

How to secure a regularisation

Case Study

Switzerland Regularisation



Known As: Operation Papyrus

Organisation: CCSI

Year of Regularisation: 2017

Overall context

Migration and geographic context

Switzerland is a federalist state composed of 26 different cantons—somewhat equivalent to States in the USA—with three main levels of decision-making: the municipal/communal level, the cantonal level, and the federal/national level. Migration policy is typically decided at the federal level (the same migration legislation applies throughout the national territory), but cantons retain some leeway as to how those laws are implemented. There have therefore always been rather sizeable differences in how undocumented migrants are treated, what services they can or can't access, and their chances of accessing legal status depending on where they were living in Switzerland. Geneva is a small urban canton, dominated by the city of Geneva.

Geneva has a relatively sizeable and stable population of undocumented migrants. In a city of about half a million people, it was estimated in 2010 between 8000 and 12,000 individuals. As a wealthy, rather “international” and urban canton, Geneva had all the ingredients to attract migrant workers. In addition to the banking and finance sector, services, and international organizations, jobs were also available in sectors such as domestic work, restaurants, construction and agriculture. Because of the harsh conditions in some of those sectors, a typical segmentation of the labour market occurred and third-country nationals came in to fill the positions that neither the Swiss nor the EU-nationals wanted. Yet because of Switzerland's restrictive immigration policy, it is almost impossible for a third-country national to obtain a work permit for a job that does not require highly skilled workers.

Migration policy in Switzerland can be divided into three categories, each with its own set of rules and regulations: asylum (which we will not deal with in this paper at all), EU migration (for which Switzerland has a bilateral agreement with the EU, the Agreement on the free movement of the people), and third country migration (for which the legal framework is the Law on foreigners and integration, or LEI in French). Asylum-seekers aside, Switzerland has a dual immigration system that grants extensive rights and possibilities to EU nationals, while closing the door almost entirely to third-country nationals (highly skilled workers and very wealthy individuals aside).

History of advocacy for undocumented rights

In this context, inspired by the church occupations started by the “mouvement des sans-papiers” in France and elsewhere, several groups of migrants started self-organizing and making their voices heard. In parallel, NGOs and trade unions were setting up support systems for these undocumented workers. Among these, a walk-in service set up by the SIT trade union allowed undocumented workers to register with the union, thus enabling the union to defend their rights both individually and collectively. This in turn created a database of undocumented workers in Geneva, with information regarding their age, sex, country of origin, length of stay, work sector, etc. The union, with the support of other members of the Collectif de soutien aux sans-papiers (the umbrella organization for all organizations, political parties, groups, and individuals advocating in favour of undocumented migrants in Geneva) then started both defending individual undocumented workers who were threatened with deportation, and collectively defending their interests by demanding collective regularization of all workers under the slogan “a job=a permit”.

Several reasons brought the issue of undocumented migrant workers to the forefront in the beginning of the 2000s. First, there was a major change in immigration rules to Switzerland: in 2002, the agreement on the free movement of workers between Switzerland and the EU came into force. With easier access to permits and better able to defend their rights, many EU workers who were working low-wage and precarious jobs in Switzerland were able to seek better jobs. The positions they left were then filled by non-EU migrant workers. In addition, 2002 also marked the abolition of the “seasonal worker” permit¹, which left thousands of workers stranded in a legal no-man's land (unable to complete the number of years necessary to obtain a regular residence permit and excluded from the free movement of workers because they were not EU nationals).



Photo: Eric Roset

1. The seasonal worker permit was employer-based and allowed workers to come for nine months (maximum) before having to return to their home country. After a three-month hiatus, they were allowed to come back for another stint. The permit did not allow for family reunification. After five continuous years of this regime, seasonal workers could apply for a regular residence permit. Seasonal workers were mostly from countries in which Switzerland organized state-sponsored recruitment missions: Italy, Spain, Portugal, Yugoslavia, Albania and Turkey. The permit was used in many sectors such as agriculture, the hospitality sector, construction and some industries.

Advocacy & Campaigning

How CCSI initially got involved

CCSI played a crucial role in securing the right to education for the children of seasonal workers² who had joined their parents clandestinely in the 1970s and 1980s. Because of this history, CCSI is still in charge of various administrative procedures related to the enrolment in public schools of undocumented children in Geneva today. Thanks to this work, all undocumented families living in Geneva with children under the age of 12 come through our organization at least once a year, giving us extensive expertise about these populations, as well as a close and trustful relationship with them. Moreover, CCSI is a member of the Collectif de soutien aux sans-papiers and sits on the board.

Overall advocacy strategy and development

Several elements contributed to the birth of operation Papyrus. It is important to note, however, that we did not know at the time (in the early 2000s) that all of this advocacy work would lead to an operation such as this one 15 years down the line. In retrospect, there is no doubt that the sustained pressure (campaigns, protests, articles in the press, etc.) we managed to generate over the years was instrumental in creating a climate in which the negotiations could start and lead to a successful operation, but one should not get the wrong impression: this was by no means a linear narrative and the way it all came together had not been mapped out from the start.

Tactics/Actions employed

That said, there were two main advocacy strategies: awareness-raising and public campaigning on the one hand, and more covert “nagging” of the authorities on the other.

