



Housing and Homelessness of Undocumented Migrants in Europe:

Developing Strategies and Good Practices to Ensure Access to Housing and Shelter

 P I C U M

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

On 28 June 2013, PICUM held an international workshop entitled “*Housing and Homelessness of Undocumented Migrants in Europe: Building Alliances and Developing Strategies*” in Brussels, Belgium. This workshop was co-organised with FEANTSA - European Federation of National Organisations Working with the Homeless and EAPN - European Anti-Poverty Network.

Participants representing local authorities, service providers, policy makers, and institutional actors from across Europe came together concerning undocumented migrants’ right to housing and right to shelter in the EU. They shared their experiences and explored strategies to challenge existing barriers through innovative tools, partnerships and policy change.

Drawing on these expert inputs and discussions, this report seeks to clarify undocumented migrants’ right to housing by exploring their access to this right in practice. The report provides an overview of their access to private sector accommodation as well as temporary shelters in various EU countries and identifies key barriers, challenges and concerns. Innovative policies and practices are highlighted which enable undocumented migrants to enforce their right to housing and improve their living conditions.



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Cover photo: Undocumented migrant children coming out of a squat in Brussels, Belgium. ©Elisabeth Schmidt-Hieber, 2012.

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Contents

Executive Summary	4
Immigration Control Mechanisms vs Right to Housing	4
Private Housing	5
Temporary Accommodation	5
Strategies and Solutions	5
Housing: Human Right vs. Immigration Control	6
Undocumented Migrants' Access To Private Housing	8
A. Challenges for Undocumented Migrants	8
B. Strategies and Solutions	10
Undocumented Migrants' Access to Emergency Accommodation	13
A. Challenges for Undocumented Migrants	14
B. Strategies and Solutions	15
Looking Ahead: Opportunities Provided by the EU Anti-Poverty Agenda for Implementation in EU Member States	19
The European Union's Strategy Against Poverty and Social Exclusion	19
Recommendations	22



Platform for International Cooperation on Undocumented Migrants (PICUM)

Founded as an initiative of grassroots organisations, the PICUM - Platform for International Cooperation on Undocumented Migrants represents a network of nearly 160 organisations and 160 individual advocates working with undocumented migrants in nearly 40 countries, primarily in Europe, as well as in other world regions. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights by providing an essential link between undocumented migrant's daily realities and the debates on migration and access to services at policy level. Working to make human rights a reality for undocumented migrants, PICUM also focuses on access to housing and shelter and to ensure that undocumented migrants receive assistance to access housing which is in line with human dignity.



“Migration policy should take into consideration migrants and housing and housing and social policy should take into consideration migrants. This is why PICUM also looks at social policies, besides migration policies.

In 2004, PICUM first published a report on undocumented migrants the housing situation in Europe and our 2012 report on ending violence against undocumented women also addressed the issue of emergency accommodation.”

Michele LeVoy, Director PICUM



European Federation of National Organisations working with the Homeless

FEANTSA, the European Federation of National Organisations working with the Homeless, was established in 1989 as a European non-governmental organisation to prevent and alleviate the poverty and social exclusion of people threatened by or living in homelessness. FEANTSA currently has more than 130 member organisations, working in close to 30 European countries. FEANTSA work to ensure access to adequate housing and more permanent dwelling. Migrants and housing has been a focus of FEANTSA's work for many years, most recently also through a special working group on migration.



“A European strategy to end homelessness must take different situations of homelessness into account. The specific needs of women, children or people with mental health problems have to be addressed. Undocumented migrants sleeping rough without access to emergency shelter are having their basic human rights denied.”

Freek Spinnewijn, Director FEANTSA



European Anti-Poverty Network (EAPN)

The European Anti-Poverty Network (EAPN) is a European network of national, regional and local networks, involving anti-poverty NGOs and grassroots organisations as well as European networks. EAPN has existed since 1990 to fight poverty and social exclusion, with members involved in a variety of activities aimed at combating poverty and social exclusion including, education and training, service provision and activities aimed at the participation and empowerment of people experiencing poverty and social exclusion.

EAPN aims to put the fight against poverty high on the EU agenda and ensure cooperation among relevant actors to eradicate poverty and social exclusion. Working with its members to develop strategic recommendations, EAPN has consultative status with the Council of Europe, and is a founding member of the Social Platform (Platform of European Social NGOs).



“There is a strong link between poverty and discrimination. Migrants are clearly a group experiencing high levels of poverty and social exclusion. Ethnicity, racism and migration have been core areas of EAPN’s work. Through our national networks, we work on undocumented migrant issues and we integrate migrants’ concerns in our work at EU level, for instance in the context of the EU 2020 strategy.”

Fintan Farrell, Project and Fundraising Manager, EAPN

Executive Summary

The right to housing is explicitly recognised as a basic human right among a wide range of international and regional instruments. As one of the facets of an “adequate standard of living”, it is stipulated in the Universal Declaration of Human Rights (UDHR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR). This right is applicable to all persons regardless of nationality or legal status.¹

The legal, economic and social constraints facing undocumented migrants have a dramatic impact on their living conditions. In the absence of work permits and lacking access to social protection, they have no legal income and are turned away from essential services. Attempts to control migration by restricting access to housing often result in landlords, letting agents and managers of emergency or temporary accommodation services being tasked with immigration control; required to check residence status, they face significant administrative burden and may face fines or criminal sections if they are found to be housing an irregular migrant.

As a result, housing standards are lowered, suspicion towards migrants is increased, and undocumented migrants may be forced to choose between poor quality, high priced rental accommodation or homelessness. Their irregular migration status means that they are unable to access existing complaint mechanisms or recourse on the private housing market, and lack entitlement to emergency accommodation and shelter.

