PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

PICUM Submission to OHCHR Study on Children's Right to Health

1 October 2012, Brussels

1. Introduction to PICUM

Founded as an initiative of grassroots organisations, The Platform for International Cooperation on Undocumented Migrants (PICUM) represents a network of more than 130 organizations and 150 individual advocates working with undocumented migrants in more than 35 countries, primarily in Europe, as well as in other world regions. With ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

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

2. Health rights of undocumented children

PICUM has witnessed that the best interests of the child are regularly superseded by migration control interests. Undocumented children are often excluded from the general systems for protecting child rights and subjected to the same immigration control measures as their parents, including restricted access to basic social rights, including health care services.

The core issue is the lack of separation between service provision and immigration control, whether in law, or in practice, due to contradictory provisions and heavy-handed immigration enforcement or lack of awareness on the part of civil servants what their duties are towards both undocumented migrants and immigration authorities.

According to PICUM's research[1] undocumented status impeded efforts to obtain health care for children, other than urgent care services. Most EU member states tie full national health care privileges to the possession of a residence permit. Undocumented children's legal entitlements to health care are usually below the standards set out in international law, such as lack of clarity in the rules, discretionary refusal of treatment, complex and bureaucratic procedures, fear of detection and lack of awareness about undocumented children's rights on the part of both service providers and undocumented families, further impede undocumented children's access to available health care services. This can leave undocumented children with access to only emergency health care. As well as affecting children's immediate state of

[1]PICUM, *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, 2009. http://picum.org/picum.org/uploads/file_/Undocumented_Children_in_Europe_EN.pdf. For seven EU member states, the UK, Poland, the Netherlands, Belgium, France, Italy and Spain, see also PICUM Country Briefs from 2011 and 2012, prepared for the "Building Strategies to Protect Undocumented Children in Europe" project workshops. http://picum.org/en/publications/conference-and-workshop-reports/.

health and violating the right to the highest attainable standard of health, these restrictions carry great risks for children's long-term health and development.

The precarious living conditions, poor housing, and other strains that accompany undocumented life bear disproportionately upon children's physical and mental health. PICUM's work has detected little understanding of or support for the particular mental health needs of undocumented children.

3. Access to health care[2]

Laws regarding access to health care for undocumented children at the national level vary enormously across Europe. In most EU countries, undocumented children receive health care under the same conditions as adult undocumented migrants, with no extra protection.

Emergency health care cannot be denied in any European Union Member State. However, in some countries, such as Ireland, Hungary, Sweden and Poland, even this care may be subject to charging,[3] though Sweden[4] and Poland[5] have extended access for certain categories of children.

Most EU countries provide emergency care free of charge. Other care that is commonly provided inclusively and free of charge includes treatment for public health reasons, including immunizations as well as screening and treatment for transmittable diseases,[6] and in serious mental health cases. Otherwise there is wide variation in the care that is provided to undocumented children, and at what cost, in the different EU Member States.

The majority of countries with insurance-based health systems (as opposed to tax-based health systems) exclude undocumented children from accessing public health insurance altogether, with the result that while care may be available, it is subject to charges that are often prohibitively expensive. Some countries exclude undocumented children from public health insurance but have set up parallel administrative systems for regulating undocumented migrants' access to public health services. Such systems can be complex and bureaucratic, creating numerous difficulties for families and health care providers. [7]

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[2] This chapter is adapted from the information available in *Rights of Accompanied Children in an Irregular Situation*, paper prepared by PICUM for UNICEF Brussels Office, November 2011. http://fra.europa.eu/fraWebsite/frc2011/docs/rights-accompanied-children-irregular-situation-PICUM.pdf

[3] In Ireland, emergency care is not provided free of charge, but health provider's have discretion over payment. In Hungary, in principle, undocumented migrants have to pay for emergency care, but if it is not actually possible, it is possible for the service provider to be reimbursed by the State. In Poland, while it is clear that emergency care provided by medical rescue teams is free of charge, it is not clear whether such care would be free of charge in hospital emergency departments, as there is no legislation establishing who would bear the costs. Hospitals can request cost coverage. In Sweden, undocumented migrants are liable to pay the full costs of emergency treatment. (Fundamental Rights Agency (FRA), *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, 2011, p. 16, 17, 27).

[4] In Sweden, children whose asylum application has been refused may access health care under the national health system (Fundamental Rights Agency (FRA), *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, 2011, p. 27.) As a result of concerted advocacy efforts from wider civil society, the Swedish government has recently announced plans to extend the provision of health care for undocumented children on an equal basis with national children. Entitlements for adults are being extended only to 'urgent care', as is the case for asylum-seeking adults. The change in legislation is due to come into effect in June 2013.