1. Awareness raising: On the public side, we strove to keep the issue in public limelight, not only by seeking media exposure but also by taking to the streets: over the years, we organized several protests both in Geneva and on a national scale, and never failed to have an undocumented workers' section in the First of May parade. We also encouraged our political allies to bring the issue forward in legislative bodies (motions,

proposals, questions to the government, etc.). In addition, there were three important national campaigns that contributed to raising awareness around the issue. The first, in 2008, was called “No child is illegal”, and focused on children's rights (to education in particular), shining light on the situation of undocumented youth who had often grown up in Switzerland but couldn't access professional training or plan for a future because of their legal status. A second campaign in 2011 was more directly centred around regularization: “Stop the hypocrisy” aimed at highlighting the fact that while Switzerland tolerated the presence of 130,000 undocumented persons on its soil, and benefited from their labour, it refused to provide a pathway to legalization for them. In 2013, the third campaign deliberately chose to re-use the 2008 slogan to address the issue of care and domestic workers. “No domestic worker is illegal” aimed at raising awareness around the plight of migrant domestic workers, the links between the absence of legal status and the vulnerabilities they faced at work, as well as the gendered aspects of the global care economy.

2. Evidence and data: One of the first and most important parts of the negotiation was defining the target group: who did we want to include in this programme? It was clear that we needed to broaden the path to regularization, but where to draw the line between the current practice (which everyone agreed was too restrictive) and a sort of “general amnesty” (which we all agreed was politically unfeasible)? The negotiation process was not public, which prevents us from going into too much detail as to what was or wasn't discussed at different stages. Various models were tested (by tweaking the criteria required for regularization), along the following “fault lines”: to what extent do we favour families over single migrants? Domestic workers only or all sectors? What are the language requirements? Do we set a minimum income requirement? If so, by how much? On the civil society side, we constantly strove to make the programme as inclusive as possible, repeatedly coming back to the initial goal of the project, as stated by the authorities: restoring the rule of law and alleviating precariousness. Our guiding principles remained the resolutions adopted by the general assemblies of undocumented workers that had taken place years prior, and refusing any type of “dirty deal”, in which some undocumented workers were favoured while others saw their condition worsen. One of the key aspects of defining the target group was trying to estimate how many undocumented migrants would be able to access legal status in

2. See note 3.

each of the models. Obviously these populations are not officially registered anywhere, making these estimates difficult to establish. Thus, the expertise and direct knowledge of the field brought by us civil society representatives was particularly important in this phase. We all relied heavily on the databases provided by NGOs and unions to map out the various alternatives.

3. Strategic Casework: In parallel, we never let the authorities off the hook on individual cases. In 2005, the cantonal government of Geneva had decided to mandate a report on these undocumented workers. The report found that thousands of undocumented workers were active in Geneva, and that the domestic sector was the main provider of employment. Under political pressure from the left and the unions, the Geneva government then decided to request from the federal government a special contingent of 5,000 permits for migrant domestic workers³. Due in part to the arrival of a far-right populist minister in charge of migration, the federal government never formally answered the request. In the following years, from 2005 to 2010, the canton of Geneva sent over several individual requests for regularization for federal approval. Some of these requests, were nonetheless rejected by the federal authorities and sent back to Geneva for deportation. However, NGOs and unions put very strong pressure on the Geneva authorities (both publicly and in closed-door bilateral meetings) not to carry out these deportations, citing the fact that Geneva had accepted these cases and that its request for 5000 permits for undocumented workers was equivalent to a political acknowledgement that collective regularization was indeed the way forward⁴. With the media attention brought onto these cases (often of hard-working undocumented families, with children attending Geneva public schools), the Geneva government found itself between a rock and a hard place, scolded by the federal authorities for not deporting these migrants, and vilified by the left (and often public opinion) for trying to do just that. Continuing to make the situation uncomfortable for the authorities created an incentive for them to seek another way of approaching the issue.

4. Direct Advocacy: In the end the most important tactic of all was direct political engagement once an opportunity presented itself. This opportunity came in 2010 when the Geneva authorities approached the Collectif de soutien aux sans-papiers with a request to discuss with us ways of improving regularization procedures in order to broaden access to legal status. This first meeting rapidly led to the creation of a “group of experts”, appointed by the Geneva government, in charge of mapping out strategies to find ways out of the impasse in which current regularization policies and procedures had led us. The group was composed of representatives of the various parts of the administration that were involved (immigration authorities, labour market control, education), and four representatives of NGOs and unions working with undocumented migrants. I was one of those four, and was selected because of CCSI’s involvement with undocumented migrant families. The other three⁵ were a union representative from SIT, the coordinator for the Collectif de soutien aux sans-papiers, and a person from one of Geneva’s largest and most respected social work NGOs. The “group of experts” met regularly for the next six or seven years, moving gradually from broad-ranging theoretical discussions to more tangible negotiations around the final “agreement”.

5. Participation of undocumented people: Undocumented people played a key role in the initial advocacy and campaigning. They took risks as they participated in protests and assemblies, talked to the media about their situation, and took part in our advocacy campaigns. They also self-organized to some extent (creating a collective of undocumented domestic workers, e.g.).