Immigration Control Mechanisms vs Right to Housing

The right to housing is a comprehensive right encapsulating access to appropriate, secure, and sustainable accommodation. The tendency to link access to housing with immigration control mechanisms is the leading cause of poor housing or homelessness for undocumented men, women and children across the EU.

Facilitating irregular entry and irregular stay is considered a criminal offence in most member states. Criminalisation can also apply to people who assist, support and rescue undocumented migrants for humanitarian reasons. Detection practices targeting the housing sector have resulted in policies where landlords, rental agencies, or housing inspectors are obliged to share undocumented migrants’ personal data with immigration authorities. Undocumented migrants often carry the burden of these policies, through increased costs and poorer conditions, and are presented with a difficult choice of being arrested on grounds of their irregular status, or becoming homeless.

While most EU countries have specific policies on child rights and a clear set of protection duties are placed on public authorities, children of undocumented families experience a different reality. A few European countries provide temporary shelter to families with an on-going application with the immigration authorities, but these arrangements remain very restricted, and the

¹ [UDHR](#), Article 25(1) and [ICESCR](#), Article 11(1).

accommodation provided is often unsuitable for children. Consequently, migrants whose irregular status prevents them from accessing emergency shelters and other temporary housing solutions are often faced with no other solutions but sleep in public parks and on the streets.

There is also a clear gender dimension to this issue. While domestic violence is a key cause of homelessness among women, an irregular migration status poses a significant set of additional barriers for those seeking support as they are likely to be turned away from specialised women's shelters and services as they do not qualify for funding.

Private Housing

Because of their residence status, undocumented migrants across Europe are excluded from state-subsidised housing and support and thereby relegated to the margins of the private housing market. Undocumented tenants have little bargaining power and limited access to complaints mechanisms and redress in cases of exploitation and other violations of their rights as tenants. While they are confined to the informal labour market and earn significantly less than other workers, they are often charged above market rates for inadequate accommodation.

In some countries, a residence permit is required to legally rent on the private market and landlords face sanctions for renting to undocumented migrants. In these contexts, many undocumented migrants endure poor, overcrowded and substandard housing conditions at exploitative rates. Landlords may take advantage of their situation to exploit them, charge them well over the market rates for sub-standard conditions and threaten or even physically abuse them. Such insecurity means that undocumented migrants and their families have to move frequently, perhaps relying on friends and family, staying in squats or spending nights rough sleeping.

Temporary Accommodation

While frontline service providers across the EU report growing numbers of undocumented migrants reaching out to their services, their access to homeless shelters is not guaranteed. State run long-term shelters often set conditions such as regular residence status or social security registration to allow access. Similarly, private facilities are also reluctant to accept undocumented homeless migrants for long-term shelter programmes.² Possibilities for undocumented migrants to access emergency night shelters do exist in many countries although many obstacles remain.

Strategies and Solutions

To bring about long term and effective solutions, civil society organisations concerned with undocumented migrants' housing situation are increasingly working to change the laws and policies which violate this essential right. They are monitoring and reporting on the situation on the ground, building multidisciplinary coalitions to urge for policy change, using legal channels, and taking an active role in transnational networks addressing poverty and homelessness at EU level.

The experiences and insight of local and regional authorities are essential to any consideration about undocumented migrants' housing. Management of social housing and emergency accommodation centres are usually a local or regional competence. Authorities at this level are often caught between national policies on migration - which focus on forced destitution and return - and local interests to ameliorate social circumstances of all residents. For this reason they are frequently a source of pragmatic, cost-effective and human rights compliant practices and partnerships to ensure undocumented migrants access to housing.

² See: European Union Agency for Fundamental Rights, "[Fundamental rights of migrants in an irregular situation in the European Union](#)", page 64, 2011.

Housing: Human Right vs. Immigration Control

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

- Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

“Regardless of their immigration status, all migrants must be afforded essential levels of protection with regard to their access to adequate housing and living conditions.”³

- United Nations Special Rapporteur on Adequate Housing, Raquel Rolnik.

“As human beings and as workers, undocumented migrants contribute to the development in our destination country, therefore we consider ourselves as part of the society. It is within this vision that we reclaim our human rights as promised in Article 25 in the Universal Declaration of Human Rights, and in Article 8 in the European Charter of the Human Rights, to acquire and sustain a secure home and community in which we live in peace and dignity. We are workers and we deserve a house that is our home.”

- Edgar Legaspi, Trusted Migrants, Netherlands.

³ See: United Nations Special Rapporteur on adequate housing, Raquel Rolnik: “[Right to Adequate Housing](#)”, page 21, 2010.



Undocumented Migrants' Right to Housing

ANN-CHARLOTTE NYGARD, European Union Agency for Fundamental Rights



Housing is a human right. The right of housing for undocumented migrants relates to Article 1 of the EU Charter on Fundamental Rights which addresses human dignity. The right to housing is also a precondition for the realisation of other basic rights ensured by the Charter, as for example the right to health. Legally speaking, the state has an obligation not to interfere with the right to an adequate standards of living, which means that they should refrain from interference which prevents access to housing.

Adequate housing is not to be interpreted as simply a roof over one's head but rather as the right to a shelter which provides sufficient privacy, space and security. However, in the EU today, the housing situation of migrants in an irregular situation is often precarious and insecure. Moreover, if access to housing is tied to enforcement measures seeking to apprehend irregular migrants, there is a risk that the right to housing may be violated. In 2011, the EU Fundamental Rights Agency produced a report on undocumented migrants in Europe and their access to rights, including the right to housing. This report demonstrated the close relationship between immigration control and enforcement measures and the protection of fundamental rights of the persons affected cannot be neglected. This research found that in 15 EU member states, landlords risk punishment for leasing to irregular migrants.⁴ Sometimes, renting of accommodation is punishable explicitly in the law, and sometimes it is prohibited under the general rules on facilitation of irregular stay. If landlords are punished for renting to irregular migrants, it might leave irregular migrants in exploitative housing conditions or they may even become homeless.

