



PLATFORM FOR INTERNATIONAL COOPERATION ON  
UNDOCUMENTED MIGRANTS

## PICUM's contribution to the consultation of the UN Special Rapporteur on the right to adequate housing on housing discrimination and spatial segregation

April 2021

*PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of 168 organisations that has worked for nearly twenty years to advance the rights and improve the situation of people who are undocumented in Europe. PICUM focuses on a variety of areas including access to healthcare, access to justice, the rights of undocumented workers, labour migration, the rights of children, families and youth, as well as fundamental rights in the context of immigration detention and return. Based in Brussels, Belgium, we focus on the European context and the EU legal framework.*

*We appreciate the opportunity to provide input on the next thematic reports on housing discrimination and spatial segregation to the UN Special Rapporteur on the Right to Housing.*

### Answers to specific questions in questionnaire:

Q1. PICUM, Platform for International Cooperation on Undocumented Migrants – NGO network, umbrella organisation focussing on advocacy and research – based in Brussels, Belgium but area of work is international (168 members in 40+ countries in Europe and adjacent area)

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Q7. Focus on discrimination experienced by: undocumented migrants

Q8: Types of discrimination experienced by undocumented migrants:

- Discrimination in relation to housing for rental or for acquisition or in accessing public or social housing;
- Access to emergency and/or transitional housing after disaster, conflict related displacement or in case of homelessness, family or domestic violence;
- discrimination in relation to housing conditions, overcrowding or housing maintenance;
- Exposure to health risks within the home, including lack of ventilation, heating or insulation, exposure to fire or housing collapse risk, unhealthy building materials, or other unhealthy housing covered by the WHO Guidelines on housing and health;
- Exposure to other risks which render housing uninhabitable, including sexual or gender-based violence, interference with privacy and physical security in the home and neighbourhood
- Discrimination in relation to access to public benefits related to housing;
- Discrimination in relation to evictions, resettlement and compensation for loss or damage of housing, land or livelihoods;
- Discrimination in relation to access to work, schooling, health care or public benefits based on the residential address or related to a lack of an official address.

## Key points regarding housing of undocumented children, families and adults

**Undocumented adults, families and children living in Europe generally do not have access to adequate housing.** They often experience discrimination in the housing market, live in cramped, inadequate and expensive housing, and can find themselves relegated to accommodation that is spatially segregated. In this non-exhaustive brief, we highlight some key issues regarding discrimination and spatial segregation.

Undocumented migrants, including children and families, often live in poor-quality and crowded conditions. They are mostly relegated to precarious, unsuitable housing, often at exploitative rent prices, and at increased risk of eviction, abuse and theft of rent and deposits.<sup>1</sup> To compound these problems, undocumented migrants may struggle financially, either because they are underpaid when they work, because they fully or partially depend on goodwill or because their irregular residence status means they cannot access poverty alleviation efforts or social benefits.<sup>2</sup> In addition, they have little bargaining power vis-à-vis landlords and may not have access to effective complaints mechanisms when exploited.

While poor living conditions are harmful to adults too, **children are particularly vulnerable to the harmful consequences** in both the short and long term.<sup>3</sup> Being homeless has severe impacts on children's physical and mental health, their education, and their social life; for example a child's risk of ill-health and disability increases by up to 25 percent during childhood and early adulthood when they experience multiple housing problems.<sup>4</sup>

One difficulty for undocumented tenants is that in some European countries it is **illegal for landlords to rent accommodation to undocumented migrants**, in some national contexts due to transposition of the EU Facilitation Directive.<sup>5</sup> The [Facilitation Directive](#) requires EU member states to adopt "effective, proportionate and dissuasive sanctions" for facilitating irregular migration, but should be implemented in line with the EU Charter of Fundamental Rights, which they often are not. The broad definitions in the Directive mean that in some Member States renting accommodation to undocumented people is considered a criminal offence. National authorities in some countries require landlords to check the immigration status of tenants and can impose fines or criminal penalties on those renting to undocumented people.<sup>6</sup>

Due to their irregular residence status, and especially in countries where renting to undocumented persons is criminalised, undocumented adults and children tend to be more vulnerable to **exploitative landlords**. Undocumented tenants may be unable to access existing complaint mechanisms to hold landlords to account, continuing the inadequate housing situation.