During the negotiations, however, undocumented persons were not directly involved. Indeed, while the existence of the “group of experts” was not a secret, the content of the discussions was not public. Although it is not ideal that undocumented people weren’t involved in this phase, it also allowed the stakeholders to discuss different scenarios freely, without having to limit what we were willing to explore for fear of political consequences or media backlash.

Stakeholders involved

In addition to undocumented people, three main stakeholders were involved in Operation Papyrus: the canton of Geneva (both political authorities and the administration), the federal level (the Justice & police minister and the State secretariat for migration), and “civil society”. For civil society stakeholders, it is important to highlight the crucial role played by trade unions in this operation. Indeed, the strong involvement of unions (and one union in particular, SIT) from the beginning helped frame the issue of undocumented people as a labour issue (fair working and market conditions) as much as a humanitarian one. That ultimately was extremely helpful in getting the authorities on board with the idea of regularization. The involvement of unions also allowed us to use the established channels of communication between unions and the political spheres for advocacy, which we did many times throughout the negotiations and implementation phases.

Convincing Bern

It is important to note that until very late in the process, the entire negotiation process had taken place exclusively in Geneva, involving only local stakeholders. However, the canton does not have the authority to deliver permits. The last phase of the negotiations thus consisted of convincing the federal authorities to come on board, and let Geneva undertake this experiment. This phase was a critical and difficult one for us civil society stakeholders. The federal authorities would only discuss matters with the cantonal authorities (without civil society representatives present), and there were a number of crucial discussions at this stage that we were not privy to. Key to convincing them was the framing of regularization as an element of labour market control, and the opportunity to finally regulate the notoriously “informal” sector that was domestic work. Another aspect that helped convince the federal authorities was that Geneva’s proposal provided an opportunity to test a new regularization policy on a limited scope. This is how the project officially became a “pilot project”, limited in time, and subject to an independent evaluation in order to decide on how to proceed in its aftermath. Once the Federal Councillor⁶ in charge of migration and the State secretary for migration had agreed on the principle, it was once again left to the lower echelons (the “group of experts” in Geneva and representatives for the State secretariat for migrations) to work out the details.

6. The executive branch of the federal government is comprised of seven Federal Councillors, each in charge of key areas (economy, justice and policing, interior affairs, foreign affairs, defence, infrastructure and finances). It is a collegial government, whose composition broadly reflects the political strength of the main political parties. The Federal Council is elected by the members of Parliament.

Process for securing the commitment

In 2010, as a proposal allowing undocumented youths to access professional training was being discussed in Parliament, an assembly of undocumented workers was convened in Geneva under the banner of the Collectif de soutien aux sans-papiers to discuss the way forward. The assembly adopted a resolution in which it asked the Geneva government to re-activate the request for collective regularization it had sent to the federal government several years prior. In response, the Geneva authorities called several members of the Collectif de soutien aux sans-papiers into a meeting, where they announced that they were not willing to reactivate the request, but wanted to discuss with us ways of improving regularization procedures in order to broaden access to legal status.

For the first few years, these discussions essentially took place within the group, who worked hard to design the technical aspects of a realistic regularization programme. But because of the highly polarizing nature of this issue, we all knew there was a strong political component to it, and that we needed to convince the political operatives involved to support the project. A key phase was thus to convince the Geneva political authorities to go ahead with the project, as we knew that only they could then go argue in favour of it with the federal authorities. We were lucky in that right around the time when the group was finalizing that first phase, a new minister was elected in Geneva and took over the main stakeholder department of security (migration, police, justice) and economy (labour market control). This minister was a young rising star in Swiss politics, from a right-wing party, who had a reputation of being both a hardliner on security issues, and a humanist and believer in the rule of law. If we could convince him, he could be the champion this project needed to go forward. And convince him we did, by presenting a well thought out project. Among the other factors that helped tip the balance was laying out a clear case of “what happens if we do nothing and let the present situation fester”: growing segments of the population living in lawlessness, unable to go to the police when they become victims of crime, which is obviously detrimental to the rule of law; a whole generation of youths leaving school with nothing but clandestine living and precarious working conditions to look forward to; families into which the third generation of undocumented migrants was being born in Geneva, as the first generation reached the age of retirement with no resources because they had never been declared by their employers (and thus had no pension), but were too old to work anymore. And of course, we argued that although it was a political risk to take, the bargain could also pay off if successful (earning support on the left, and showing those on the right that the project was a brave and pragmatic solution to an issue that had been at a stalemate for years).

3. In the wake of the report, an important private structure called “Chèque-service” was set up in Geneva, allowing the employers of undocumented domestic workers to register their employees with social insurances, thus making their jobs “semi-declared” (regular in terms of social contributions, conformity with minimum wages and other labour regulations, even though the employee does not have a work permit). The employer announces the employee to Chèque-service, saying how many hours the person works, etc. and Chèque-service then takes care of all the administrative procedures to declare the job to social insurances, and establish yearly salary certificates, etc. The existence of Chèque-service and the knowledge of the domestic work sector it provided were important in giving visibility to the issue. For more information see <https://www.chequeservice.ch/en/homepage>

4. For further information on these early years of mobilization, see “Solidarity and unity with undocumented workers”, SIT, Geneva, 2010 (http://www.sit-syndicat.ch/spip/IMG/pdf/brochure_sans-papiers_english.pdf)

5. Thierry Horner, union secretary for the SIT trade union; Alessandro De Filippo, coordinator for the Collectif de soutien aux sans-papiers; Rémy Kammermann, legal expert at the Centre social protestant. It is also worth noting that while every single person involved on the “State” side of this programme (from ministers to administrative representatives, to Federal councillor) has changed in the course of the negotiations or implementation phase, the four representatives of “civil society”, myself and my three colleagues, have remained stable.

