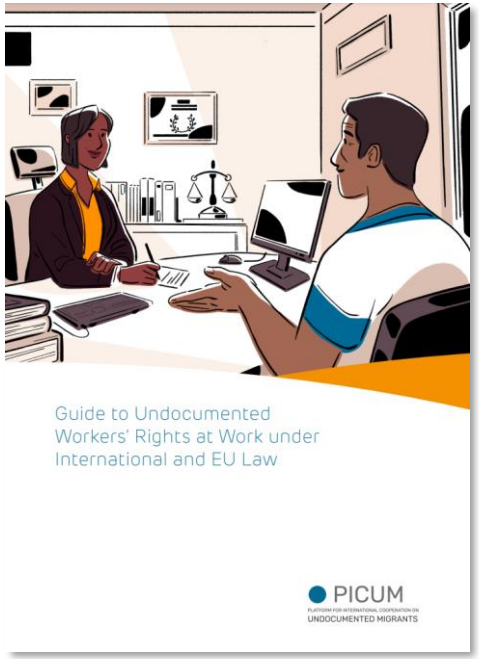
Labour rights and regular migration pathways

Aiming to advance the debate both at EU and national level on **labour justice for undocumented workers**

Current discussions on **EU Single Permit Directive** (single residence and work permit); European Platform tackling Undeclared Work, European Labour Authority

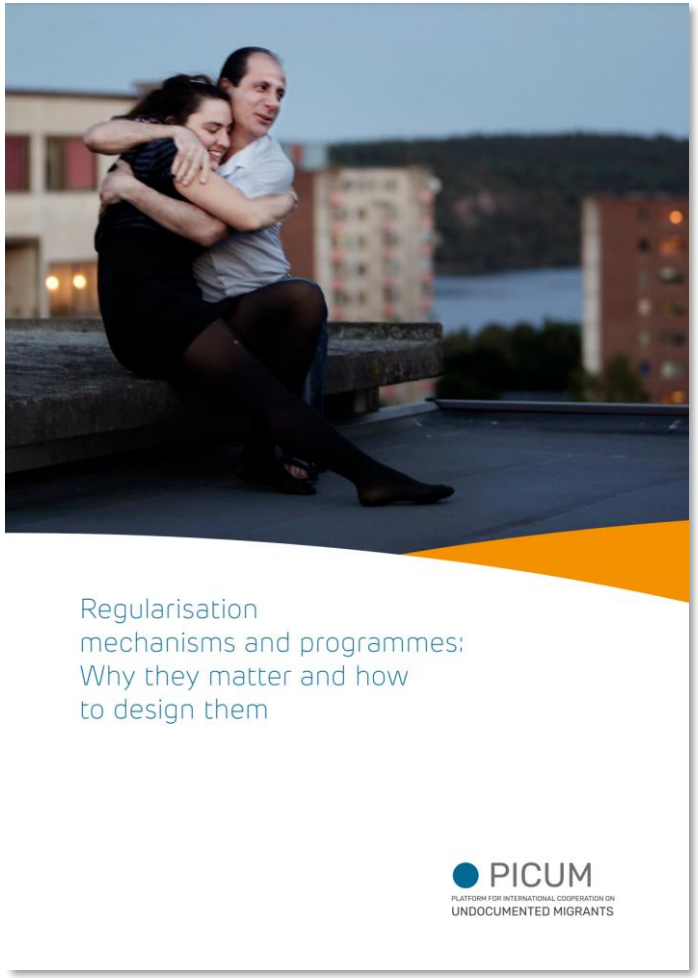
- Research on law and practice concerning labour migration schemes and labour rights for undocumented workers





Fair and effective regularisations

- Report: nearly 80 regularization measures in nearly 20 countries
- Discussion of impact on people and society
- Practices from across the world: 10 key elements for sustainable regularization programs
- Barriers to integration (role of digital procedures and administrative fees)