The **gender perspective** inherent to migrants' experience of poverty, housing insecurity, exploitation by landlords, and rough sleeping should not be overlooked. Visa dependency upon an abusive

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<sup>1</sup> For the impact of inadequate housing on undocumented children's well-being and development, see PICUM, '[Navigating Irregularity: The Impact of Growing up Undocumented in Europe](#)', (2021).

<sup>2</sup> PICUM, '[Navigating Irregularity: The Impact of Growing up Undocumented in Europe](#)', (2021).

<sup>3</sup> PICUM, 'Homelessness and Poverty through a Health Lens', (2020); PICUM, '[Navigating Irregularity: The Impact of Growing up Undocumented in Europe](#)', (2021).

<sup>4</sup> Harker L., '[Chance of a lifetime: the impact of bad housing on children's lives](#)', Shelter; in PICUM, '[Navigating Irregularity: The Impact of Growing up Undocumented in Europe](#)', (2021)

<sup>5</sup> The criminalisation of landlords and other legitimate service providers may predate the Facilitation Directive. See Directorate General for Internal Policies of the Union, '[Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update](#)' for more info.

<sup>6</sup> PICUM, '[Housing and homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter](#)', (2013).

partner, employer or spouse means that by fleeing a shared residence, migrant women risk losing their status and becoming undocumented.<sup>7</sup> Once undocumented, they face a disproportionate risk of being turned away from domestic violence shelters as they lack resources and future perspective, and the shelters 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.<sup>8</sup>

The **number of homeless migrants from outside the EU (“third country nationals”)** is growing in several EU Member States.<sup>9</sup> This includes both regular and irregular migrants. For instance, “*in Denmark, one in five homeless people were immigrants in 2017 (compared to less than 14% for the rest of the population). The number of homeless migrants increased by 250% in two years, from 125 people in 2015 to 438 in 2017. 41% of the 1,687 women (with 1,649 children) in Danish homeless shelters or emergency accommodation were immigrants.*” In Dublin, Ireland, a report by the city council showed that foreign-born persons were more likely than the native population to be exploited by landlords or become homeless.<sup>10</sup>

**Unaccompanied children**,<sup>11</sup> both with irregular and regular migration status, may be **excluded from reception centres** because reception centres are full, or because the child is determined to be an adult by an often-arbitrary age assessment.<sup>12</sup> In such cases, unaccompanied children may become homeless, living in squats or temporary settlements. Unaccompanied children have been found homeless in several countries, including France, Greece, Albania and Spain. In certain *départements* in **France**, unaccompanied children find themselves sleeping rough even though they should be taken care of by child protective services according to French law.<sup>13</sup> These children find themselves in a state of acute precarity: more than half of the unaccompanied children Médecins du Monde France assists are homeless and have no way of supporting themselves.<sup>14</sup> A similar number (51 percent homeless) is seen by Médecins Sans Frontières in their centres in Pantin and Neuilly Plaisance (Île de France). These children are extremely vulnerable to violence and exploitation: 20 percent of the children seen by the centre in Pantin had experienced violence or maltreatment since their arrival in France.<sup>15</sup>

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<sup>7</sup> See a.o. PICUM, [Insecure Justice? Residence permits for victims of crime in Europe](#), (2020).

<sup>8</sup> PICUM, [‘Housing and homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter’](#), (2013).

<sup>9</sup> Quote from FEANTSA and Fondation Abbé Pierre, [‘Fifth overview of housing exclusion in Europe 2020’](#), (2020), which includes data on the number of homeless third country nationals in Brussels, Belgium; London, UK; Finland; North Rhine-Westphalia, Germany; Spain, Greece, The Netherlands, France, and Sweden.

