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ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS FROM A HUMAN RIGHTS PERSPECTIVE: A COMPARATIVE STUDY OF DENMARK, SWEDEN, AND THE NETHERLANDS

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ABSTRACT

Background

Undocumented migrants' access to health care varies across Europe, and entitlements on national levels are often at odds with the rights stated in international human rights law. The aim of this study is to address undocumented migrants' access to health care in Denmark, Sweden, and the Netherlands from a human rights perspective.

Methods

Based on desk research in October 2011, we identified national laws, policies, peer-reviewed studies, and grey literature concerning undocumented migrants' access to health care in the three involved countries. Through treaties and related explanatory documents from the United Nations and the Council of Europe, we identified relevant international laws concerning the right to health and the rights of different groups of undocumented migrants. A synopsis of these laws is included in the analysis of the three countries.

Results

Undocumented migrants in Denmark have the right to emergency care, while additional care is restricted and may be subject to payment. Undocumented migrants in Sweden have the right to emergency care only. There is an exception made for former asylum-seeking children, who have the same rights as Swedish citizens. In the Netherlands, undocumented migrants have greater entitlements and have access to primary, secondary and tertiary care, although shortcomings remain. All three countries have ratified international human rights treaties that include right of access to health care services. We identified international treaties from the United Nations and the Council of Europe that recognize a right to health for undocumented migrants and embrace governmental obligations to ensure the availability, accessibility, acceptability, and quality of health services, in particular for specific groups such as women and children.

Conclusion

In the Netherlands, undocumented migrants' right to health care is largely acknowledged, while in Denmark and Sweden, there are more restrictions on access. This reveals major discrepancies in relation to international human rights law.

BACKGROUND

In the last 10 years, irregular migration has gained increasing attention in Europe and has become a priority issue for European Union migration policy.¹ In 2008, the number of undocumented migrants in the EU was estimated to be 1.9–3.8 million.² Undocumented migrants constitute a heterogeneous group, which in this context may include individuals who have (a) been rejected for asylum and gone underground to avoid deportation; (b) overstayed their visas or had their visas revoked; (c) entered a country illegally; or (d) had parents with an irregular migratory status. Undocumented migrants in Europe face difficulties accessing health care, including maternal and infant care, emergency care, medication, and treatment for chronic diseases and mental health problems.^{3–6} In addition, these migrants often experience precarious living conditions that may have negative health consequences.⁷ As a result, undocumented migrants are an extremely vulnerable group among Europe's population. The provision of health care for undocumented migrants is nationally regulated by EU member states and ranges from full access (on certain preconditions) to no access to non-emergency care.⁵ Thus, entitlements to health care on a national level is often at odds with undocumented migrants' rights as stated in international human rights law, which acknowledges the right to health for all persons, regardless of their migratory status.⁸ Moreover, providing health care may represent challenges for health care professionals, as entitlements are often at odds with codes of medical ethics.⁴ Thus, the issues concerning access to health care for undocumented migrants represent an intersecting field between medicine, public health, medical ethics, politics, and national and international law.

Research on undocumented migrants' access to health care in northern Europe is scarce. Here, we use the cases of Denmark, Sweden, and the Netherlands. Although these countries have similarities and are all

strong welfare states, entitlements for undocumented migrants vary notably, making them interesting countries to compare on this issue. The size of the undocumented migrant population is also different across the three countries: Denmark is estimated to have between 1,000–5,000 undocumented migrants, Sweden 10,000–50,000, and the Netherlands 75,000–185,000.^{9–11} The aim of this article is to address undocumented migrants' access to health care by: (i) comparing national laws, policies, and practices in Denmark, Sweden, and the Netherlands, and (ii) discussing these in a wider framework of international human rights law.

