



Autumn Academy 2017.

Strategic Approaches on Migrants with Irregular Status in Europe

Residents with irregular status: challenges for cities in a European policy context

By Ramon Sanahuja

St Hugh's College, Oxford,

September 18th – 22nd 2017



01

Introduction and Context

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Context

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1. **International flows of migration is a given reality** for the city.
 2. **Migrants in irregular status are continuously arriving** with the purpose to live and work in cities.
 3. **In practice Spanish legislation makes impossible to contract in origin, which eventually becomes an important source of informal economy.**
 4. **Very often local administrations have to deal with this reality:** Where do irregular migrants live? Which are their working conditions? Where are they going when they are sick? How can they report to the police a crime or an abuse? Where are their children attending schools? Where can they learn the language? And so on.
 5. **The city of Barcelona wants to improve reception and inclusion for all migrants arriving** in our city and to avoid the risk of social exclusion and lack of social cohesion **(50% of arrivals in irregular status).**
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02

Why do local government provide services and inclusion policies to irregular migrants.



Why do we do it?

Human Right reasons:

Irregular migrants exist as human beings and arrive constantly to our city; therefore we cannot turn a blind eye, and must act. We strongly believe that a minimum set of services should be accessible to everyone.

Practical reasons:

According to our experience, most *migrants in irregular status today will be regular migrants tomorrow*, since most of them will not be returned or expelled and will end up finding ways to regularize their situation. Therefore, the sooner we provide inclusion and hosting services, the better for all.

Political reasons:

Irregular migrants have become an excluded group, given that their rights are determined by their administrative situation. Our political focus as a local and public administration led by our Mayor is fighting social exclusion and inequities.



Why do we do it?

Economic reasons:

It is better including irregular migrants in mainstream services than creating parallel specific systems that are both less efficient and more expensive. This is clear in the case of accessing the health system.

All welcoming policies and inclusion efforts implemented by the Local Administration, must be seen as an investment rather than as an expenditure: an investment in social cohesions and prevention for possible future exclusion conflicts.

Legal reasons:

The Article 13th of the **Human Rights Universal Declaration states that:** *"Everyone has the right to freedom of movement and residence within the borders of each State" and that "Everyone has the right to leave any country, including his own, and to return to his country".*



03

Example of irregular migrants left alone by the State in our city without any documents