Council Directive 2002/90/EC (The Facilitation Directive) requires EU member states to adopt effective, proportionate and dissuasive sanctions for facilitating irregular migration. The Directive must be implemented in line with the EU Charter of Fundamental Rights. The FRA recommends that the Facilitation Directive is revised so that EU Member States prohibit the penalisation of actions committed with a humanitarian aim. They also propose that the wording of the directive be revised so as to exclude the punishment of persons who rent accommodation to migrants in an irregular situation, unless this is done for the sole purpose of preventing removal.

⁴ See: European Union Agency for Fundamental Rights, "Fundamental rights of migrants in an irregular situation in the European Union", page 63, 2011.

Undocumented Migrants' Access To Private Housing

"It is crucial for undocumented migrants to have access to housing as a first step to accessing other fundamental rights."

Maaika Santana, Pigment, Belgium

A. Challenges for Undocumented Migrants

Because of their irregular migration status, undocumented renters face a particular set of barriers on the private housing market. They have very little bargaining power and are frequently restricted from accessing complaint mechanisms or redress in cases of exploitation and other violations of their rights as tenants. In some countries, their position is further compromised as immigration control mechanisms sanction landlords for renting to those without a valid residence permit.

As a result, many undocumented migrants are relegated to the informal housing market, characterised by poor, overcrowded and substandard conditions at exploitative rates. Undocumented migrants and their families renting on the private housing market are at increased risk of losing their accommodation. They often have to move, and frequently rely on friends and family, stay in squats or become homeless.

Key Issues

- Irregular status creates a number of **administrative barriers** for migrants on the private housing market. Undocumented tenants may not be able to open a bank account or enter a tenancy agreement, thereby creating a number of challenges to enforce their tenancy rights if problems with their landlord arise. As a result, existing protections aimed at regulating relations between landlords and tenants are often inaccessible to undocumented tenants.
- In some EU member states, national authorities have implemented **detection mechanisms**, requiring landlords to check tenants' immigration status and impose fines or criminal penalties on those renting to undocumented migrants. The use of private rented accommodation as a means to detect undocumented migrants have led to increased administrative burden on landlords and fuelled discrimination against 'foreign looking' tenants.
- Undocumented migrants are less likely to report complaints due to **repercussions arising from their irregular status** if they contact the police or should their landlord seek retribution.
- Undocumented migrants who can access the private are generally housed in **unsanitary, poor conditions with exploitative prices**, particularly where there is a scarcity of rented housing. Overcrowded, rundown and insalubrious conditions have a direct consequence on other rights such as the right to health, the right to education, etc.
- Deteriorated and poorly maintained conditions create health risks, particularly for **undocumented children** who are disproportionately exposed to housing-related health hazards such as asthma, lead poisoning or carbon monoxide intoxication.

- Migrants' **housing may be tied to employment**. This is not only the case for live-in domestic workers or carers, but also for agricultural workers whose employers provide their accommodation on-site, often the case for seasonal workers⁵. Undocumented workers reliant on their employer for both employment and housing face a particular vulnerability; the employer has significant control meaning that labour exploitation is often coupled with poor living conditions and unfair wage deductions.

⁵ See also: [Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers](#), adopted by the European Parliament in February 2014, which establishes that seasonal workers should all benefit from accommodation that ensures an adequate standard of living and where the accommodation is arranged by or through the employer,...it should meet the respective member state's health and safety standards. See also: International Labour Organisation (ILO), [Domestic Workers Convention, 2011 \(No. 189\)](#), Article 6 and Article 7.

- The insecure and transient nature of undocumented migrants' housing situation can often **adversely affect pending applications for regularisation** as the migrant is generally required to show a fixed address and this may be checked at any time during the consideration of their application.
- While some undocumented migrants have to rely on housing through their **community networks** – staying with family or friends - this often leads to overcrowding and is only a temporary solution.
- Many undocumented migrants find housing through **subleasing**. However, exploitation is frequent as there is a lack of legal frameworks to regulate subleasing agreements.

Protections Exist, but Undocumented Migrants Can Rarely Avail of Them

BEATRIZ CAMARGO, Abraço, Belgium



While the right to housing is enshrined in the Belgian constitution (Article 23), and protections are in place to support tenants, undocumented migrants face a number of barriers to access their right to housing. To protect landlords and tenants, Belgian legislation requires that rental deposits are placed in a blocked bank account which can only be accessed on the consent of both parties. In Brussels, landlords are obliged to register rental contracts at the Department of Finance for tax purposes.

As undocumented migrants often lack a formal rental contract and face a number of administrative barriers to obtain a bank account, they tend to pay their deposit and monthly rents to the landlord in cash. This means they can almost often never recover their deposit at the end of the rental agreement. While this written proof of a rental agreement could, at a later stage, help tenants to enforce their rights, undocumented migrants are often unaware of this obligation and enter verbal agreements without written contracts. This means that if problems arise, they are in a vulnerable position to negotiate with their landlord.

Because of these shortcomings, accommodation occupied by undocumented migrants is generally of poor quality and can even be dangerous. Undocumented children are at particular risk of housing-related health hazards. For them, poor housing conditions can lead to asthma or even carbon monoxide intoxication.

Abraço, a Brussels-based migrant community organisation offering assistance and information to mostly Portuguese speaking migrants in an irregular or precarious situation, offers interpersonal mediations between tenants and landlords but often cannot involve the police due to the irregular status of many tenants who contact them.

We Often Rely on Contacts within Our Own Communities

EDGAR LEGASPI, Trusted Migrants, Netherlands



Edgar Legaspi arrived in the Netherlands from the Philippines when he was 15 years old. He came to work, but had many difficulties with housing. In the Netherlands, it is not possible to register on official waiting lists for state funded housing without a residence permit, so undocumented migrants must find a private rented accommodation. On the private market, housing agencies usually require a bank account and one month's rent in advance for registration.