MATERIAL AND METHODS

Based on desk research conducted in October 2011, we identified national laws, policies, peer-reviewed studies, and grey literature related to undocumented migrants' access to health care in Denmark, Sweden, and the Netherlands. In the case of Denmark, we examined the Danish Health Act and the Danish Aliens Act for paragraphs concerning entitlements to health care for undocumented migrants. We also searched the websites of relevant authorities, such as the Danish Immigration Service and the National Board of Health, for policies on the issue. In the case of Sweden, we examined the Health and Medical Care for Asylum Seekers and Others Act for relevant paragraphs. We also searched official Swedish documents, in which we identified reports describing undocumented migrants' access to health care. In the case of the Netherlands, we examined the Health Insurance Act and the Linkage Act, which links the right to social services to administrative status. We also searched the websites of relevant authorities, such as the Dutch Immigration and Naturalization Service.

In order to identify practices concerning access to health care for undocumented migrants, we searched grey literature from NGOs and human rights organizations working with undocumented migrants in the three countries.

To address the human rights perspective, we read treaties and related explanatory documents from the United Nations (UN) and the Council of Europe, identifying relevant international laws concerning the right to health and the rights of undocumented migrant groups. We included these international human rights instruments in the analysis and discussion of our findings.

RESULTS

Entitlements and access to health care for undocumented migrants in Denmark

The Danish health care system is tax-financed and grants universal access to Danish residents. All Danish residents have a personal identification number and card, which they use to obtain services. Health care entitlements for undocumented migrants are, with few exceptions, only implicitly described in legislation and policy documents.

The Executive Order on the Right to Hospital Treatment notes that non-residents have the right to emergency treatment in cases of sudden illness, delivery, or aggravation of chronic illness; this treatment must be provided just as it is to Danish residents.¹² In 2003, the Danish National Board of Health likewise stated that undocumented migrants have the right to free emergency care, and that doctors in these cases have a duty to provide the best possible treatment, but are not obligated to treat non-emergency cases.^{13,14} However, the Danish Health Act does not clearly define when a condition should be considered an emergency, and that decision therefore falls to the doctor providing treatment.¹⁵ According to the Danish Health Act, persons without permanent residence may obtain non-emergency care if it is not reasonable to refer them for treatment in their home countries. In some cases, however, the Regional Council may request payment for such non-emergency services.¹⁶ For example, it has been reported that undocumented migrant women in a major obstetrical department may be charged for obstetric care, depending on their complications and need for

Caesarean operations.¹⁷

According to the Danish Aliens Act, undocumented migrants in need of necessary care may request treatment from the Danish Immigration Service.¹⁸ Migrants do not use this option, however, since the Immigration Service is obliged to alert police to the whereabouts of known undocumented migrants.¹³

One research study of undocumented migrants and emergency room nurses in Denmark found that informal barriers (lack of knowledge about the health care system, weak networks with residents that may help to obtain health care, and fear of being reported to the police) may cause delays in seeking treatment and encourage alternative health-seeking strategies such as self-medication, contacting doctors in home countries for advice, and borrowing health insurance cards from Danish residents.¹⁹ According to a second Danish study, health professionals believe that undocumented migrants experience inequities in accessing primary care, and primary health practitioners are uncertain how to respond to this patient group.²⁰

In 2011, the Danish Red Cross responded to this lack of health care access for undocumented migrants and opened a clinic in cooperation with the Danish Medical Association and the Danish Refugee Council. The Copenhagen-based clinic is open three times per week and is run by volunteer health professionals. It has been able to admit patients to public hospitals and give referrals to outside specialists.²¹

Entitlements and access to health care for undocumented migrants in Sweden

Sweden also has a tax-financed health care system that provides universal access to those with a personal identification number. A law enacted in 2008, the Health and Medical Care for Asylum Seekers and Others Act, granted adults the right to emergency care and “care that cannot be deferred”—a term that is not clearly defined.²² Since this law does not cover undocumented adults, they have the right to emergency care only, and the county councils that manage Swedish health care can claim reimbursement for the full cost.

