



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

Undocumented Migrants with HIV/AIDS in Europe

Discussion paper for the conference “The right to HIV/AIDS prevention, treatment, care and support for migrants and ethnic minorities in Europe: The community perspective.”

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Organized by the European Aids Treatment Group (EATG) and Group Português de Activistas sobre Tratamentos de VIH/SIDA Pedro Santos (GAT)

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization that aims to promote respect for the human rights of undocumented migrants within Europe.

PICUM promotes respect for the basic social rights of undocumented migrants, such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid, and the right to fair labour conditions.

PICUM is based in Brussels and has nearly 90 affiliated members and 90 ordinary members in approximately 20 countries in Europe and beyond. PICUM's monthly newsletter on issues concerning the human rights of undocumented migrants is produced in seven languages and circulates to PICUM's network of more than 2,400 civil society organizations and individuals and further.

On 28-29 June 2007, PICUM, with the support of EUROCITIES, will hold an international conference in Brussels on “Access to Health Care for Undocumented Migrants in Europe.” The event will provide a forum to share creative examples and strategies to address the problems associated with insufficient access to health care for undocumented migrants in Europe.

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Undocumented Migrants in Europe

Undocumented migrants are migrants who do not have a residence permit authorizing them to regularly stay in the country of destination. In its work PICUM encounters two principle types of undocumented migrants:

- (i) People whose arrival in the country of destination has been by a legal route, but who have subsequently found that the substantial cost of their movement cannot be recovered through the very limited work opportunities permitted under the official schemes;
- (ii) People who, though gaining admission by irregular routes, had been led to that point after a long-drawn out process involving a substantial commitment in time and scarce financial resources, but who had not at the onset of their journey necessarily intended 'illegal' migration.

According to estimates from 2008, there are about 3.8 million undocumented migrants in Europe¹, whom largely remain invisible in the eyes of policy makers. This situation puts enormous strain on local actors such as NGOs, health care and educational professionals, and local authorities, who often work with limited resources to defend undocumented migrants' fundamental rights, including the right to health care, education and training, fair working conditions, and housing. These local actors are confronted on a daily basis with situations in which they witness that irregular legal status is an obstacle for a sizeable part of the population in accessing basic social services. Professional groups experience clashes between what their professional ethics tell them to do and the incriminatory discourse regarding undocumented migrants.

Undocumented = No Human Right to Health Care?

Generally speaking undocumented migrants in Europe have serious problems in gaining access to health care services. While numerous international instruments in human rights law have been ratified by EU member states and refer to the right of *everyone* to health care as a basic human right (regardless of the administrative status of the person), the laws and practices in many European states deviate from these obligations.²

Improving access to health care for undocumented migrants is an urgent priority not only since the lack of access has proven to have serious consequences for undocumented migrants but also for public health in general.

¹ Clandestino Project, *Undocumented Migration: Counting the Uncountable – Data and Trends across Europe*, 2009. (http://irregular-migration.hwwi.net/typo3_upload/groups/31/4.Background_Information/4.2.Policy_Briefs_EN/ComparativePolicyBrief_SizeOfIrregularMigration_Clandestino_Nov09_2.pdf) accessed on 27 May 2007.

² Luca Bicchieri and Michele LeVoy, *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework*. PICUM. March 2007. (<http://www.picum.org/HOMEPAGE/Undocumented%20Migrants%20Have%20Rights!.pdf>) accessed on 21 May 2007.

PICUM's research and the experience of the organizations in its network have shown that there is a wide disparity amongst EU member states concerning legal entitlements of undocumented migrants to basic health care services. The following general observations can be made:

- Some member states provide no subsidized health care to undocumented migrants, allowing access only on a payment basis (e.g. Sweden and Austria);
- Some member states (e.g. Germany) provide subsidized access in very limited cases;
- Some member states run "parallel" health care services for undocumented migrants (e.g. France, Belgium and the Netherlands);
- Some member states offer free health care services to undocumented migrants under almost the same conditions as nationals (e.g. Spain and Italy).³

In addition to these wide discrepancies in legal entitlements, there is a general lack of clear-cut definitions and poor awareness amongst all actors concerned (local authorities, health care providers, NGOs, and especially undocumented migrants themselves) about entitlements to health care services. This results in a situation in which a large number of undocumented migrants throughout Europe do not access proper health care services.