Some landlords are unscrupulous and take advantage of the irregular status of migrants. They sublet housing to undocumented migrants without formal contracts so they can decide who will share a room with whom. The undocumented tenant cannot always use the address for administrative purposes; depending on the owner, personal mail can be received but no official mail.

Without a regular residence status, undocumented migrants lack bargaining power and, as a result, become more vulnerable to abuse and exploitation on the housing market. In order to overcome these difficulties, many undocumented migrants often rely on contacts within their respective communities. Housing and shelter can thus be shared based on solidarity for a temporary period, but this is rarely a long-term solution.

B. Strategies and Solutions

To address the structural and practical barriers facing undocumented migrants on the private housing market, a number of actors across the EU are developing innovative practices and strategies enabling undocumented migrants to rent adequate housing and to uphold their tenancy rights:

- Civil society organisations and tenant associations are a **vital source of information** regarding undocumented migrants' right to housing and practical measures which enable them to uphold this right – such as ensuring proof of rental payments.
- Due to the difficulties that undocumented migrants face in accessing official complaint mechanisms or in reporting abuse to the police, many civil society organisations have developed innovative non-judicial ways to resolve landlord-tenant disputes, often providing either ad-hoc or formal **mediation services**.
- Civil society organisations and even trade unions can provide undocumented tenants with **legal assistance** to gather evidence, file a legal complaint, and in cases of lead poisoning, access compensation or even regularise their status.
- **Tenants' associations** can also be a mechanism for undocumented migrants to assert their housing rights. Tenants associations can be encouraged to accept and represent the concerns of all tenants regardless of status. Initiatives to establish and support informal tenants' associations in low-income communities where undocumented migrants live can provide localised support. Through collective negotiation in disputes with landlords over breaches of tenancy agreements and persistent neglect/ poor housing conditions, tenants' associations can empower undocumented migrants to claim their rights without their status being exposed or otherwise exploited.

- Some organisations are working on **community based solutions** to improve the availability of decent housing and temporary accommodation options:

- ▶ Some own or rent housing, which they rent or sublet to undocumented migrants.
- ▶ Initiatives also exist to mobilise communities to provide temporary accommodation in their homes. While this takes stringent vetting of both migrants and hosts, central management for suitable matching, and financial support, such community based

solutions can prevent destitution and homelessness by providing undocumented migrants and families in need with temporary accommodation within the community, and also build community solidarity and visibility of the rights of undocumented migrants.

- Partnerships with **housing associations** (private non-profit providers of low-cost housing) can also increase the availability of temporary housing, as they may have decent housing which remains vacant for periods of time prior to sale or rental.

We Need to Find Solutions to Ensure Non-Discrimination

MARÍA-JOSÉ ALDANAS, Provivienda, Spain



While the right to housing is guaranteed to citizens in the Spanish constitution (Article 47⁶), the lack of affordable accommodation is an issue in all of Spain. The rules⁷ that regulate access to housing for foreigners establish that only regularly residing foreigners have access to the public housing market and to assistance.

The financial crisis and high rates of unemployment have increased the number of housing evictions, particularly among migrants. Discrimination, labour market exclusion, and administrative barriers make access to the private housing market even more difficult for migrants.

The principle of non-discrimination is key in Provivienda's programme. Targeting migrants in the region of Madrid, and funded by the community of Madrid, Provivienda mediates between tenants and home owners and checks housing conditions. To prevent discrimination in accessing the private rental market, the identity of the tenant is kept from the landlord until the leasing agreement is signed. Undocumented migrants thus do not have to provide official documents such as payment slips.

⁶ See: Article 47 of the Spanish Constitution: *Todos los españoles tienen derecho a disfrutar de una vivienda digna y adecuada.*

⁷ Art. 13. "Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la L.O. 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social", 2009.

Health Risks Are a Direct Consequence of Poor Housing Conditions

ANGÈLE NGO MOUSSI, Lawyer, Association of Lead Poisoned Families (AFVS), France



The Association of Lead Poisoned Families (AFVS) is a small French association with a special focus on victims of lead poisoning, a toxic metal which may be present in pipes and lead based paint of older houses. The effects of lead poisoning on health are devastating. Lead is toxic to everyone, but unborn babies and young children face a particular risk for health problems from lead poisoning reaching from symptoms such as headaches and stomach pain to negatively affecting a child's developing brain. Lead poisoning is often the result of substandard housing and as a result, undocumented migrants are disproportionately exposed.

AFVS supports undocumented migrants by arranging for a technician to inspect the accommodation of undocumented families and produce a detailed report on the health and safety standards of the house and the existence of lead traces. All of this is done without the involvement of the police.

French law stipulates that tenants have the right to healthy housing conditions. This applies to undocumented migrants who have the right to file a complaint to uphold this law. AFVS supports undocumented migrants to avail of their tenancy rights by filing a legal complaint. However, whether the case is brought on by an undocumented migrant, a foreigner or a French citizen, favourable rulings are rare.

Lead poisoning is categorized in France as a serious disease. Child victims may receive compensation from the Commission for the Compensation of Victims (*Commission d'indemnisation des victimes d'infractions*). In some cases, this had enabled undocumented children who became ill due to lead exposure to obtain a residence permit.

Undocumented Migrants' Access to Emergency Accommodation

There Was Absolutely No Place for Me to Go To

RACHEL, an undocumented mother of four children, Belgium

I am a mother of four children. I arrived to Belgium with two children and the other two were born here. Their father has left. I am undocumented, I have no income and no support. Although I was a victim of domestic violence, I have been turned away from emergency accommodation and been refused housing support.

The Belgian authorities threatened to take my children away from me, because I was unable to provide them with adequate living conditions. But despite this, I take good care of them; I take them to school, I clean their clothes, I give them food. Eventually, one association helped me to find accommodation and I am staying there now, but the landlord is not so nice. She knows that I am irregular and she threatens to call the police on me.