Since 2000, asylum-seeking children and undocumented former asylum-seeking children in Sweden have had the same rights as Swedish children to health, medical, and dental care.²³ These rights were realized after NGOs and Swedish pediatricians advocated for them on the basis of the UN Convention on the Rights of the Child (CRC) and critique from the UN Committee on the Rights of the Child.²³ There are, however, still several obstacles to treatment for these children; for example, many undocumented families cannot afford the full cost of medicines and other treatments. Many health care providers, especially outside pediatric clinics, are unaware of the laws regarding children's care, leading to denial of care for undocumented migrant children.²⁴ Furthermore, undocumented children who were not previously seeking asylum have the same restricted access to care as undocumented adults. In response to the limited access to care for undocumented migrants, NGOs have opened clinics where health professionals volunteer to treat undocumented patients. The first of these clinics opened in 1996, and they are now available in Sweden's four largest cities.^{25,26}

After UN Special Rapporteur on the Right to Health Paul Hunt visited Sweden in 2006, he sharply criticized Sweden's limitations on health care for asylum seekers and undocumented migrants. In a report, he noted that the country was violating international human rights law by restricting their right to access health care equal to that provided to Swedish residents.²⁷ Hunt's report, together with lobby work initiated by the volunteer clinics for the undocumented, sparked a wide debate. Subsequently, some 40 organizations formed The Right to Health Care Initiative, a broad coalition of religious and humanitarian groups, trade unions, and almost all of Sweden's health professional organizations.²⁸ Since Hunt's report and the resulting initiative, most county councils have issued more generous guiding principles for the health care of local undocumented patients. However, providers are not always aware of these new principles since they are not always familiar, while those who are aware may find them difficult to follow due to lack of adequate administrative support.²⁹ Studies have shown that two of three undocumented patients have abstained from seeking health care in the last year because of high costs and barriers to access.^{4,7}

Entitlements and access to health care for undocumented migrants in the Netherlands

The Dutch health care system requires all residents to purchase private health insurance. Undocumented migrants, however, have been excluded from health insurance since 1998, when the country adopted the Linkage Act connecting the right to social services with administrative status.^{30,31} Nonetheless, undocumented migrants are entitled to care that is "medically necessary." Until 2009, health care providers were reimbursed through a special fund that covered such necessary treatment.^{32,33}

Since 2009, health care providers no longer have relied on this fund for reimbursement. Based on Article 122a of the Dutch Health Insurance Act, they can seek reimbursement for 80-100% of the cost of care, depending on the treatment concerned (for example, costs resulting from pregnancy and childbirth are reimbursed in full). To receive the reimbursement, they must prove that they first attempted to collect the owed amount from the patient.^{4,34,35} In principle, therefore, undocumented migrants should now pay for health services unless they cannot afford the bill. The new scheme distinguishes between "directly accessible" services (general practitioners, midwives, dental care up to age 21, and acute hospital care) and "not directly accessible" services (for example, non-emergency hospital care and nursing homes). Services deemed "not directly accessible" require a referral.³³

As a result of this scheme, a wide range of services is available, in principle, to undocumented migrants in the Netherlands. These services cover primary, secondary and tertiary care, including pre- and postnatal care, psychiatric care, youth health, and screening and treatment for HIV and other infectious diseases.⁴ However, the system also contains financial and practical hurdles. It can be problematic that adult dental care (including acute dental care) is not covered.⁴ The referral system from primary to secondary care is not optimal, due to financial obstacles for health care providers (80% reimbursement for part of the treatments).³⁶

Reports suggest that undocumented workers avoid seeking health care services because of a lack of information about the entitlements to health care, coupled with the fear of having to pay the bill.³⁴ In

Table 1. General policies and practices on access to health care for undocumented migrants in Denmark, Sweden, and the Netherlands

	Health Care System	Legislation	Practice	NGO Clinics, Private Initiatives
Denmark	Tax-financed health care system with universal access for Danish citizens and persons with permanent residency.	Right to free emergency care. Non-emergency care is restricted and the Regional Council may request payment for these services, depending on the individual case. Danish Immigration Service may provide necessary, urgent, and pain-relieving care if requested.	Free emergency care, but undocumented migrants may face informal barriers in access. Non-emergency care may be subject to payment.	Volunteer health professionals run one clinic.
Sweden	Tax-financed health care system with universal access for Swedish citizens.	Adults: Access to emergency care only, at own expense for the full cost. Children previously asylum-seekers: Access to all health, medical, and dental care. Children not previously asylum-seekers: Same as adults.	Many regional councils have adopted more generous policies, but knowledge is often not spread to the health workers in the field and lack of adequate administrative routines complicated the process.	Volunteer health professionals run clinics in the biggest cities and in some smaller cities.
The Netherlands	Insurance-based health care system with universal access to a basic health care package for Dutch residents.	Undocumented migrants excluded from insurance system but entitled to medically necessary care; health care provider must prove patient cannot afford bill.	Access to primary, secondary, and tertiary care. Practical hurdles occur due to language problems, inadequate referral systems, general practitioners refusing to provide necessary care, and a lack of recognition of specific health	Private and voluntary initiatives for dental care.

