

# Undocumented Migrants' Right to Health and Education in Europe: Protection Needs vs Immigration Control

The immigration control mechanisms now implemented in EU Member States force undocumented migrants into a state of policy-driven social and physical destitution by curtailing their most fundamental rights to health and education; ineffective and inhumane, these policies are detrimental to Europe's social inclusion, human rights and public health responsibilities.

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Undocumented migrants are those without a residence permit authorising them to stay in their country of destination. They may have been unsuccessful in the asylum process, overstayed their visa or entered irregularly. While undocumented migrants have rights that are recognised and protected under international and European human rights law, their innate entitlement to hold rights is increasing being questioned and marks one of the greatest threats to the European human rights regime today (PICUM, 2007a).

The European Union is an institution founded on principles of democracy, human rights and rule of law, and these remain the pillars on which the credibility and sustainability of the expanding Union rely. The EU's Charter on Fundamental Rights formally recognises the importance of social equality and prohibits "discrimination on any ground"<sup>2</sup>, while its 2008 annual human rights report pledges "the same importance to economic, social and cultural rights as to civil and political rights" (European Community, 2008, p.43). In clear conflict with these stated ideals however, policies are developed by the EU and its Member States that effectively strip migrants of their innate social rights on the grounds of their administrative status.

## Undocumented migrants in Europe

The routes to becoming undocumented are complex and often the result of arbitrary policies and procedures over which the migrant has little or no control (MRCI, 2008, p.19). It is the experience of PICUM and those within its network that the majority of undocumented migrants enter Europe legally, but after a period, encounter difficulties and find themselves without the relevant permit for residence or

employment. Irregularity is the result of an administrative infringement and not a criminal offence; irregular migration is a process "fuelled by exploitation, redundancy, misinformation and administrative delays" (Ibid, p.30).

Once they have an unregulated status, migrants are systematically denied those elements that constitute a basic standard of living and face a *de facto* violation of their fundamental rights. As the trend to link migration control mechanisms to social services increases, undocumented migrants' fear of discovery and deportation hugely limits their ability to access their social rights or seek redress against violence, abuse and exploitation. By seeking to deter migrants from entering Europe through unauthorised means and compelling those living in an irregular situation to leave of their own accord through the creation of an intolerable set of living conditions, these policies rely on the violation, not the recognition, of fundamental human rights. Consequently, the most impoverished and socially excluded members of European society are systematically denied the means of obtaining a basic standard of living. Their lack of adequate housing, education, health care and fair working conditions creates a state of extreme poverty and destitution, belying the myth of a socially inclusive Europe<sup>3</sup>.

While undocumented migrants constitute a considerable proportion of Europe's migrant population, they have remained invisible to policymakers and there are few social strategies that address their needs. This paper will outline the tenets of the right to health and the right to education, and explore the extent to which undocumented migrants residing in Europe may enjoy these rights.

## Undocumented migrants' right to health

Non-discrimination is a core guiding principle in the protection of human rights. Everyone is entitled to human rights without discrimination of any kind. This means that human rights are for all human beings, regardless of "race, colour, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status". Non-discrimination protects vulnerable individuals and groups from the denial and violation of their human rights.

The right to the highest attainable standard of health is a fundamental human right protected by international law. An important element of the right to health is that both health care and other essential conditions for health must be affordable to all without discrimination. Thus, authorities are under an obligation to ensure that health policies and programmes consciously address the different needs of those facing barriers in accessing care.

The definition of right to health as provided by the UN International Covenant on Economic, Social and Cultural Rights, Article 12(1) affirms that State Parties recognise: "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The content of this provision has been further clarified by the Committee on Economic, Social and Cultural Rights (CESCR), established to monitor the implementation of the Convention, in its General Comment 14:

*States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal migrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy. . . .*

## Undocumented migrants' access to health care in Europe

While no Member State's legislation specifically forbids access for undocumented migrants, publicly subsidised health care, either partially or fully, is not entirely guaranteed in Europe. In some countries, all health care (even emergency care) is provided only on a payment basis and treatments are generally unaffordable for undocumented migrants (PICUM, 2007b).

Besides the common hindrances facing undocumented migrants at the legislative level, there are many other practical obstacles in all European countries linked to procedures and administrative conditions, discrimination, language and cultural barriers, medical fees, and so forth. Many undocu-

<sup>1</sup> PICUM leads an independent network of over 107 member organisations providing humanitarian support and protection to undocumented migrants in 25 countries across Europe and beyond. For more information visit [www.picum.org](http://www.picum.org).