Irregular entries in Europe borders





Irregular entries in Europe borders



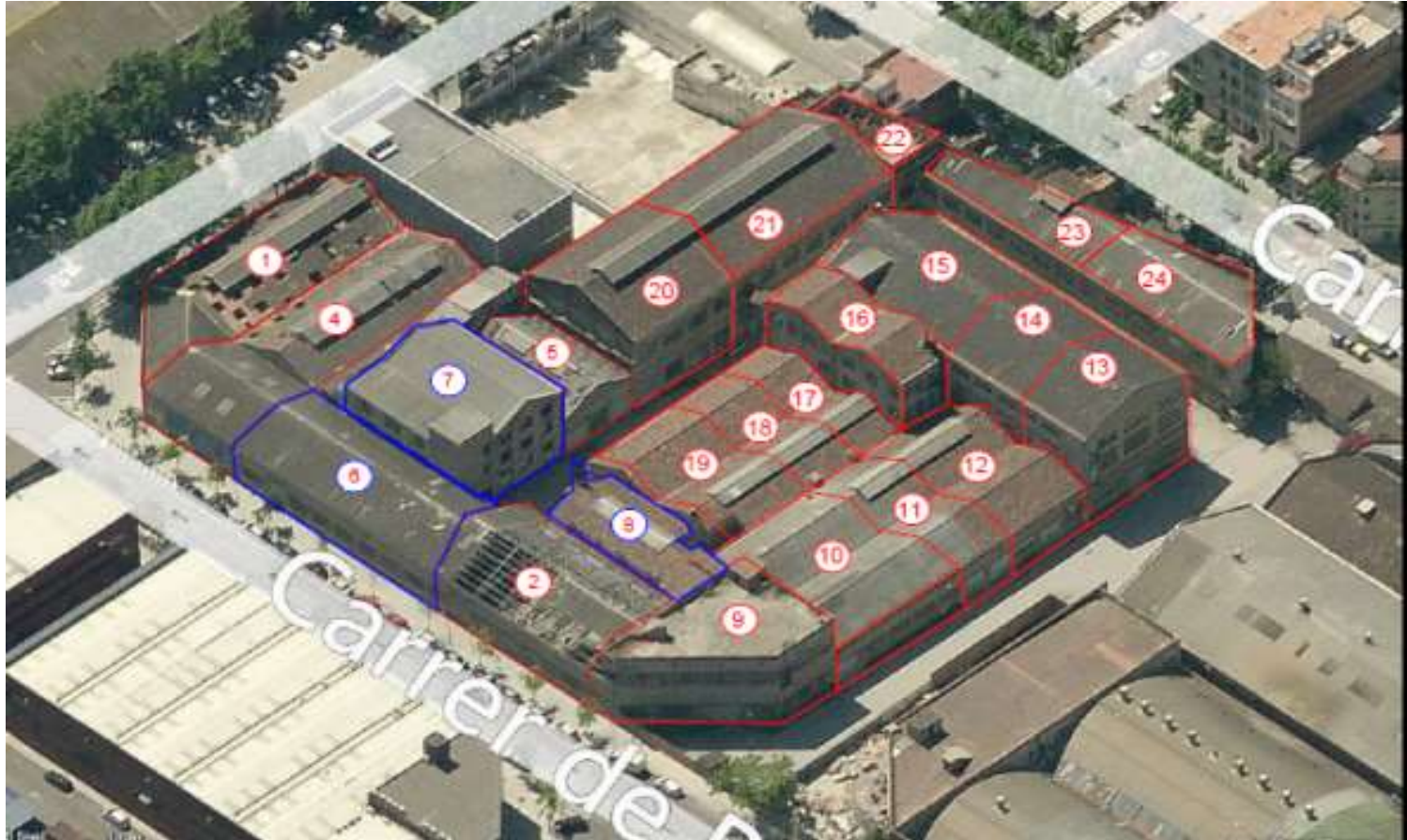


CIE / Internment Center in Barcelona





Irregular settlement in old industrial warehouse







Irregular settlement in old industrial warehouse





Informal economy : collecting junk in the streets





Informal economy : Street vendors





SAIER / Plan for irregular settlement









04

How do we do it? The government measure for encouraging access to regularization and preventing lapsed regularity



How do we do it?

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1. By **guaranteeing universal access to municipal public services** and promoting access to other services.
 - By having a **very active policy on local registration** (*Padrón*) in order to legally turn irregular migrants into local neighbours.
 - All people who are registered in the local register become a neighbour, and therefore he/she has the right to access to all local services: Education, health, libraries, language learning, etc.
 2. By **encouraging the regulation of people** in irregular situation who are living in the city (by providing free legal advice...) In some cases by providing job offers.
 - E.g. Targeting special groups like domestic workers.
 3. By **detecting and preventing possible situations of lapsed regularity**
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How do we do it. ?

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4. By **providing evidence on the vicinity** in Barcelona to all irregular migrants who are at risk of being expelled or interned.

This will provide evidence in case of detention by the police , to avoid internment at the Detention Centre, where they can be up to 60 days or can be expelled.

This evidence report will be launched in November 1st,

5. By **promoting amendments to legislation**, so that inclusive policies can be adopted in the Spanish legislation and if possible, also in the European legislation.

Other municipalities in Spain are following the example.



05

Questions and suggestions for the European Commission



Suggestions for the EC

1. Need to picture the real problem:

Europe should know a reliable estimation of the irregular migrants living in all member states. How many millions of them are there?

Establishing different profiles

2. Seeing which **nation legislations produce less irregularity** and **grant more inclusion and social cohesion, and then** benchmark these legislations. Also, seeing which legal framework provides fare situations for irregular migrants.

For instance: *the rooting process of the Spanish legislation —Arraigo Social— could be a good example.*

The best way to fight irregular immigration is to facilitate residence and work permits through recruitment at origin. In fact, it is because recruitment in origin does not work, that there is irregular immigration



Suggestions for the EC

3. **Accepting that all irregular migrants in the EU should not be deported or expelled:** it is not feasible neither legally nor because of budget reasons.

In this cases **recommend national state members to offer a temporary residence permit** for all those who, for different reasons, cannot be deported.

Promote voluntary return instead of forced deportation (as set in the Preamble of the Return Directive).

4. **Enabling through some indirect European directive a better minimum access to services in order to prevent exclusions** to all human beings independently of their legal situation (health, education...)