Key challenges

- The length of the entire process, and in particular the negotiation period (six years) and its “secretive” nature were important challenges we faced. This had a negative impact on the involvement of undocumented migrants and somewhat loosened our ties with parts of the undocumented community. By the time the negotiations started – several years after the most active phase of community organization and involvement – many in the undocumented movement had disengaged.
- In addition, the negotiation itself went on for years, during which we could not disclose the content of our discussions with the authorities. This led to difficulties in maintaining meaningful bonds with undocumented communities throughout this process. Had we known it were to last quite as long, we would have put more thought and energy into ways of fostering the active involvement of undocumented persons in this process.

Key learning

In projects such as this, it is sometimes astonishing to what extent individual figures remain important. At various stages of the process, the fate of the project hung on one single person, or a combination of individuals (the right people, at the right position, at the right time), sometimes for the better, sometimes not. One does not always have a choice in the matter, but it is worth putting thought into how much one wants to depend on one person, regardless of how good that person might seem. In this instance, the young rising star of right-wing politics who decided to take this project and run with it⁷ undoubtedly played a crucial role in getting the federal authorities on board. And the fact that he was behind the project clearly helped garner much more public support for it than if it had been simply a lefty NGO pipe-dream. However, toward the end of the project, this politician’s career imploded in a massive and completely unexpected corruption scandal, and everything related to him became negatively tinged almost overnight. It is too early to tell what extent his political demise will end up harming the project in the eyes of history. But in retrospect, we might have been better off by relying less on this one Minister and by building broader (albeit probably weaker) support for the project within the Geneva government.



Photo: Eric Roset

Implementation

Involvement of NGOs in scheme creation

The common ground at the start of these negotiations was that it was not healthy in the long run for Geneva to let its undocumented population grow too large, and that we needed to find a way of allowing those who were clearly stabilized here to come out of the shadows and access legal status. It was also agreed that the current procedure for regularization was unsatisfactory⁸, and could not provide an adequate response to the long-term presence of thousands of well-integrated undocumented workers in Geneva. Thus we all agreed that the goal was to design a programme capable of granting legal status to a relatively large group of undocumented migrants within a relatively short timeframe.

Another part of the negotiations was the procedure itself. For civil society, making the procedure as objective and transparent as possible was key, as the arbitrary nature of the procedure had been a major obstacle up to then. With this project, that goal went hand in hand with another, much more practical one: in order to make it capable of processing a high number of claims in a short timeframe, the procedure had to be standardized and simplified. With that in mind, the group had to discuss every single step of the procedure and, for each one, determine exactly what was going to be examined, how, and by whom. Ultimately, this procedural aspect was a key factor in how the project turned out. Indeed because it was such a large scale operation, not only could we only have objective criteria for regularization (i.e. with yes or no answers), the elements of proof that candidates needed to provide in support of their claim (showing that they did indeed meet every one of the criteria) also had to be standardized for all potential candidates. It is worth noting here that one of tactics we used was being very proactive in these negotiations: drafting proposals, offering to write policy documents, etc. One should never underestimate to what extent administrations are willing to engage if what you propose is a pragmatic

solution that actually makes their lives easier.

The second phase of the negotiations was centred around broadening the scope of the project. Indeed, one of the unique aspects of operation Papyrus⁹ was that it went beyond a “simple” regularization scheme and included elements meant to mitigate the potentially negative aspects of a large-scale regularization operation. The two main risks that the authorities feared were creating an influx a new undocumented migrants (who would come and replace those who had obtained a permit and would leave the precarious jobs they had to seek better working conditions, or simply hear about the programme and flock to Geneva in the hopes of benefitting from it), and having large numbers of regularized migrants become dependent on welfare once they could access it. Obviously the rather strict criteria were the main mitigating factor, in the sense that contrary to an amnesty in which anyone present on the territory at a given moment obtains a permit, regularization would only be available to those who met the requirements.

But in addition to that, operation Papyrus included measures¹⁰ such as systematic labour market controls, ensuring that every job occupied by a person obtaining a permit within the project complied with legal requirements (minimum wage if applicable, payment of social contributions, paid leave, etc.). The goal was twofold: on the one hand making sure that the State was not implicitly tolerating irregular working conditions in Geneva; and on the other, improving working conditions in the most affected sectors, thus limiting the incentive for regularized workers to leave those jobs and be replaced by other undocumented migrants. This was particularly important in the domestic work sector, as it is usually a very difficult sector to regulate (because the work is done in private homes, often by migrant workers). We as NGOs and unions had consistently argued that it would be impossible to regulate that particular sector without granting the workers the protection they needed to come forward and denounce the conditions they were forced to work under. In other words, if the workers remained undocumented, they would remain too vulnerable to risk telling on their abusive employers. With this in mind, we strongly advocated