<sup>2</sup> Chapter III, Article 21(1) of the Charter of Fundamental Rights of the European Union.

<sup>3</sup> The 2000 Nice Summit marked the EU Member States' adoption of a social affairs agenda, setting out their future priorities. This agenda confirmed their dedication to issues such as employee protection, gender equality, poverty reduction and tackling discrimination.

mented migrants are unable to pay medical fees in those countries where they are requested to do so. Those undocumented migrants who do seek health care generally opt for the services provided by NGO clinics and hospital emergency units.

Research shows that undocumented migrants mainly seek health care when they are severely ill (PICUM, 2007a). In fact, a high percentage do not access any kind of health care, even in countries where they are entitled. Health is commonly not their main concern, because often all of their energy is exhausted in acquiring the minimum subsistence necessary for survival. Many undocumented migrants lack information about their right to access medical services in the country where they live. On many occasions, they do not seek medical help because they have an enormous fear of being discovered and deported. They easily confuse the levels of administrations and public authorities, and often fear that hospitals or health centres will inform the police of their presence.

There are many vulnerable groups of undocumented migrants as regards access to health care, including women, children and people with severe chronic diseases such as HIV/AIDS. Disadvantaged on the basis of their gender and administrative status, undocumented women are particularly exposed by the inability to access health care services. Across Europe, undocumented women are giving birth at home alone, or putting their lives at risk to obtain abortions as they lack entitlements or are too fearful to avail themselves of treatment in hospitals or clinics. Those suffering abuse and health-related crises often have no idea what their rights are, and may face repercussions if they contact the police or seek assistance. Women's health is inexorably linked to the accessibility of preventative care, immunisations, health education, family planning, and pre- and post-natal care, yet the basic entitlements taken for granted in Europe are systematically denied to undocumented women. They have no access to medical services and support programmes for psychological trauma caused by sexual violence, and, while they have priority needs in the area of reproductive health and rights, there are significant legal and practical barriers preventing their access to information and services

### Undocumented migrants' right to education

The right to education is both a fundamental human right and an enabling right that is necessary for the realisation of other human rights. The UN body responsible for monitoring the implementation of economic social and cultural rights has affirmed the importance of education as:

*the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the*

*means to participate fully in their communities*<sup>4</sup>.

Education plays a vital role in empowering women, safeguarding children, tackling social injustice and promoting integration<sup>5</sup>. In Europe, it is generally taken for granted that all children, regardless of gender or background, will be able to complete a full course of primary schooling. While European governments have committed themselves to the promotion of free and equal education in developing countries as a means of tackling extreme poverty and gender inequality, they deny this right to those without a valid residence permit.

The right to education for children is confirmed and consecrated by a wide range of international conventions, which recognise the right of instruction as a fundamental right of every child (PICUM, 2007a, pp. 40–43). The Convention on the Rights of the Child (CRC) is the fundamental instrument in the protection of children's rights at international level. Article 28 of the convention guarantees access to education for all children, including those who are undocumented. The article stresses obligations regarding children's right to access education free from discrimination of any kind.

*States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all.*

The principle of non-discrimination reported in Article 28, and more directly in Article 2, comprehensively guarantees the right to education without distinction between undocumented children and children whose residence is authorised.

Therefore, all migrant children, irrespective of their status, should have access to the same statutory education as national children. Any limitation regarding the enjoyment of these rights, such as administrative and practical barriers, should be removed as they are contrary to international obligations

### Undocumented migrants' access to education in Europe

Despite the protections afforded to undocumented children under international law, growing tensions exist in Europe between their protection needs and the immigration control agenda. Education has

emerged as a key issue in this struggle. In some EU Member States, undocumented children are refused access to schools on the basis of their status; while in others, immigration police use the education system as a means of detecting and deporting undocumented families. Exploitation, discrimination and the increased rates of detention facing undocumented minors severely limits their education. The importance of schooling for a child's formation and social integration is an established and incontrovertible fact. For undocumented children, however, the educational system holds added significance as it often initiates the process through which they may become regularised. In some countries, regular school attendance enables children to receive residence permits when they reach 18 years of age<sup>6</sup>.