Suggestions for the EC

- 4. Enabling the EU funds to target irregular migrants not only in the return/expulsion funds:** Ex: language learning, training, social inclusions, emergency lodging...

Create a line of European funds for municipalities so they can work on inclusion policies with people in an irregular situation, especially for those programs who target very excluded irregular migrants (irregular settlements, etc).

- 4. Making possible at some degree to drop repressive approaches on irregularity,** especially for those professionals who in some countries are obliged to report such situation to the police (medical doctors, teachers, etc.). It is not their duty.

This will enable trust among irregular migrants towards public administrations



Suggestions for the EC

7. **Portraying legislation about minors hierarchical above any legislation** of residence. All minors should have granted education, health and protections in equal condition as the rest of the minors.
8. **Finally, words matter.** The EU has the Director General of “Legal Migration”... which implies indirectly the existence of “**illegal**” **migration**, therefore “illegal persons”, something that we suggest avoiding . Why not just calling it “**Migration and Intergation**”?



**Ajuntament
de Barcelona**

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Strategic Approaches on Migrants with Irregular Status in Europe
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Residents with irregular status: challenges for cities in a European policy context

By Ramon Sanahuja

The presentation is focused on the Barcelona's perspective specially presenting the *Government measure for encouraging access to regularization and preventing lapsed regularity*. The example given applies for the city of Barcelona, nevertheless, some of the reality and consequences described also apply for other local administration in Europe.

Introduction:

- As local administrations, we perceive the **international flows of migration as a given reality**. However, the competency to regulate these flows and to control the borders belongs to the central government.
- States do their best, but the reality is that **migrants in irregular status are continuously arriving** with the purpose to live and work in cities. This has been the case in the past and will be in the future for most European cities (from the North, South East or West).
- Eventually, "irregularity" is not an abstract concept. **It means people, persons who live and work** in specific places, usually cities. **Very often local administrations have to deal day by day with this reality**, and they are the ones who have to deliver answers to the following challenges: Where do irregular migrants live? Which are their working conditions? Where are they going when they are sick? How can they report to the police a crime or an abuse? Where are their children attending schools? Where can they learn the language? And so on.
- Independently of the legal status of the person, the city of Barcelona wants to improve reception and inclusion for all migrants arriving in our city and avoid the risk of social exclusions and lack of social cohesion.

Why do we provide services and inclusion policies to irregular migrants?

- **Human Right reasons:**

Irregular migrants exist as human beings and arrive constantly to our city; therefore we cannot turn a blind eye, and must act. We strongly believe that a minimum set of services should be accessible to everyone.

- **Practical reasons:**

According to our experience, most *migrants in irregular status today are future regular migrants tomorrow*, since most of them will not be returned or expelled and they will end up finding ways to regularize their situation. Therefore, as soon as we provide inclusions and hosting services, the better for all.

- **Political reasons:**

Irregular migrants have become an excluded group, given that their rights are determined by their administrative situation. Our political focus as a local and public administration led by our Mayor is fighting social exclusion and inequities.

- **Economic reasons:**

It is better including irregular migrants in mainstream services than creating parallel specific systems that are both less efficient and more expensive. This is clear in the case of access to the health system.

All welcoming policies and inclusion efforts implemented by the Local Administration must be seen as an investment rather than as an expenditure: an investment in social cohesions and prevention for possible future exclusion conflicts.

- **Legal reasons:**

The Article 13th of the **Human Rights Universal Declaration states that:** *"Everyone has the right to freedom of movement and residence within the borders of each State" and that "Everyone has the right to leave any country, including his own, and to return to his country"*.

In Spain, despite the political declaration of the Spanish government about *the "legal and orderly migration flow"*, the reality of our short period of history of migration is the great number of irregular migrants (50% of all migrants in Spain have been somehow in irregular status). Such a big number of irregular migrants are the evidence that the legal system is not working accurately.

The own Spanish legal system framework and the way it is applied has created an important number of irregular migrants. How and why?

- Restrictions on legal immigration channels, by limiting entry channels in all their options.