A. Challenges for Undocumented Migrants

There is a substantial gap in most EU member states between legal entitlements and actual policies in practice concerning access to adequate housing and shelter for undocumented migrants. Some EU member states prevent undocumented migrants from accessing publicly-funded homeless services and emergency accommodation. While such policies are implemented as an attempt to curtail irregular migration, there is no evidence that they achieve this aim and yet, they place a significant burden on frontline service providers, place women and children in a particularly vulnerable situation, all while undercutting advancements at European and national level to end street homelessness, address domestic violence, and bring children out of poverty.

Homeless service providers report an increasing proportion of migrants amongst Europe's homeless population.⁸ The limited capacity of existing services and restrictions linked to migrants' residence status means that they face an increased risk of street homelessness.

Access to homeless shelters is not guaranteed for undocumented migrants in the European Union. In most countries, it is only accessible to those who have a residence permit or social security registration. In situation of homelessness or emergencies, for instance, experiences of domestic violence, undocumented migrants cannot easily access shelters. Shelters, in turn, often require documents for the reimbursement of their services. Some shelters are also simply at the limit of their capacity and then give priority to those with a residence permit.

This is particularly severe in the case of undocumented women escaping violence who are in need of emergency shelters for women⁹ and may be forced to choose between abusive living conditions or becoming homeless, a situation in which they are often exposed to further violence, if they cannot access specific women or domestic violence shelters.

To address the specific needs of undocumented migrants, many service providers have developed new approaches and partnerships to meet their accommodation and support needs. Civil society organisations are increasingly working

alongside public officials to overcome the numerous practical barriers arising from the administrative and financial restrictions facing undocumented migrants.

Migrants' rights organisations and accommodation providers are also working together to engage and inform the debate on migration policy. Seeking to ensure greater coherence between migration control and fundamental rights concerns, civil society actors are working at various levels to bring about a more informed and fair policy on migration. Through data collection, academic research, and policy analysis, they are raising awareness regarding migrants' experience of irregularity and homelessness, and seeking to bring about an end to the use of destitution as a tool of immigration control.

Key Issues

- Authorities may develop policies based on the assumption that if they do not provide shelter and other services to undocumented migrants, it will deter irregular migration and encourage those on the territory irregularly to return home. However, **civil society organisations** witness the humanitarian fallout of these policies leading to increased exploitation and homelessness, yet they are often unsupported in trying to fill the gap.
- The limited availability of emergency accommodation does not meet the high **demand of undocumented migrants in need of shelter**. Shelters which are open to undocumented migrants often run on very limited budgets and are based on volunteer work.
- There is a clear **lack of specialised shelters** for migrants in Europe. They face different challenges and while shelters sometimes offer re-integration assistance for homeless people, it rarely meets the needs of undocumented migrants.
- There is a clear **gender-perspective** to migrant homelessness but this is not well documented.¹⁰ Migrant women may become undocumented because of visa-dependency upon an abusive partner, employer or spouse.

⁸ See: FEANSTA Statement: "[Homelessness Amongst Immigrants in the EU – A Homeless Service Providers' Perspective](#)", 2013.

⁹ See also: PICUM, "[Strategies to End Double Violence Against Undocumented Women - Protecting Rights and Ensuring Justice](#)", 2012.

¹⁰ In Ireland, researchers conducted interviews with 60 migrant women to identify the role of gender based violence in their experiences of homelessness. See Paula Mayock, Sarah Sheridan and Sarah Parker, "[Migrant Women and Homelessness: The Role of Gender-based Violence](#)", *European Journal of Homelessness*, Vol 6(1), August 2012.

- As a result of limited access to shelter and **risk of detection**, undocumented migrants¹¹ often cannot escape situations of exploitation meaning they must remain in exploitative situations or risk street homelessness.
- Traditional homeless shelters are not always suitable for children. While some countries provide specific temporary shelter for undocumented families who have an on-going application with immigration authorities, these are limited. Denied state assistance and access to the labour market, undocumented parents **risk losing custody of their children** if they cannot provide adequate shelter.
- State support is rarely granted to undocumented migrants with **pending applications for regularisation**; this means that they may be homeless for many years, so are forced to return to their countries of origin before the process is complete.

B. Strategies and Solutions

- Across Europe, migrants' rights organisations, accommodation providers, and authorities are developing innovative solutions to fill the gap between restricted access to emergency accommodation and the high demand for shelter among undocumented migrants.
- Frontline service providers have a vital role in **collecting data and case studies** regarding the barriers which prevent undocumented migrants from accessing emergency shelters. This evidence base is essential in raising awareness and encouraging relevant actors to develop more effective solutions.
- **Cooperation among local actors** such as city authorities, migrant community organisations, emergency shelters and hospitals, can result in very effective ways to address the homelessness of undocumented migrants through the provision of emergency accommodation.
- Often caught between the demands of their professional ethics and immigration laws seeking to limit access to basic services, **professionals in the areas of housing, healthcare, and child welfare** frequently emerge as key

allies in the reaffirmation of undocumented migrants' right to equality and non-discrimination. Cooperation among professionals working with undocumented migrants, local organisations and associations has led to significantly improved practices on the ground and effective allies in demanding long-term policy change.