[5] In Poland, children attending public schools may access medical and dental prophylactics, including mandatory vaccinations, medical check-ups and screening tests, free of charge (Articles 92 (1)(2) of the Law on education system of 7 September 1991 and Regulation of the Minister of Health on the organization of the prophylactic healthcare for children and youths of 28 August 2009 (c.f. HUMA Network, *Access to Health Care and Living Conditions of Asylum Seekers and Undocumented Migrants in Cyprus, Malta, Poland and Romania*, 2011, p. 101)).

[6] Though in some countries, for HIV only screening is provided free of charge and treatment must be paid for. See for example, FRA (2011), *ibid*, page 23.

[7] For example, Belgian legislation guarantees only "Urgent Medical Care" free of charge for undocumented children (and adults) when medically certified as such. (Loi organique des Centres Publics d'Action Sociale of 8 July 1976 and Arrêté Royal relative à

In many countries, 'urgent' or 'immediately necessary' treatment is available free of charge for undocumented children. In circumstances where only 'emergency' or 'urgent' care is available free of charge, children often have to wait until their health deteriorates significantly before they are able to access care, with obvious implications for their health and recovery. Undocumented children are rarely able to access continuous and specialist health care services appropriate to their needs, including dental or vision care, and face difficulties in accessing sexual and reproductive health care. Undocumented children can be particularly vulnerable to mental health issues,[8] which risk being left unaddressed if a restrictive definition of urgent medical needs is applied.

Further, access to health care in practice differs greatly from legal entitlements. There are various important practical obstacles that prevent undocumented children from accessing health care services, even if entitled.

a. Varied interpretation of urgent/ essential/ immediately necessary treatment

Health systems across the EU Member States afford different levels of care to undocumented migrants, including children, using definitions such as "urgent", "essential", and "immediately necessary" treatment. Interpretations of these terms vary considerably, including in terms of provision – whether care must be accessed through hospital emergency departments or whether children may access primary health care and other services. The interpretations can be both inclusive and exclusive in practice. For example, in Belgium, the system allows for interpretation of "Urgent Medical Care" for children to include much secondary care. In Italy, the interpretation is quite open, and allows for all continuous care. In Poland and Hungary, on the other hand, the interpretation is much more restrictive.[9] Interpretations also vary on the local level, subject to doctors' discretion. Varying definitions of urgently necessary treatment create inequality across similarly placed children across the EU, and can lead to undocumented children being denied necessary treatment.

b. Discretion on the local level

In too many cases in several EU Member States, PICUM's research discovered that the decision whether or not to treat a particular undocumented child fell entirely upon the goodwill of individual medical or administrative personnel. This creates a danger of arbitrary and discriminatory requests for documentation and denial of access to services. In the UK, for example, while undocumented children can access primary care from a GP free of charge, it is at the GP's discretion whether or not to register them in the first place. Similar issues have been reported in the Netherlands.

There are also times when the discretion in making such decisions is made at the financial desk rather than by medical practitioners. For example, in the UK, despite clear guidance stating that decisions regarding the urgency of care must be taken by a medical doctor, charging arrangements are carried out by Overseas Visitors Managers (OVM). There have been situations where patients are initially referred to

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l'Aide Médicale Urgente of 12 December 1996 (c.f. HUMA Network, Access to health care for undocumented migrants and asylum seekers in 10 EU countries: Law and practice, 2009, p. 23).

[8] For example, children may have experienced trauma over events in their countries of origin, on route, and in Europe itself, such as in detention. The uncertainties of living with an irregular status can also be very traumatic for children; living with the threat of deportation (of themselves with their families, and of one of their caregivers), and uncertainty around what will happen when they reach the age of majority and about the future in general. The inclusion of undocumented children in school, and their de facto integration, can also cause imbalance within families in an irregular migration situation, where parents have much more restricted access to rights and society as a whole. Children with better knowledge of the language and country's culture and systems, often assume the role of translator to assist parents. This change in intergenerational relations and responsibilities can put a strain on families and children.

[9] Luca Bicocchi & Michele LeVoy, *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, Brussels, 2009, p.53.

the OVM instead of a doctor, and been refused "immediately necessary" or "urgent" treatment, which is not to be delayed pending payment.[10] With complex rules, and lack of training for staff, there are numerous examples of undocumented families and children being inappropriately denied medical treatment by hospital management or administrative staff.

Complex and bureaucratic systems for reimbursement of services provided to undocumented children can also cause doctors and hospital administrations to be reluctant to treat them. This has been reported as an issue in the Netherlands and in Belgium, for example.[11] In such circumstances, undocumented migrants are particularly vulnerable to discrimination.

c. Lack of awareness and complex rules

The rules governing access to health care are complex and subject to change. At the same time, health care institutions in many countries are being given greater responsibility to determine immigration status and provide treatment accordingly. Without adequate training of health care professionals and clear guidance, it is inevitable that there will be a lack of awareness or understanding of the rules that can lead to inappropriate requests for documentation and denial of care.