10 key elements for fair and effective regularisation

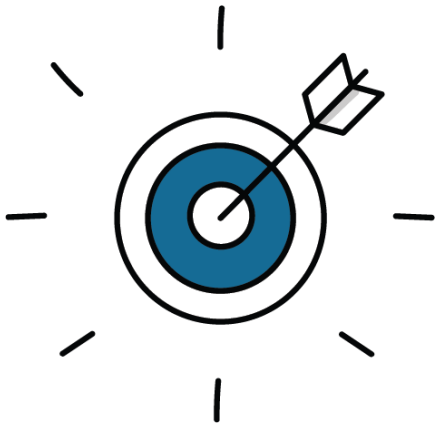
1. Undocumented people can **apply themselves**, including children.

e.g., 'Operation Papyrus'

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

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

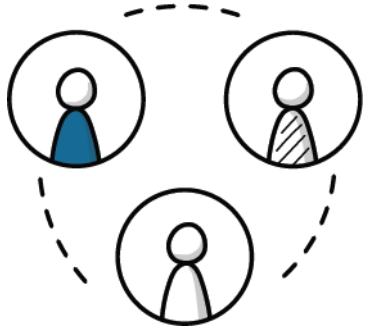
realistic criteria (housing situation, income) + private and family life is a grounds for stay



10 key elements for fair and effective regularisation

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

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

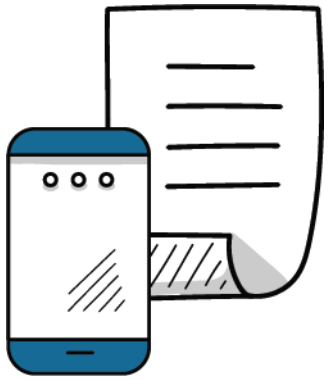


6. The procedure is **accessible** in practice.

e.g., not bureaucratic, burdensome, or expensive;

submission and response timelines are realistic (programmes open >18 months)

Digitalised procedures and fees

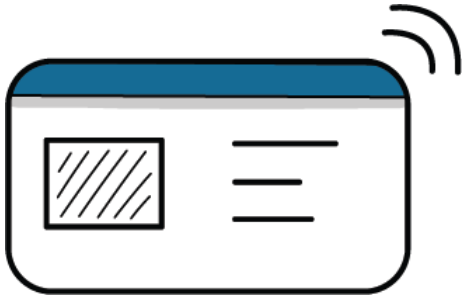


10 key elements for fair and effective regularisation

7. Procedural **safeguards** are in place

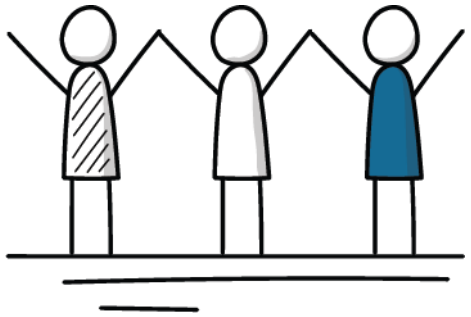
including access to readily available information and free legal aid, the existence of firewalls and having the right to be heard.

8. A **temporary permit** gives access to services, justice and the labour market during the application process.



10 key elements for fair and effective regularisation

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



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

e.g., foreseeing job-search periods in work-based permits; access to permits on other grounds; permit can be renewed; etc.

e.g., language classes, job-orientation support, etc.

Ways to strengthen rights-based policies on undocumented migrants

1. **Protect the health, education, social services, labour sectors from the encroachment of migration enforcement** by creating firewalls.
2. **Recall commitments** in the areas of human rights as well as medical ethics, cost efficiency, societal values, social cohesion.
3. **Work locally** to find practical solutions, and to provide evidence of what is possible.
4. **Contribute to humanizing and reframing** the migration debate.

Ways to strengthen rights-based policies on undocumented migrants

5. **Remove the word "illegal" from your vocabulary**. Words matter and influence the direction of policy.
6. **Break out of our silos**: engage in new forums and with new partners to bring a human rights and social justice perspective to migration debates.
7. **Press for holistic, humane, evidence-based** approaches to migration policy.

Thank you!

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