<sup>10</sup> RTE, 15 August 2019, [‘Migrants face discrimination in rental market - Charity’](#), (checked 19 April 2021).

<sup>11</sup> An unaccompanied child is a child who has been separated from both parents and other relatives and is not being cared for by an adult who by law is responsible for doing so. Governments should appoint a guardian to them from the moment the child is found on the territory. For more on unaccompanied children, see a.o. UN Committee on the Rights of the Child, General comment no.6, [Treatment of unaccompanied and separated children outside their country of origin](#)

<sup>12</sup> For an overview of age assessment procedures in 15 countries, see SCEP, [‘Review of current laws, policies and practices relating to age assessment in sixteen European Countries’](#), (2011).

<sup>13</sup> Both under the ‘aide sociale à l’enfance’ legislation (République Française, *Code de l’action sociale et des familles: Chapitre Ier : Service de l’aide sociale à l’enfance. (Articles L221-1 à L221-9)*) and under the law on the protection of childhood (République Française, *LOI n° 2007-293 du 5 mars 2007 réformant la protection de l’enfance*).

<sup>14</sup> Médecins du Monde, [Notre action pour les mineurs non accompagnés](#), (n.d.).

<sup>15</sup> Médecins sans Frontières, [Les mineurs non-accompagnés: symbole d’une politique maltraitante](#) (2019). See PICUM, [‘Navigating Irregularity: The Impact of Growing up Undocumented in Europe’](#), (2021) for more on homeless (unaccompanied) children in France.

People who are unable to secure adequate housing will look to **alternative solutions**. In Andalusia, **Spain**, migrant agricultural workers who have been unable to secure formal accommodation in local villages - partly due to discrimination by landlords - have been forced to reside in encampments where there is no access to water, gas, electricity supply, or sanitation facilities, and where the camp is physically isolated from local villages. Further problems exist in these settlements, such as vulnerability to COVID-19 and the increased prevalence of gender-based violence, which is made worse by the fact that women may be afraid to seek help through fear of being reported to the immigration authorities.<sup>16</sup>

In north of **France**, adults and children are living in encampments while trying to cross the English Channel. French police regularly rase down these informal settlements and evict the inhabitants, often violently and without offering any alternative place to stay.<sup>17</sup> These encampments are often inhabited by (undocumented) migrants, including children. Of the 1,079 evictions that happened between 1 November 2019 and 31 October 2020, 93 percent of the encampment was inhabited partly or solely by migrants from outside the EU (“third country nationals”), and children were present in 90 percent of the evicted informal settlements.<sup>18</sup>

### Some noteworthy practices:

See PICUM’s 2013 report, [Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter](#)

In addition, we highlight the following:

*“In **Italy**, the section of the legislation on the facilitation of stay sets higher standards regarding safeguards for civil society than the Facilitators’ Package.<sup>19</sup> It diminishes the risks of criminalisation of humanitarian assistance as well as service providers, such as landlords. The criminal offence of facilitating the permanence of irregular foreigners is conditioned on taking ‘unfair advantage’ out of their situation or drawing ‘undue profit’ when providing accommodation.<sup>20</sup> In 2013, in order to bring more clarity to the element of ‘unfair advantage’, the Italian Supreme Court confirmed that “there must also be specific intent to procure an ‘unjust profit’ by taking advantage of the migrant’s irregular situation, resulting in ‘unfair and excessively onerous conditions on the tenant (migrant)’”.<sup>21</sup> In addition, it also noted in 2015 that ‘undue profit’ could be “drawn from contract terms much more*

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<sup>16</sup> PICUM Meeting notes, ‘Homelessness and Poverty through a Health Lens’, (2020) (PICUM meeting notes are not public); El País, 18 February 2020, [‘No water, toilets or electricity: Life in Spain’s shameful shanty town’](#), (checked on 20 April 2021); Público, 22 October 2019, [Hundreds of migrant seasonal workers take to the streets of Lepe to demand decent housing](#) (checked on 20 April 2021)

<sup>17</sup> Project Play, [Evictions. Practices that violate children’s rights on the Franco-British border.](#)

<sup>18</sup> Médecins du Monde, [Observatoire des expulsions le lieux de vie informels 2020: Note d’analyse détaillée](#) (2020).

