

Basic Social Rights - Spain

1. Right to Shelter

- **Can an undocumented migrant receive accommodation in a public housing shelter or in a private shelter that receives public funding?**

No information provided.

- **Is it legal for a landlord to rent out an apartment to an undocumented migrant?**

Yes. For example, the organisation Provienda in Madrid works on the government's behalf on a programme to ensure immigrants' access to rented housing. They act as mediators between the undocumented migrant and the landlord, and ensure that the apartment meets minimum standards.

2. Right to Health Care

- **Do undocumented migrants have access to public health care / is there a special health service only for undocumented migrants?**

The law passed in 2001 guarantees health care for pregnant women and minors, and for undocumented migrants who are registered at the town hall. However, this is a national law, and each autonomous community has its own competences in health care. An example of how this works is the case of Andalucía. In 1999, a special agreement was made by the Department of Health of the Andalusian government, NGOs and trade unions to guarantee access to the health care system. An undocumented migrant can access health centres directly or via the referral card obtained at a participating organization.

The condition of registration at the town hall also excludes a number of groups from access to health care, as the precondition is the possession of a passport and a housing contract. Therefore, there are a number of special health care centres focusing on those groups.

The Aliens Act that went into effect on 22 December 2003 contains two provisions that directly affect undocumented migrants, specifically concerning health care: police are able to access data of foreigners registered at municipalities; and thus undocumented migrants no longer have much of an incentive to register at the municipality (some still register to obtain health care, but many may consider it too risky given that the police can have access to their data).

- **Do health care professionals have the duty to report an undocumented migrant to the authorities? If yes, why? If no, why not?**

As health care is guaranteed by law, there is no obligation to report undocumented migrants.

3. Right to Fair Labour Conditions

- **Does national labour law stipulate that an employer is obliged to pay an undocumented migrant for work done, even if the worker does not have a legal residence or work permit?**

No information provided.

- **If an undocumented migrant has an accident at the workplace, can s/he receive coverage from Social Security (via accident insurance) to cover the costs of treatment or care?**

No information provided.

- **Can an undocumented migrant bring a court case against an employer for withheld wages?**

No information provided.

4. Right to Organise

- **Do undocumented migrants have the right to organise?**

According to Article 7 of Law 8/2000, the right to demonstrate, to public meeting and to associate are subject to the foreigner being a resident or being authorised to stay in the country. Therefore, undocumented migrants do not have these rights.

- **Can an undocumented migrant be a member of a trade union?**

The Law 8/2000, which came into force in January 2001, links the right to become a member of a trade union to a migrant's legal status. This also counts for the right to strike. This violates Article 28 of the Spanish constitution, and ILO agreements. However, trade unions stated that they consider the law unconstitutional, and that they would continue to allow undocumented migrants to join.

5. Right to Education and Training

- **Can undocumented children under the age of 18 enroll in schools?**

Yes. It is compulsory for all children in Spain to attend school, and thus undocumented minors are also required to attend school.

- **Are schools obliged to report the presence of undocumented children/adolescents to the authorities?**

No.

- **Do schools receive any funding for these children/adolescents?**

No information provided.

- **Do undocumented adults (over the age of 18) have the right to education and training?**

Undocumented adults may not legally enrol in courses at adult education centres, though in practice these centres are not very restrictive.

6. Right to a Minimum Subsistence

- **Do undocumented migrants have a right to welfare benefits from the government?**

No information provided.

7. Right to Family Life

- **Can an undocumented migrant legally get married or legally cohabit?**

No information provided.

- **Is it legal to deport an undocumented migrant without his/her spouse or child/ren?**

No information provided.

8. Right to Moral and Physical Integrity

- **Are there rules and regulations upholding the right to integrity of undocumented migrants in this country?**

No information provided.

- **Has this country been condemned for not respecting international agreements concerning protection of the personal integrity of undocumented migrants?**

No information provided.

- **Are detention centres accessible to non-governmental organisations?**

In general, it is difficult to enter a detention centre. One organisation, the Federación Estatal de SOS Racismo in Barcelona was able to enter detention centres when a politician or parliamentarian made the request and accompanied the organization. Requests made by the organization itself were systematically denied.

9. Right to Legal Aid

- **Are undocumented migrants entitled at any time to free legal aid from a jurist or lawyer?**

No information provided.

- **Can undocumented migrants freely assert their rights in court and in the appeals court?**

No information provided.

Books and Reports

- Rapport sur la situation actuelle à El Ejido et dans la province d'Almeria (Andalousie, Espagne) suite à la visite d'une mission internationale coordonnée par le Forum Civique Européen, 12 Janvier 2004
- El Ejido, Terre de non droit (French or German) : a report of an international investigative commission on the racist uprisings in February 2000 in Andalucia. (European Civic Forum and Comité Européen de Défense de Réfugiés et Immigrés, order at: longomai@karatel.fr or eurocoop@swissonline.ch)
- Ruiz Olabuénga, J.L., Ruiz Vieytiez, E.J. and Vicente Torrado, T.L. Los Inmigrantes Irregulares en España: La vida por un sueño (1999), Serie Derechos Humanos, vol.4. Universidad de Duesto, Bilbao
- Domingo, A. , Kaplan, A. and Gil, C.G. Easy scapegoats: Undocumented Migrants in Europe, Spanish Report 2000, Freudenberg Stiftung

Articles

- Discretion Without Bounds: The Arbitrary Implementation of Spanish Immigration Law (July 2002).
This report documents how the Spanish government has failed to ensure the uniform and coherent implementation of its immigration law, resulting in the arbitrary and discriminatory treatment of migrants. The report is also available in Spanish and French. Please contact Dorit Radzin at radzind@hrw.org if you would like to receive a version in one of these languages. Also, please refer to [Human Rights Watch's Spanish language website](#) for links to our research and advocacy work in a variety of countries that has been translated into Spanish.