- Civil society organisations are increasingly **working alongside local and regional authorities** to bring about practical measures to alleviate destitution by removing existing barriers or encourage specifically designed services for undocumented migrants. To reduce rough sleeping, ensure effective management of public services, and ensure cost-effectiveness, local decision makers are often compelled to find pragmatic solutions to ensure public health, social cohesion and migrant integration. An increasing number are working in partnership with migrant community organisations to provide undocumented migrants with shelter, welfare payments and providing safe reporting for those who have experienced exploitation and abuse.
- Some organisations, for instance faith based communities or women's rights organisations, seek alternative funding to **run their own shelters** so they may support all in need, regardless of residence status.
- Migrant rights organisations are increasingly working at policy level to **reframe the conversation on migrants' homelessness**. They are vocal about the fact that the lack of a housing policy for undocumented migrants is a policy in itself and that by refusing migrants rights to housing, authorities are violating a whole set of other rights such as health, education and employment.
- Many organisations were actively working to **improve the existing legal framework** and create positive legislation. At national level, they were seeking to codify positive provisions in national laws, to ensure legislation is compatible with international human rights standards. At EU level, some networks have been lobbying for a common legal framework on access to accommodation, going beyond just emergency shelter.
- Once in place, it is important that **legal standards are enforced**. Many organisations support undocumented migrants in the day-to-day realisation of their right to housing. Several underlined the need to provide a practical route for migrants to follow in order to access homeless shelters (i.e. pro forma letters which outline the applicable rules and procedures regarding their right to housing). If access is refused, it is good to be aware of the applicable judicial remedy. Legal aid is often essential to enabling undocumented migrants to enforce their rights.

¹¹ In their 2010 [Country Report](#), the WAVE network reports that only six countries in the 48 member states of the Council of Europe provide an adequate number of women's' shelter places, in four countries there is a severe lack of shelter places and extremely poor service provision and in three countries, there are no specialised services at all.

- Some NGOs **hold national authorities accountable** for their human rights obligations under the European Court of Human Rights and European Social Charter. Litigation under Article 3 of the European Convention on Human Rights was discussed as one means to ensure better policies across the EU. In the Netherlands, the

eviction of entire undocumented families from state accommodation centres provided for asylum seekers prompted civil society organisations to take the case to the European Committee on Social Rights where several landmark cases have been made concerning access to housing for undocumented migrants.

Church Asylum Provides Temporary Shelter to Migrants in Need

BIRGIT NEUFERT and **MICHAEL WESTRICH**, Ecumenical Consortium for Asylum in the Church (BAG Asyl in der Kirche e.V.), Germany



Undocumented migrants constantly fear detection and deportation and subsequently, refrain from approaching official shelters in Germany. Compelled by their Christian faith, some parishes provide temporary shelter to undocumented migrants. In addition to shelter, the parishes provide undocumented migrants with legal support and accompaniment. Generally, it is recognised by authorities and tolerated by the state.

The social position of the church certainly played an important role in its advocacy and continues to do so today. However the situation has changed. European migration policies, most of all the Dublin II/III regulation, are challenges which require a more transnational response to homelessness and irregularity.

Providing Direct Support and Engaging at Policy Level

BO HEIDE JOCHIMSEN, Projekt Udenfor, Denmark



In Denmark, undocumented migrants do not have access to public funded shelters, nor are there any official figures of undocumented homeless migrants. The common political attitude assumes that if migrants are not assisted they will leave the country. But in reality, when migrants do not have access to the labour market or to health care, their focus remains on how to survive from one day to the next. Once someone becomes homeless, their health condition rapidly deteriorates.

Udenfor provides direct assistance to homeless people through outreach and a mobile café, but also conducts advocacy work. Raising awareness about homelessness through conferences, media engagement, and dialogue with politicians, they also work alongside city authorities, shelters and hospitals. The organisation emphasises the need for the state to take accountability and develop a long term solution to the destitution of migrants.

Cities Have to Find Ways to Close the Gap Between Legal Frameworks and the Situation in Practice

TIJL MEHEUS, Street Corner Work Ghent, Belgium

THOMAS MAESELE, Public Centre for Social Welfare Ghent, Belgium



The Public Centre for Social Welfare Ghent (PCSW) is a social work public authority that works closely with the municipality of Ghent, a city of about 250,000 inhabitants, and provides urgent medical aid and humanitarian aid to undocumented migrants.

The homeless reception centres in the city are in principle open to undocumented migrants. However, undocumented migrants have to pay the costs to be hosted there themselves. In this instance, the CPAS/OCMW is only obliged to provide urgent medical care. In practice, housing is thus not available to undocumented migrants for both financial and administrative reasons. Ghent has three

major night shelters which are generally accessible but there are not always places available as they are open to all homeless persons. Families with children therefore sometimes prefer not to turn to emergency night shelters. The situation of the city's two day centres is similar.

The city developed a number of good practices to make shelters accessible for undocumented migrants and to close the gap that exists between the applicable legal framework and the situation in practice. One example is a project approved in June 2013, which allows undocumented families access to housing and provides guidance. They also developed specific social guidance providing information to everyone who needs to use night shelters. Guidance is given to undocumented migrants approaching the shelters in relation to basic needs and access to services, as to where to find a health practitioner, relevant NGOs, social workers, etc.

Undocumented Migrants' Fundamental Rights Have to be Upheld

MR ADRIAN BERRY, Barrister, Garden Court Chambers, United Kingdom



Despite the different legal systems in the EU, some common principles and rules are applicable. When dealing with undocumented migrants, human rights standards provide the necessary legal framework to ensure social justice.

Prohibiting inhumane and degrading treatment, Article 3 of the European Convention on Human Rights is reiterated in the EU Charter of Fundamental Rights as well as in the constitutions of all EU member states. Undocumented migrants are often subject to inhuman or degrading treatment as they are prevented from getting adequate housing and access to other fundamental rights. There is a positive obligation to avoid inhuman or degrading treatment and therefore there is a duty on the state to take positive steps to provide undocumented migrants with adequate shelters. Article 3 has the power to convert an obligation into a duty and it can be litigated upon.