8. The legal basis for regularization is art. 30, 1, b of the Law on foreigners (LEI). It is a two-stage procedure in which the request is first sent to the canton, who is in charge of the main investigation into the claim. If and only if it is approved at the cantonal level does the request get sent to the federal level for complementary investigation and final approval. Regularization is never a right, only a possibility granted by the authorities if and when they wish to do so, in exceptional circumstances. The law itself is rather vague, stating only that “usual regulations for entry and residence can be bypassed in cases of extreme individual hardship”. Other regulations list the various elements taken into account by the authorities as they examine these claims, but the procedure remained both long and uncertain for migrants who decided to risk requesting a permit. The margin of appreciation and discretion at the authorities’ disposal as they examined claim made it difficult for candidates (as well as for support NGOs) to predict outcomes with any degree of certainty. In our experience, aside from families with children who had spent their adolescence in Switzerland, and individuals with serious health

problems, chances for regularization were very slim indeed. Moreover, initiating the procedure is equivalent to making yourself known to migration authorities who did not know of your existence, and, in case of a negative outcome, entails risking deportation. Because of all of this, few undocumented migrants attempted the procedure at all, and fewer yet were granted a permit (100-150 cases yearly).

9. At some point during the negotiation, the project acquired a “code name”: operation Papyrus (a lousy tongue-in-cheek nod to what ancient Egyptians used “before having paper(s)”). Needless to say we NGOs had no say in the matter.

10. Strategically, these measures were called “accompanying measures”, which is a term that means a lot in Switzerland, as it designates a series of measures (such as facilitating collective bargaining and minimum wage extensions in sectors facing pressure to lower wages and worsen working conditions due to immigration) taken by the federal government to limit the adverse effects of the free movement of workers with the EU.

for the procedure to include the most vulnerable of domestic employees and keep them as safe as possible. Ultimately, we managed to design the process in a way that allowed workers to apply for a permit even when none of their employers would come forward and support their claim (which was impossible before operation Papyrus – at least one employer needed to “sponsor” the claim), and made sure that labour market controls only took place once the person had obtained a permit and was thus more able to defend their rights.

Regarding the risk of having regularized migrants depending on welfare, the first thing we did was demonstrate that the scenario was unlikely. To do this, we gathered a sample of persons who had been regularized in the past six or seven years, and looked at how many of them had depended financially on the State since they had obtained a permit. Our sample study found that even in the most vulnerable group (single mothers with young children), only a very small number had been dependent on welfare payment, and even then, it was usually for a limited amount of time, and for “explainable” reasons (such as falling suddenly and gravely ill). In addition to that, other measures were set up in order to help workers who lost jobs during the regularization process to find work, and improve their language skills.

It is with this comprehensive project that we convinced the Geneva government to endorse it, and advocate in its favour with the federal authorities in Bern.

Throughout the preparation of the project, we on the civil society side had successfully argued in favour of keeping the most inclusive options possible (e.g. for the regularization criteria), knowing that these would likely be restricted by the federal authorities. Our prediction was accurate, and during this phase we worked intensely to maintain what had been agreed to in Geneva as much as possible. Here again, being proactive and providing our “emissaries” with lists of arguments and practical cases illustrating the rationale behind our choices proved key. In the end, we did not lose too much ground and the final project was close to what we had initially proposed.

Another important aspect of this last phase was the discussion around the procedure itself, and potential outcomes. Legally speaking, regularization in Switzerland is meant to be an exception, not a right under any circumstances¹¹. All of the stakeholders knew that we could not change the law – it was highly unlikely that we could garner sufficient support for the idea to risk a national parliamentary

process¹². This was perhaps the strongest constraint on the entire project: we had to work within the tight framework of the existing laws and regulations, changing elements on the margin that actors within an administration have the power to modify without political oversight. This is why even within operation Papyrus, each and every claim needed to be examined individually, by both the cantonal and the federal authorities, and meet criteria that remained restrictive enough that regularization remained “an exception” and not the norm.

What was crucial for us in civil society though, was making the process secure for applicants. This is why we fought to keep as few criteria as possible, and to obtain guarantees that if the applicants met these criteria and were able to demonstrate it with the required documents (which had by then been defined quite precisely in a list), they would indeed obtain a permit. Neither the federal nor the cantonal authorities could reject an application for reasons other than not fulfilling the criteria or not providing the required documents to substantiate the claim. It was a very important element to us, and one of the most difficult for the administrations involved in processing these claims to accept, as it entailed them renouncing a part of the power they use to have over the outcomes of these cases. Hard as we tried to get such guarantees in writing, we never did – or at least not as clearly as we would have wished. We ultimately decided to trust that the authorities’ public commitment to making this operation a success would be sufficient to ensure that all parties would stick to what had been agreed. And we were right.

Announcement, dissemination and outreach

The implementation phase began in earnest on 21 February 2017, with a joint press conference by the cantonal and federal authorities, announcing the start of a large-scale regularization operation called operation Papyrus. They stated the criteria, basic steps of the procedure, accompanying measures and duration of the project (until 31 December 2018). Up until that moment, some of us couldn’t quite believe it was actually going to happen, but now there was no turning back. We NGOs and unions held our own press conference that afternoon. The media immediately grasped the historic nature of the project, and gave it massive coverage. It was front page news throughout the country, and generally well received¹³.