Lack of awareness on the part of undocumented parents is also a barrier. Many undocumented migrants do not know what health care they or their children are entitled to, and outreach and information is fundamental to ensure that they access care when possible.

d. Excessive costs

As undocumented children are often excluded from national insurance schemes, or only have limited access, health care that must be paid for is prohibitively expensive. For example, the cost of a normal procedure for delivery of a baby can be more than 2,000 euros[12] (child birth is considered emergency health care and cannot be denied but maybe be charged for in some countries). Such excessive costs can be a major barrier to undocumented children's access to health care.

e. Linking of payment to immigration status

A worrying development in the UK is the new obligation on NHS staff to provide details of patients owing £1,000 (approximately 1,150€) or more to UK Border Agency (UKBA). Pending applications with UKBA (new visas, extensions of stay, re-entry) can be refused until the debt has been paid.[13] For example, someone who may otherwise be eligible for regularisation may have their application rejected because they are unable to pay debts for health care. This may exacerbate parents' fear of incurring large debts for medical treatment, and pose a further obstacle to health care for children.

Such interaction between the health service and immigration authorities will likely also increase fear that accessing health services will lead to detection.

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[10] Department of Health, "Implementing the Overseas Visitors Hospital Charging Regulations", 2011, p. 43-44.
[11] Luca Bicocchi & Michele LeVoy, *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, Brussels, 2009, p.57.
[12] Data for Sweden from 2005 indicated that child delivery cost 21 000 sek = 2 197 euros (at the time of print). Source: Médecins Sans Frontières "Experiences of Gömda in Sweden: Exclusion from health care for immigrants living without legal status", 2005
[13] The government announced these changes on 18 March 2011, but they are not yet in force, and further guidance will be issued (Department of Health, "Implementing the Overseas Visitors Hospital Charging Regulations", para 5.55).

f. Fear of Detection

Fear of detection, and subsequent deportation or separation of the family, is a fundamental obstacle to undocumented children's access to health care. In some countries, there are laws requiring public service providers to denounce undocumented migrants to immigration authorities. Even though health care providers are usually excluded from this requirement, as is the case in Italy, and in Germany, for emergency situations, such laws create a highly negative environment in which undocumented families fear any interaction with authorities. Indeed, fear is a constant aspect of undocumented families' interaction with statutory authorities, and can prevail even when there are no instances of health care administrations sharing information with the immigration authorities.

Research by Pharos, UNICEF Netherlands and Defence for Children International – the Netherlands in 2008 and 2009 found that undocumented children and their parents were afraid that hospitals had the duty to report them to the police. Parents of undocumented children were also afraid they would not be able to pay hospital bills. These concerns caused parents to delay going to hospital when their child was unwell.[14]

A case received by a London-based NGO, Praxis, illustrates the potential tragic consequences of such circumstances. An undocumented family placed their young baby with an unregistered child minder while they worked. The child minder shook the baby causing severe injury. Instead of taking the baby straight to hospital, the parents sought the help of an unlicensed medical practitioner due to fear that their immigration status would be exposed if they went to hospital. The family did later present to the Accident & Emergency Department, but the baby died. There is no evidence that the baby would have survived if she had reached Accident & Emergency sooner, but the delay may have been an aggravating factor.

g. Lack of access to continuous care and medical records

In some EU Member States, undocumented children are able to access continuous care, through inclusive regulations or inclusive interpretations of legislation. However, other obstacles, such as lack of awareness, complex rules, costs of consultations and medicines, fear, inability to regularly attend appointments (due e.g. to indirect costs such as transport, time off work), and language difficulties, can still present obstacles to children's access to continuous health care.

Further, the maintenance of medical records can be an issue. Undocumented parents may give false names and contact details, or use insurance cards belonging to family members or friends, because of fear of detection or in order to access health care they would otherwise not be able to receive.[15] Medical records may also not be kept when undocumented children access health care services informally. Undocumented families that have moved often or otherwise do not access medical services from the same provider may not have any records of their or their children's medical history. For example, a doctor in Belgium, Saphia Mokrane, reported a case where a four-year old undocumented child had moved with her family through four different countries on their journey to Belgium, and had received different vaccinations in each one, but her mother had no record of which vaccinations they were. Being afraid that her daughter was not protected, the mother considered it safer to have the vaccinations again.[16]

Thus, undocumented children are often not able to access continuous medical care. This is not only detrimental to their health, but more costly than preventative care.

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[14] Marjan Mensinga, "Undocumented children and the access to healthcare at the hospital" (English summary of research, June 2010.

[15] PICUM, *Access to Health Care for Undocumented Migrants in Europe*, PICUM, Brussels, 2007, p. 9; Fundamental Rights Agency (FRA), *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, 2011, p. 49

[16] Presentation by Doctor Saphia Mokrane, General Practitioner, Council of Europe Hearing on "Undocumented migrant children in an irregular situation: a real cause for concern", 15 March 2011, Brussels