There are three main ways through which legal provisions can support undocumented migrants to realise their human rights. Firstly, *by creating positive legislation*. This is a policy exercise in trying to achieve positive provisions are codified in national laws, and can be done by ensuring legislation is compatible with international human rights standards. The second way of ensuring access to rights is *make them practically applicable at the local level*. In terms of day-to-day realization of their right to housing, it can be very beneficial to provide undocumented migrants with a practical route to follow in order to access homeless shelters (i.e. pro forma letters which outline the applicable rules and procedures regarding their right to housing). Finally, it is important to *ensure that legal standards are enforced*. Even a right is recognized by the law, it is important to be able to enforce them. If access is refused, it is good to be aware of the applicable judicial remedy. Legal aid is often essential to enabling undocumented migrants to enforce their rights.

Looking Ahead: Opportunities Provided by the EU Anti-Poverty Agenda for Implementation in EU Member States

The European Union's Strategy Against Poverty and Social Exclusion

The Europe 2020 Strategy¹² is a 10-year plan proposed by the European Commission in the areas of employment, social affairs and inclusion. One of the key initiatives, the European Platform against Poverty and Social Exclusion, aims to help EU member states to lift 20 million people out of poverty and social exclusion in Europe through smart, sustainable and inclusive growth.

All EU member states have committed to achieving Europe 2020 targets and have translated them into national targets and policies. To ensure EU member states' individual efforts and coordinated action, the European Commission has set up a yearly cycle of economic policy coordination called the European Semester. Each year each EU member state submits its planned programmes of economic, social and other structural reforms ("National Reform Programmes" and "National Social

Reports") to the European Commission, which provides them with recommendations for the next 12-18 months ("Country Specific Recommendations"). This process can be useful for civil society as an opportunity to provide their own analysis of the planned programmes, evidence on the situation for people experiencing poverty including migrants, and alternative recommendations.

The European Commission adopted the Social Investment Package (SIP)¹³ in February 2013 as an integrated policy framework with the major objectives of simplifying and better targeting social policies; ensuring that social protection systems respond to people's needs, and upgrading active inclusion strategies. Through the adoption of the SIP, the European Commission started to consider social spending as an investment that can deliver long term social and economic returns rather than a mere cost.

¹² [Communication from the Commission Europe 2020. A strategy for smart, sustainable and inclusive growth, 2010.](#)

¹³ [EC Social Investment Package \(SIP\)](#)

PICUM Engages with EU Social Inclusion Processes

In 2007, PICUM developed a Reporting Template to assist local actors to advocate for specific and clear actions at the national level in the framework of the European Social Inclusion-Social Protection Process.

The template can be used to support frontline organisations in mainstreaming their concerns about undocumented migrants' social exclusion caused by the lack or insufficient access to health care. Available in nine languages (Dutch, English, French, German, Hungarian, Italian, Portuguese, Spanish and Swedish), they were a key output of PICUM's project "Access to Health Care for Undocumented Migrants".

expert insight



Anti-Poverty Strategies at EU Level

VINCENT CARON, European Anti-Poverty Network (EAPN)



In addressing the issue of homelessness across Europe, a working document adopted by the European Commission refers to the increased vulnerability of undocumented migrants by stressing that *"it is no longer acceptable that migrants are kept in a 'legal limbo', a grey zone where they are often deprived of basic civil or socio-economic rights"*.¹⁴

However, the austerity measures adopted by national governments and promoted by the European Union through the European Semester, are causing an increase of people in poverty. Since 2012, four million more people have been experiencing poverty in the European Union. Further, EU member states are increasingly limiting housing allowances, leading to evictions and ultimately to the situation of regular migrants becoming destitute and in many cases undocumented, due to the loss of their jobs and thus, residence permits.

In this context, anti-poverty policies should include undocumented migrants and other vulnerable groups and address the issue of housing and homelessness of undocumented migrants specifically in light of the poverty target and other EU2020 objectives. The European Commission's Social Investment Package (SIP) should be used to give operational guidance to member states on how to achieve their commitment to reduce poverty with ring-fencing of funds and requirements of national strategies to access EU Structural Funds and to promote active inclusion, effective social services and long-term care to reduce child poverty and homelessness.

¹⁴ See: European Commission Staff Working Document, *Confronting Homelessness in the European Union*, SWD(2013) 42 final, Brussels, 20.2.2013, p. 42.



Anti-Poverty Strategies at National Level

Ms Graciela Malgesini, EAPN Spain



It is estimated that there are 900,000 irregular migrants residing in Spain¹⁵, including migrants in the following situations:

1. *Migrants who lost their jobs and became irregular.* The financial crisis has increased the rate of job losses and evictions across Spain. It is estimated that migrants constitute 30% of housing evictions; while facing similar financial difficulties as Spanish citizens, they may have less support networks. By losing their primary residence, they have to move frequently, depending on family and friends, going to temporary shelters or sleeping on the street, unless they find accommodation. Social Services may step in to take care of children in these situations, but often at the cost of separation from their parents.

2. *African immigrants many of whom entered Spain irregularly.* While many apply for asylum, 95% of their applications are rejected. Up to 42.2% of homeless people in Spain were foreigners in 2012, more than half of them coming from Africa.¹⁶

3. *Immigrants living in settlements and shanty towns.* There are informal settlements besides the rivers, or in the fields in rural areas. Near Madrid, one of the most important is La Cañada Real, a settlement with 8,628 inhabitants living in 2,466 poorly endowed and built homes (2012 census).

While much remains to be done to improve the situation of human rights of irregular migrants, in the current context of the decline of the welfare state in Spain, civil society is taking action.

In May 2013, an alliance of social organisations proposed a “Legislative Initiative” in order to change the mortgage law, supported by 1.5 million signatures. The proposal was not taken into account as a whole, but the political impact forced a law that prevents the eviction of the vulnerable families. EAPN Spain is taking part in the committee in charge of distributing 6,000 houses to the most vulnerable families.