13. Of course not by all: the populist far-right Swiss People’s Party immediately tried to stall the project by introducing emergency bills in parliament. But because the project was a pilot project, limited in time, they failed to gather sufficient support and the project was allowed to proceed.

A week later, we organized an information session for undocumented migrants at a large concert venue in Geneva. Demonstrating the high hopes raised by the announcement of the project, more than 2000 people showed up, forcing us to close the doors when we reached the 1400 person capacity limit, and to hold parallel sessions on the sidewalks for those who were unable to get in. During that session, we explained in detail (and in all the main languages of the undocumented communities in Geneva) what the criteria were, what documents were needed¹⁴, how the procedure worked, and where to find help¹⁵. At the end of the session, we handed out “regularization kits” with all of this information in writing, in the various languages spoken in the community.

Operation Papyrus criteria

- » **Continuous residence in Geneva for five years (for families with at least one child attending school), or 10 years (for all others).**
- » **Being currently employed**
- » **Being financially independent (no debt, unpaid bills or dependence on welfare)**
- » **Achieving A2 (oral) level in French**
- » **Not having a criminal record**

A week after that, we opened the three specific walk-in services we had set up to process the claims. Over the next year and eight months, unions and NGOs would provide over 2230 hours of free and anonymous counselling to potential applicants, helping them to gather documents, explaining how to deal with their employers, reassuring them about the risks involved. Once the person had gathered all of the required documents, they gave one of the unions or NGOs power of attorney and we acted as the go-betweens with the authorities. Over two thirds of all the applications sent in during operation Papyrus were processed by NGO and union members of the Collectif de soutien aux sans-papiers¹⁶. When all went as planned, the claim was then examined by the cantonal authorities, approved and sent to the State secretariat for migration, who checked that all was in order (and searched databases available to them only, such as those listing potential terrorists and the like) and gave its seal of approval. The applicant (and their family) then obtained a one-year renewable residency and work permit and were finally able to remain in Geneva legally. In the best of cases, the entire process took a few months, although the cantonal and federal

14. See annex 1.
15. Throughout the project, approximately 20 information and outreach sessions were organized, some targeting specific communities that we were expecting to see but were showing up in lower numbers than anticipated.
16. The remaining third was either handled by private lawyers and other unofficial “intermediaries”. Some applications were also sent directly by candidates, with no help at all from anyone. The success rate of

administrations were rapidly overwhelmed by the number of applications. By the time the operation ended in December 2018, approximately half of the claims had not been processed. As I write this in the fall of 2020, the last few cases are finally being finalized.

Meticulously planned as this operation was, we were unable to anticipate every one of the real-life individual situations that would arise. And this is where the relationship of trust and collaboration that we had built with the authorities over the long negotiation period really became crucial. Two steering committees were set up for the implementation phase, each one meeting roughly once a month. There was a political steering committee, which was basically an extension of the “group of experts”, and which in addition to internal meetings had regular encounters with the minister in charge of the project, as well as with the federal authorities. In this group, we kept stakeholders informed as to how the implementation was playing out on the ground; we decided how to treat situations that arose that had not been discussed during the negotiation phase; we planned the independent evaluation process and collaborated with its authors.

There was also a technical steering committee, in which all of the unions and NGOs who were partners of the project and involved in processing cases¹⁷ met with those in charge of examining the applications within the cantonal administration. These meetings were hugely important to the smooth running of the operation, as they allowed for continuous dialogue around unforeseen obstacles or difficult individual cases. Having these steering committees provided much needed space for discussion, and gave us civil society representatives the opportunity to hold the administration to their word, making sure everyone involved held up their end of the deal.

Application and process

For the undocumented persons, the first step was usually to come to one of the several walk-in consultations we had specifically set up for the project (with NGOs and unions, we covered every day of the week), where they could enquire as to whether their situation met the basic criteria. We counselled them as to the documents they needed to provide, reassured them about the risks involved, tried to help them through the dilemma of how to approach their employers about the process, etc.

these applications was of course much lower.
17. Whereas only four of us had been part of the “group of experts” who had prepared and negotiated the project, many more organizations were involved in the implementation phase. Not only was the project no longer a “secret”, we also needed all hands on deck and could not have ensured the implementation of the project without the collaboration of all of our colleagues in the field.

11. See above, footnote 9.

12. The German-speaking part of Switzerland is notoriously more conservative on immigration issues, and being less urban, has less experience with the issue of undocumented migrants.