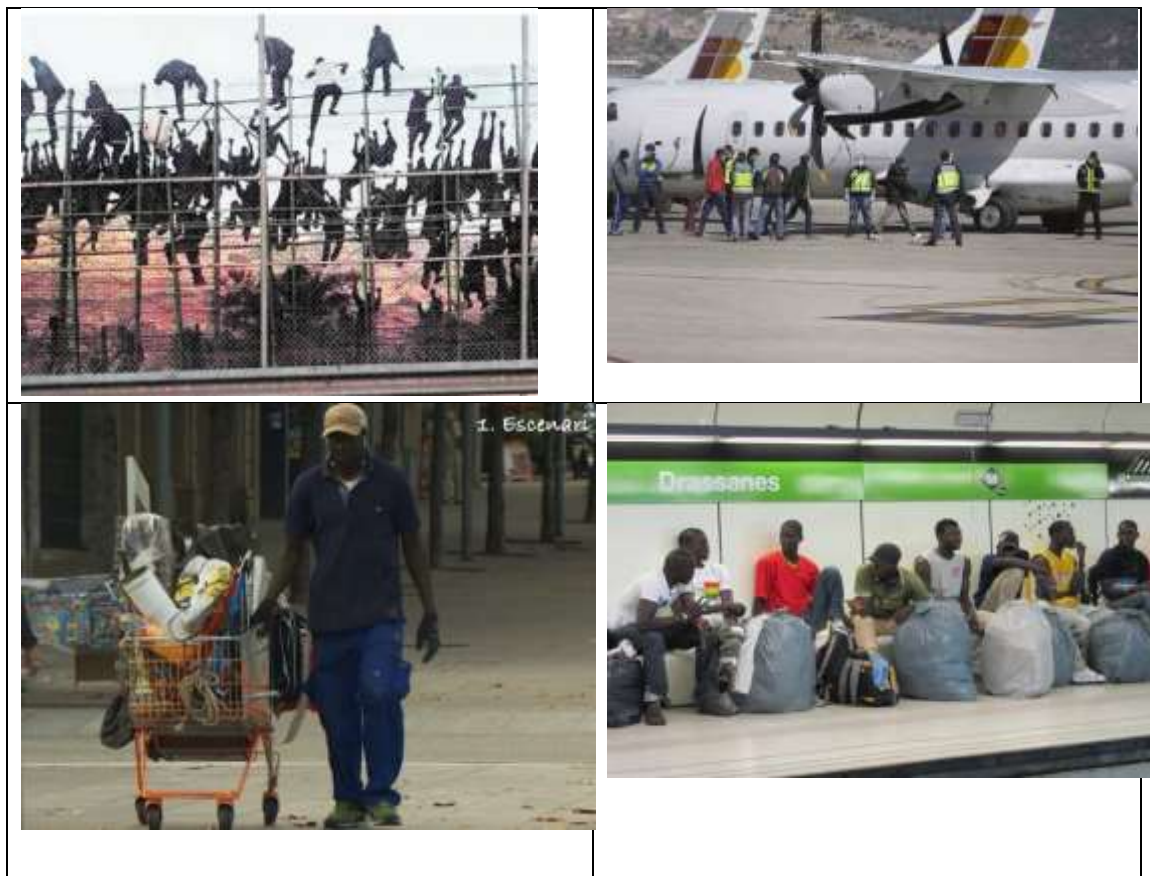
- Granting very short residence and work permits.
- The complexity and inflexibility of the residence and work renewal system.
- The lack of any mechanism for enabling foreign nationals who cannot be deported to regularise their situations.

Example:

The State is constantly transferring from Melilla, Ceuta or the Canary Islands to Barcelona migrants who cannot be deported or expelled and who are left on their own in the streets without any legal document.

This flow, which started in the year 2000, has transported thousands of sub-Saharan migrants, and has created social cohesion problems in Barcelona. For instance, an important number of irregular migrants are currently living in very poor conditions in the city.

Much of these people end up living in irregular settlements in old industrial buildings and in the margins of the economy, collecting junk or as street vendors.





To solve and deal with this situation our administration had to create social programs in order to provide some help and inclusive solutions to these persons. These programs have been financed, in the case of Barcelona, with the municipal budget.

Lapsed regularity:

Another legal problem is the so called “**lapsed regularity**”, that is: migrants, or even refugees, in regular status due to several reasons end up losing the residence permit, therefore fall in irregularity. In the case of Spain, the main reason is that these migrants do not meet all the legal requirements for the renewal, especially if it occurred that they had lost their job. Very often, if the affected person is the head of a family, the legal status also affects the rest of the family.