In recent years, there has also been a tendency in Europe to restrict access to health care for undocumented migrants and to reinforce the link between access to health services and immigration control policies. Such policies not only undermine fundamental human rights but also result in overburdening migrant communities who may already be marginalized and living in precarious situations. "Disputes over immigration status frequently cut across the provision of care and treatment, leaving sick people untreated, supported only by others in the migrant communities who themselves subsist at a minimum wage and minimum social amenity standards."⁴

Undocumented migrants with HIV/AIDS are one of the most vulnerable groups in Europe today. As migrants they face discrimination and their uncertain legal situation results in precarious living conditions. Living with a serious illness makes it extremely difficult to earn a living in order to survive, and if they do work in the informal economy as undocumented workers they often encounter abuse and exploitation by their employers. In addition, undocumented migrants with HIV/AIDS suffer from stigmatization for being HIV-positive and may even be rejected by members of their own ethnic communities.

Access to HIV/AIDS Testing and Treatment

A person who is HIV-positive in Sweden, without a legal residence status, faces being sent back to his or her country of origin if discovered. This was the case of Sebastian, who had to pay for the cost of his private visits to the doctor. The lack of treatment means that HIV-positive undocumented

³ This information is based on PICUM's research conducted in 11 EU member states (Austria, Belgium, France, Germany, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom). See PICUM, *Access to Health Care for Undocumented Migrants in Europe*, 2007.

(<http://www.picum.org/sites/default/files/data/Access%20to%20Health%20Care%20for%20Undocumented%20Migrants.pdf>) accessed on 27 April 2010.

⁴ AIDS and Mobility Europe, "Preface: The ideal of migrant-friendly health care," in *How HIV-positive people with an uncertain residence status survive in Europe: You can speak! AIDS and Mobility Europe*, 2006, p 2. (<http://ws5.e-vision.nl/systeem3/images/WG%20IV%20-%20You%20can%20speak.pdf>) accessed on 21 May 2007.

*migrants will not be treated as nationals within the Swedish health system because of their irregular legal status, despite the fact that the Swedish law states that the primary concern of a doctor is the patient's health. Undocumented migrants who are HIV-positive face a slow and silent death penalty in Sweden, as the provision of anti-retroviral medication is only available to Swedish citizens. For undocumented migrants like Sebastian there is no way out.*⁵

Considerations of public health have resulted in almost all EU member states providing anonymous and free HIV *testing* to undocumented migrants. Nonetheless, this is not always the case regarding HIV/AIDS *treatment* for undocumented migrants. PICUM's research in this area reveals the following situations amongst various EU member states⁶:

- Some EU member states provide treatment to undocumented migrants with HIV/AIDS free of charge, in some cases, and under certain conditions (e.g. Belgium, France, Italy, the Netherlands, Spain and Portugal);
- Some EU member states provide treatment to undocumented migrants with HIV/AIDS only on a payment basis, and often at full cost (e.g. Austria, Sweden and the UK);
- In Germany, the situation has drastically changed since PICUM first performed its research in 2007. Undocumented migrants had access as long as they obtained a *Krankenschein* (a document allowing the person to go to the doctor) from a social welfare center⁷; however, there was the duty to denounce undocumented migrants to the immigration authorities imposed on health centers and other public administration institutions. In September 2009, a new legislation was passed which stated that the administrative personal of hospitals and social welfare centres no longer had the duty to denounce.⁸

In many EU member states where there are no legal entitlements to receive HIV/AIDS treatment, the law provides for the possibility of asking for a residence permit on medical or humanitarian grounds. In practice, however, it is very difficult to obtain such permits. In addition, in some countries the procedures and criteria applied by public administration are rather discretionary.

Given all of these above-mentioned difficulties in gaining access to treatment, the role played by civil society organizations and local actors is crucial concerning undocumented migrants with HIV/AIDS. There are many organizations and hospitals throughout Europe that aim to ensure that undocumented migrants have access to treatment by putting in place all possible strategies for them to gain access. Yet in some cases the reality remains that even these entities cannot reach this group of extremely excluded migrants who, on many occasions, go to the hospital only to die.

⁵ AIDS and Mobility Europe, "Sweden: Mikael's testimony about his friend Sebastian: Denied the medication he needed to live," in *How HIV-positive people with an uncertain residence status survive in Europe: You can speak!* AIDS and Mobility Europe, 2006, pp. 27-29. (<http://ws5.e-vision.nl/systeem3/images/WG%20IV%20-%20You%20can%20speak.pdf>) accessed on 21 May 2007.

⁶ PICUM, *Access to Health Care for Undocumented Migrants in Europe*, 2007.

⁷ HUMA Network, *Access to Health Care for Undocumented Migrants and Asylum Seekers in 10 EU Countries*, 2009. (<http://www.huma-network.org/News-Press-Releases/Access-to-health-care-A-fundamental-right-not-respected-in-Europe>) accessed on 27 April 2010.

⁸ *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz vom 19.09.2009, Nr. 88.2.3.* (http://www.forum-illegalitaet.de/Kath_Forum_Erl_uterung_AVV_Aufenthaltsgesetz.pdf) accessed on 27 April 2010.