Civil society is also engaging in civic dialogue with the government on social policies. In 2013 the Platform of the Third Sector, an alliance of seven organizations and platforms (one of them EAPN) working with a total of seven million vulnerable people, was formed. After that, they asked the Government to summon a Table of Civic Dialogue. At least, there is a formal channel to make proposals and influence social policies.

¹⁵ See: [Plan estratégico del cuerpo nacional de policía 2007 2008](#), November 2006

¹⁶ See: Instituto Nacional de Estadística (2013), [Encuesta sobre centros de atención a personas sin hogar](#) (ECAPSH), 2012, page 2.

Recommendations

1. Respect Undocumented Migrants' Right to Housing

A rights-based approach to housing offers a comprehensive framework for the design and implementation of policies on housing and to address homelessness. States are under the obligation to ensure non-discrimination and equal treatment to migrants in the enjoyment of economic, cultural and social rights, including the right to housing. Regardless of immigration status, all migrants should have access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation, without discrimination. To this end, states must adopt all necessary measures to progressively ensure access to basic shelter and housing to all in their territory, and protect them from discriminatory, unfair and degrading treatment.

2. Build a Firewall Between Access to Housing and Migration Enforcement

Detection practices requiring landlords to check the residence status of tenants and sanctioning those who rent to irregular migrants should be ended. There is an urgent need to delink immigration control from the right to housing by removing all legal and administrative restrictions which seek to detect undocumented migrants or curtail their access.

3. Decriminalise Undocumented Migrants' Access to Housing

Organisations and individuals providing shelter and assistance to undocumented migrants should not be subject to penalties, prosecutions or fines. The Facilitation Directive stipulates that EU Member States must impose sanctions on those facilitating the entry and residence of irregular migrants, but should not result in sanctions for those providing humanitarian assistance.

4. Ensure Undocumented Tenants' Access to Justice Effectively Tackles Exploitation in the Private Sector

Ensuring undocumented tenants' access to justice is an effective way to address some of the most salubrious, exploitative and hazardous rental accommodation in Europe today. Undocumented tenants must be able to file complaints against unscrupulous landlords and avail of effective grievance mechanisms without fear of immigration enforcement. Judicial and administrative procedures must guarantee redress to all tenants regardless of immigration status, and appropriate mechanisms must be in place to resolve disputes, prosecute, and sanction exploitative landlords.

5. Increase Availability of Shelter Places for Vulnerable Migrants

The difficulties facing accommodation service providers to provide temporary or emergency shelter to undocumented migrants is symptomatic of the increasing funding and capacity challenges they face. Demanding an end to policies and practices which discriminate against undocumented migrants can enable temporary and emergency shelter providers to reaffirm the fundamental right to shelter, build strategic alliances with the migrants' rights movement, underline the need for improved funding, and augment political pressure to increase capacity of temporary and emergency accommodation.

6. Include Undocumented Migrants Within the EU 2020 Process

Policies seeking to downgrade migrants' living conditions and prevent them from living a dignified life are incoherent with EU member states' obligations under the EU 2020 Agenda and are detrimental to advancements in a number of other policy areas. To coherently and effectively fight homelessness in Europe, undocumented migrants should be included in the EU 2020 process. Member States should be encouraged to include homelessness - including of undocumented migrants - in their National Reform Programmes and report on the use of Structural Funds in the fight against homelessness. At European level, the EU 2020 process should have a specific indicator for undocumented migrants and the European Commission and the Council should address Country Specific Recommendations on homelessness and, to better shape policies in this field, develop harmonised data collection and EU indicators on the linkages between homelessness and undocumented migrants.

7. Address Gender Related Experiences of Housing Insecurity and Homelessness

There is an urgent need to address the gender-perspective inherent to migrants' experience of poverty, housing insecurity, exploitation by landlords, and street homelessness. For migrant women, the lack of liveable conditions in private housing can result in irregularity and homelessness. Visa dependency upon an abusive partner, employer or spouse means that by fleeing a shared residence, migrant women risk losing their status and becoming undocumented. Once undocumented, they face a disproportionate risk of being turned away from domestic violence shelters as they lack resources and future perspective, and the shelter managers are often unable to receive reimbursement for housing them. Independent residence permits are essential to preventing migrant women from becoming trapped in violent and exploitative situations. States must assure that, in line with the EU Victims' Directive, they provide shelters, accommodation and targeted support services to all victims of domestic violence regardless of their residence status.

8. Ensure the Right to Housing for Undocumented Children

While certain protection mechanisms and services exist for unaccompanied migrant children, undocumented children residing with their parents or other caregivers rarely have access to any form of state support to ensure adequate housing. Undocumented children should not face discrimination in access to housing and accommodation provisions due to their or their parents' irregular status. In particular, where children and families are at risk of homelessness or destitution, states must meet their child protection duties in full respect of child rights, including the right to family unity, and provide support for the child to live together with their families in suitable accommodation. Such support should be clearly separated from immigration enforcement actions.

9. Involve Local and Regional Authorities in Development of National and EU Policies

Local and regional policy makers should be involved in the design of national and EU policies on housing and homelessness. Through the resourceful application of national policies or their own initiatives, local decision makers have developed an effective and inclusive approach to integration, social cohesion, and ending street homelessness. These pragmatic, cost-effective and non-discriminatory responses can provide a vital source of innovation to the social inclusion debate at national and European level debate and should receive greater consideration at all stages of policy development.

10. Support Civil Society Organisations Working to Uphold the Right to Housing Without Discrimination

Civil society organisations play a major role in upholding undocumented migrants' right to housing in law, policy and practice yet there is little funding available for services available for this work. Public funds are often conditional on regular residence status, and there is often inaction or apprehension among private donors. To adequately address undocumented migrants' urgent housing and shelter needs, funding should be consistent, accessible and non-discriminatory. To ensure that future policies are effective, it is important that migrant community organisations are supported in identifying gaps and inconsistencies and have the capacity to actively engage in relevant policy debates on housing and homelessness.



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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