Lapsed regularity is also a great problem from the policy point of view: many public administrations have invested in hosting and inclusion policies and the results for these efforts can be eventually useless.

In other countries of Europe, lapsed regularity would include all asylum seekers whose application have been rejected after waiting a decision for months or even years.

Which are the consequences of irregular situations in our city?

- a) **Favouring the informal job market.**
- b) **Labour exploitation and unstable employment conditions.**
- c) **Distrust of access to public authorities.**
- d) **From administrative exclusion to social exclusion: legal, labour**
- e) **Potential segregation and social conflicts in the public space.**

How do we do it? (See the document on our Government measure for encouraging access to regularisation and preventing lapsed regularity).

1. By **guaranteeing universal access to municipal public services** and promoting access to other services.

By having a **very active policy on local registration** (*Padrón*) in order to legally turn irregular migrants into local neighbours. All people who are registered in the local register become a neighbour, and therefore he/she has the right to access to all local services.

2. By **encouraging the regulation of people** in irregular situation who are living in the city (by providing free legal advice...)
3. By **detecting and preventing possible situations of lapsed regularity**
4. By **providing evidence on the vicinity** in Barcelona to all irregular migrants who are at risk of being expelled or interned.
5. By **promoting amendments to legislation**, so that inclusive policies can be adopted in the Spanish legislation and if possible, also in the European legislation.

Questions/suggestions for the EU.

We acknowledge that it is not easy to deal with all member states, especially with countries with positions on the edge like Hungary, Slovakia, Poland or even the UK.

It is a fundamental political issue that is decided at the highest levels, but there is a need to shift the focus and have real politics on the issue: Europe cannot turn a blind eye on the situation of millions of human beings living poorly in our cities.

1. Need to picture the real problem:

Europe should know a reliable estimation of the irregular migrants living in all member states. How many millions of them are there?

If we are not able to quantify the reality we cannot see this reality, ergo we do not have a problem. The number should be realistic and estimated by every state member, using independent and reliable sources with an accurate methodology.

Also, there is a need of qualitative data on the exclusion/inclusion situations of the irregular migrants in every country.

In the US there are estimations, which makes them aware of the size of the “problem”.

Establishing the different profiles of irregular migrants in Europe and studying different situations:

- Overstay visitors
- Rejected asylum seekers
- Economic migrants
- Lapsed regularity...

2. Seeing which **nation legislations produce less irregularity and grant more inclusions and social cohesions, and then** benchmark these legislations. Also, seeing which legal framework provides fair situations for irregular migrants.

The best way to fight irregular immigration is to facilitate residence and work permits through recruitment at origin. In fact, it is because recruitment in origin does not work, that there is irregular immigration.

Identify also which legislation better avoids the terrible risks and impact of lapsed regularizations.

For instance *the rooting process of the Spanish legislation —Arraigo Social— could be a good example* of innovative legislation.

3. **Accepting that an important part of all irregular migrants in the EU should not be deported** or expelled: it is not feasible neither legally nor because of budget reasons.

In this cases **recommend national state members to offer a temporary residence permit** for all those who, for different reasons, cannot be deported.

Promote voluntary return instead of forced deportation (as set in the Preamble of the Return Directive).

4. **Enabling through some indirect European directive a better minimum access to services in order to prevent exclusions** to all human beings independently of their legal situation (health, education...)
5. **Enabling the EU funds to target irregular migrants not only in the return/expulsion funds:** Ex: language learning, training, social inclusions, emergency lodging...

Create a line of European funds for municipalities so they can work on inclusion policies with people in an irregular situation, especially for those

programs who target very excluded irregular migrants (irregular settlements, etc).

6. **Making possible at some degree to drop repressive approaches on irregularity**, especially for those professionals who in some countries are obliged to report such situation to the police (medical doctors, teachers, etc.). It is not their duty.
 - This will enable trust among irregular migrants towards public administrations (it is important for many reasons: Public health, security, the rights of minors...). Irregulars must trust public administration to avoid dangers and risks.
7. **Portraying legislation about minors as hierarchal above any legislation of residence**. All minors should have granted education, health and protections in equal condition as the rest of the minors.
8. Finally, **words matter**. The EU has the director general of “Legal Migration”... which implies indirectly to the existence of “**illegal**” **migration**, therefore “illegal persons”, something that we suggest to avoid. Why not just calling it “**Migration**”?