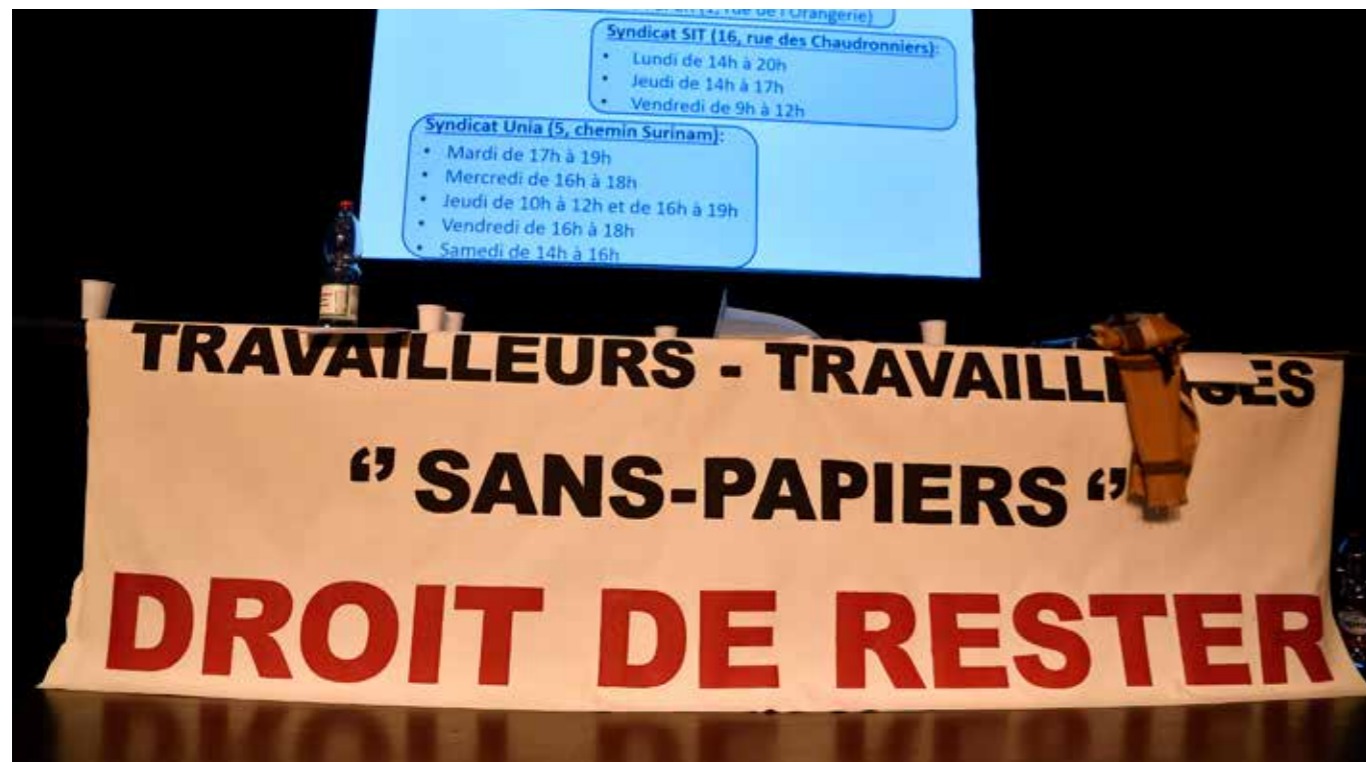
Once they had all the documents in order (which often took several visits), one of the NGOs or unions would generally formally take the case (with power of attorney) and send it to the cantonal authorities. After a thorough review in Geneva¹⁸, if accepted the case was then sent to the federal authorities where it was reviewed once more (and the additional checks carried out, such as national security threats, etc.). If accepted by the federal authorities, the case would come back to Geneva, where the cantonal authorities would call the person in to process their biometric data so as to establish the permit. It is important to note that, for all the cases sent in by us NGOs and unions, there were no more than a handful of rejections (usually because the candidates had omitted to tell us about something in their past). The handful that were rejected were almost always cases in which the applicant had failed to mention that they actually did not meet one of the criteria (e.g. having a prior conviction that no longer appears on a public criminal record statement, providing fake documents to prove their stay, not telling us that their previous asylum claim was still pending, or that they had applied for a permit in France last year).

Outcomes

By end 2020, over 2800 persons had obtained a permit thanks to the operation: 70% of them were women, of an average age of 45, 81% from Latin America (10% from eastern Europe and 6% from Asia) and 64% were domestic workers¹⁹. Thanks to regularization, declaration to social insurances and salaries increased. The permit obtained is a yearly residence and work permit, which gives the person full access to the labour market and allows them to travel back and forth to Switzerland as long as the permit is valid. It can be renewed provided the person still meets the criteria²⁰, and, after five years, one can apply for a more stable five-year “settlement” permit.

One should note that the period immediately following obtention of a permit is often a critical time for formerly undocumented migrants. It is a time in which, all of a sudden, they are faced with numerous financial and administrative obligations they did not use to have. And while the relief of no longer living in constant fear of arrest and/or deportation is immediate, it often takes some time for the benefits of regularization to materialize and their socio-economic situation to change for the better. Moreover, for some, the sudden lifting of pressure after years of constant struggle is overwhelming and can lead to mental health issues. However these tend to be temporary and our experience shows that within 18 months, most have found stability once again, and their situation is on an upward trend.

Photo: Eric Roset



18. This stage would take anywhere between a few months and well over a year, depending on how large the backlog of cases had become... the bottleneck also moved from Geneva to Bern and back, for the same reason.

19. For more data on the undocumented people involved in operation Papyrus, see the independent evaluation of the project here: <https://>

www.ge.ch/document/evaluation-du-projet-pilote-papyrus-relatif-regularisation-travailleurs-statut-legal-geneve/telecharger
20. Being in debt, dependant on welfare, or having committed a crime or misdemeanour can all lead to a permit not being renewed.