Generally speaking, at the legislative level, access to compulsory education is granted to all children in the EU. The right to education for undocumented children is explicitly referenced in Belgian, Italian and Dutch legislation; in France, Spain and Poland, undocumented children are implicitly included in the reference to 'all children'; while Hungarian and Maltese law only mentions the right to education for those with a valid residence permit (PICUM, 2009, p.16). On a practical level, however, numerous difficulties emerge for those with an irregular migration status. These barriers may be practical, such as lack of identification; institutional, such as discriminatory legislation; or broadly societal, such as the fear of being detected. As a result, both compulsory education and higher education can be difficult for undocumented youth to obtain<sup>7</sup>.

Identity documents are often needed by schools to prove the number of students in attendance so they may receive reimbursement from the state. In some cases, schools may provide services for a particular catchment area and require students to prove residence in that area before enrolment. Fear of authorities is another leading factor that prevents undocumented migrants from entering education; while in most countries, police roundups in schools are rare, the fear of being detected is so embedded that many parents prefer not to risk sending their children to school<sup>8</sup>. Additional costs can also pose a significant barrier; while access to primary education is free, undocumented families are excluded from economic aid for extra expenses such as books, transportation, and so forth. Poor knowledge of the

6 In Italy and France, for example, the conferral of a residence permit once the student reaches adulthood is tied to physical presence in the territory for a certain number of years and having followed a scholastic course.

7 Although individual countries vary in their definitions, compulsory education is generally defined as primary and secondary education from 6 to 16 years of age.

8 As French Interior Minister, Nicolas Sarkozy initiated a policy whereby immigration police visited schools to detect undocumented parents when they went to fetch their children.

4 Committee on Economic Social and Cultural Rights, Article 1 of General Comment No. 13 on the right to education.

5 As underlined in the report Integrating Immigrant Children into Schools in Europe, "Almost all European countries comply fully with this basic right, extending it to all immigrant children, irrespective of their residential status. In other words, families of refugees or asylum seekers or those who are irregularly resident, no less than those with long term residential status, may all enroll their children at a school in the host country" (EC, 2004, p. 67).

national language can limit undocumented families' ability to enrol their children in school and sustain their attendance. The precarious living conditions experienced by undocumented families are also shown to have a direct affect upon their children's schooling; those forced to move regularly can rarely complete an entire school year. A specific problem cited in many countries, and a clear form of discrimination against undocumented students, is the fact that they are not regularly issued diplomas at the end of their scholastic career.

## Conclusion

Inequality and discrimination in Europe's social systems continue to be widespread, with the educational attainment and health status of migrants and minorities lagging behind that of majority groups. There remains a large gap between the theoretical entitlements granted by law to all and the concrete practices experienced by undocumented migrants. The current barriers implemented at the policy level have placed an enormous strain on local actors such as NGOs, health care and educational professionals, as well as local authorities, who witness firsthand the humanitarian crisis they cause.

Despite this bleak picture, many positive examples of collective responses exist at local levels which have enabled undocumented migrants to enjoy their rights. Civil society actors across Europe have reacted strongly against the inhumane policy-driven destitution experienced by undocumented migrants. Individuals have come together, founded associations or formed informal networks, to curtail the effects of migration control mechanisms, help irregular migrants to overcome numerous practical barriers and finally, raise awareness about the issue to encourage real policy change.

These organisations often work with limited resources to guarantee a basic standard of living and defend the fundamental rights of undocumented migrants. Furthermore, there is a worrying tendency across Europe to criminalise and penalise those providing humanitarian and social assistance. Professional groups, such as social workers, church groups, doctors and teachers, experience clashes between their professional ethics and the incriminatory discourse regarding undocumented migrants.

Due to the difficulties facing undocumented migrants in accessing health care, many civil society organisations are offering these services themselves, referring migrants to other agencies that provide such services, and working with social services to try to integrate undocumented migrants into the public service system. Several initiatives have also emerged which seek to protect the right to education for undocumented children residing in Europe; in France, the Network for Education Without Borders (Réseau Education Sans Frontiers – RESF) grew from a gathering of trade unions, parent's associations, community groups and educational

institutions who were committed to the protection of non-deportation of undocumented student at all educational levels.

While civil society actions may provide a short-term solution to the issues facing undocumented migrants, a more sustainable and accountable response must urgently be developed at the policy level. The European Union and its Member States are obliged to uphold the human rights of those within their jurisdiction. While Member States may control their borders, immigration and social policies must be coherent with their human rights obligations. Under human rights law, migrants without a valid residence permit should not face limitations on their fundamental rights on the grounds of their immigration status. Any distinction made in relation to undocumented migrants seeking to realise their innate entitlement to health care, adequate housing, fair working conditions and education are thus in violation of universal principles of human rights protection. ■

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