<sup>19</sup> Article 12(5) and (5-bis), Italian Legislative Decree 25 July 1998, n. 286. Cited by Tipik Legal study on Italy, 2014.

<sup>20</sup> Ibid.

<sup>21</sup> See “Supreme Court, Sentenza 597/2013, 24 April 2013; Supreme Court, Sentenza 46070/2003, 23 October 2003; Supreme Court, Sentenza 5093/2012, 17 January 2012. The same reasoning had already been established in 2003, in a case where it had not been ascertained, however, from the conditions of the contract that the landlord had intended to impose unduly onerous responsibilities on the tenant. See Supreme Court, Sentenza 46066/2003, 16 October 2003”. In footnote 59 of UNODC (2017) Issue Paper – The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol (Vienna, 2017), p. 40.

*beneficial to the owner, even if such terms are not excessively detrimental to the migrant”.*<sup>22</sup> ~ quote taken from [Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update](#).

To address the **poor quality of informal encampments in Spain**, [Fundacion Cepaim](#), a Spanish NGO and PICUM member, established nearby day centres, which offer washing and laundry facilities, and provide workshops on topics such as psychosocial health and the prevention of gender-based violence.<sup>23</sup>

### Recommendations:

To ensure that undocumented children, families and adults can enjoy adequate housing, PICUM recommends:

1. **Decriminalise renting to undocumented people in EU and national legislation**, as it would both help protect undocumented people from falling victim to exploitative landlords, better housing conditions overall and make sure that national and EU legislation is human rights compliant. The EU [Facilitation Directive](#) should be revised to exclude the punishment of persons who rent accommodation to undocumented migrants in an irregular situation, by adding ‘unjust profit’ as a requirement for the facilitation of irregular stay to be considered a crime, so citizens and service providers are not criminalised.
2. **Initiatives and services aimed at combating poverty and homelessness should take into account and target undocumented migrants, especially children**. Undocumented people require a targeted approach because their irregular residence status makes it harder for them to find secure housing and leave a situation of acute poverty. Shelter personnel and social workers may not be aware of a client’s residence status or the country’s residence procedures, and may not be able to find solutions because of this.
3. **Protect working adults from exploitation** by addressing gaps in labour law coverage and clarify that all workers, regardless of residence status, are included.<sup>24</sup> Low or non-existent household income is a cause of homelessness. Addressing this will indirectly impact the housing situation of undocumented adults and families with children.
4. **Governments and service providers should ensure a ‘firewall’ is in place between service providers – including landlords and emergency shelters—and migration enforcement services**. Detection practices requiring landlords and shelters 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.
5. **Ensure undocumented tenants’ access to justice effectively tackles exploitation in the private sector**. 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.

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<sup>22</sup> See footnote 60 “Supreme Court, Judgment no. 17117, 20 January 2015. The meaning and effect of “intent to gain”. Court of Catania, Proc. n. 93/2016 R. I.M.C., 21 January 2016”. In UNODC (2017) Issue Paper – The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol (Vienna, 2017), p. 40.

<sup>23</sup> PICUM Meeting Notes, ‘Homelessness and Poverty through a Health Lens’, (2020)

<sup>24</sup> PICUM, [‘A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice’](#), 2020

6. **Increase availability of shelter places for vulnerable migrants and ensure access to shelters irrespective of residence status.** Governments and service providers must provide services based on need and not exclude persons experiencing homelessness because of their residence status. The number of shelter places available should reflect the number of (homeless) persons in need, including and especially vulnerable persons.
7. **Address gender-related experiences of housing insecurity and homelessness.** Governments 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. **Improve migrants' awareness of their rights.** Migrants are more vulnerable to exploitation in the housing market when they are unaware of their rights.