Key challenges

- The main challenge in the implementation phase was having to discourage some candidates from applying. In spite of being very well integrated and having lived in Geneva for a long time, some were unable to regularise their situation in the framework of this operation. Indeed, the criteria were strict, and the “dark side” of having clear and objective criteria is that when you don’t meet these particular requirements, you are out²¹. For example, a person who had arrived in 2005, and been in Geneva ever since except for 18 months between 2010 and mid 2011 could not apply because the stay had not been continuous. Moreover the legal basis (art. 30 of the Law of foreigners) for regularizations within this project unfortunately excluded migrants who had claimed asylum in the past. These situations obviously gave rise to profound feelings of injustice
- Private lawyers and intermediaries provided an additional challenge. Indeed many of those we had advised not to apply for a permit within this project were bitterly disappointed, and some of them consequently turned to private agents or other intermediaries who shamelessly exploited this despair. Some of these private agents filed - often for a very high price - applications for people who did not meet the criteria, thus exposing them to the risk of deportation.
- During this phase, we also had to fight disinformation on an unexpected scale. As soon as the project was launched publicly, the wildest rumours started flying: the number of available permits was capped, and there was no point in applying as one would never be one of the “happy few”; it was all a giant trap set up by the government to round up undocumented migrants and deport them all... Other rumours were less brazen but more insidious: some were saying that one needed to prove 10 years of continuous employment and denounce all former employers in order to be able to apply (in reality one needed to prove current employment only, and 10 years residence, which could be proven through other means); other said that if your employer didn’t support you, it was impossible to obtain a permit (this one was particularly frustrating, given how hard we had fought for that not to be the case). Throughout the operation, we had to constantly fight back, using every possible means of communication to reach these communities, reassure them and

encourage them to apply before the deadline of December 2018.

- Another difficulty was managing the massive delays in processing claims. As mentioned above, the cantonal administration (and eventually the federal administration, too) were rapidly unable to process the huge number of applications. On the one hand, this made our relationship with the persons and families we represented more difficult, as they understandably became increasingly frustrated with the wait, sometimes going for more than a year without any news at all as to how their case was doing or whether it had even begun to be processed. On the other, it made the political “steering” of the project more complicated. Indeed, it was harder to assess in real time how the project was going on the whole, as we had no immediate visibility on the outcomes of the cases (both in terms of permit obtention and labour market issues).

Key learning

- The regular meetings of the political and technical steering committees were crucial to ensuring that the implementation phase ran as smoothly as possible. It was very important to be able to discuss unforeseen cases as they showed up, and to strategize about communication and other political issues with all stakeholders throughout the operation.
- Though being part of a successful regularization scheme is exhilarating, it is vital not to underestimate how much work that involvement entails. For us NGOs and unions, especially given that it was a project limited in time, it was an exhausting and intense few years, during which our human, material, and emotional resources were sometimes stretched dangerously thin. Even though the historic nature of the project brought new volunteers (and donations!), everyone involved went above and beyond the dedication usually required in this line of work. Given the “pilot” nature of the project and its possible significance for other regions in Switzerland if successful, the pressure to get it right was high. It also attracted a lot of attention from media and academia, both of which were very welcome but added to the workload nonetheless.

21. It is important to note that throughout the operation, it remained possible for applicants who did not meet the criteria for operation Papyrus to apply for regularization on the grounds of “extreme individual hardship”. The difference was they did so within the

framework of same imperfect and lengthy procedure that had been in place before operation Papyrus, and thus had no guarantees as to the outcome of their case.

Conclusion

Ultimately the operation was a huge success, allowing over 2800 persons to access legal status – about a third of the total undocumented population in Geneva. Crucially, the overwhelming majority of applications we sent were approved. Thanks to the accompanying measures, millions of Swiss francs worth of social contributions poured into the State coffers, and many employers of domestic workers became aware of their obligations as employers. Moreover, the independent evaluation was able to show that none of the risks identified (new influx of undocumented migrants and large-scale dependency on welfare) actually materialized²².

We are currently awaiting a report by the federal government that should state their final assessment of the project and provide a proposal as to how to move forward, which will then be discussed by

Parliament. The report itself was delayed because the independent evaluation on which it is based could only be concluded once most of the cases had been processed. It is worth noting that since the project ended in 2018, the political context has changed considerably. The federal minister in charge of immigration who was in place at the start of the operation, socialist Simonetta Sommaruga, has been replaced by the very conservative Karin Keller-Sutter. Conversely, the parliamentary elections of 2019 ushered in a younger, “greener” and more gender-balanced Parliament. Moreover, the coronavirus crisis provided a stark reminder of the vulnerabilities faced by undocumented workers. We can only hope that the thousands of formerly undocumented workers who now can defend their rights and build a future in Switzerland will inspire federal authorities and lawmakers to make operation Papyrus the law of the land.

Geneva, October 2020

22. The evaluation is available online, following this link: <https://www.ge.ch/document/evaluation-du-projet-pilote-papyrus-relatif-regularisation-travailleurs-statut-legal-geneve/telecharger>

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RISE UP stands for Rights, Innovation, Solutions and Evidence based policy for Undocumented People.