a recent study of detained undocumented migrants, about 25% of the respondents who had sought medical help reported that a health care provider had denied them care.³⁶ A recent study carried out by Doctors of the World indicated that 29% of undocumented migrants in the Netherlands did not receive the medical services they needed. On a related note, the study reported that a number of general practitioners are unwilling to treat undocumented migrants, leaving the responsibility to a small group of willing practitioners.³⁷ There are also problems related to the vaccination of children, as non-registered children do not receive invitations for the vaccination program.

DISCUSSION

Summary of findings

The findings show that undocumented migrants in Denmark have access to emergency care. Additional care is provided if it is not reasonable to refer them to their home country; depending on the case, the undocumented patient may be required to pay for this care. In Sweden, undocumented migrants only have access to emergency care, with the exception of former asylum-seeking children in Sweden, who have rights equal to those of Swedish citizens. In the Netherlands, undocumented migrants have greater entitlements and access to primary, secondary, and tertiary care, although shortcomings remain. An overview of the findings is presented in Table 1.

Access to health care for undocumented migrants according to international human rights law

Denmark, Sweden, and the Netherlands have ratified a number of international human rights treaties that contain a right of access to health care services. Such human rights apply, in principle, to everyone residing in a member state's territory, regardless of citizenship or migratory status. We can distinguish here between UN treaties and treaties from regional bodies, such as the Council of Europe. Some EU laws may also have some relevance concerning undocumented migrants' access to health care services.

United Nations treaties

The most important UN treaty provision on this matter is Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR),

which establishes the "right to the highest attainable standard of physical and mental health," in short, the "right to health."³⁸ The UN Committee on Economic, Social, and Cultural Rights (CESCR) specified the meaning and implications of this provision in General Comment 14, which, while not strictly legally binding, gives an authoritative and comprehensive overview of the meaning and implications of the right to health.⁸ Four elements of General Comment 14 are of particular importance when it comes to protecting the health of undocumented migrants:

1. Non-discrimination: Member states are under a legal obligation to not deny or limit equal access to preventive, curative and palliative health services and the underlying determinants of health to any person, including asylum seekers and undocumented migrants;
2. All health services, including those provided to undocumented migrants, should be "available, accessible, acceptable and of good quality" (often referred to as the "AAAQ"); accessibility means that health services have to be provided on the basis of the principles of non-discrimination and information accessibility, and that they are financially and geographically accessible;
3. There is a set of minimum essential health services that are to be guaranteed to everyone under all circumstances (the so-called "core obligations"). These include the provision of essential drugs, reproductive, maternal (prenatal as well as postnatal) and child health care, immunization, and education and access to information. Health services provided to undocumented migrants should cover these services as a minimum.
4. The right to health not only embraces a right to health care, but also a wide range of socio-economic factors that promote conditions in which people can lead healthy lives, including food and nutrition, housing, and access to safe and potable water and adequate

Table 2. International human rights treaties containing a right of access to health care services and date of ratification

Treaty Provision	Implications for Undocumented Migrants	Date Ratified in Denmark	Date Ratified in Sweden	Date Ratified in the Netherlands
Article 12, International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Right to health for undocumented migrants	January 3, 1976	January 3, 1976	March 11, 1979
Article 12, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Right to health care services for undocumented migrant women, including pre- and postnatal care	May 21, 1983	September 3, 1981	August 22, 1991
Article 24, Convention on the Rights of the Child (CRC)	Right to health for undocumented migrant children	August 18, 1991	September 2, 1990	March 7, 1995
Articles 11, 12, and 17, European Social Charter (ESC)/Revised ESC and case law	Right to protection of health for lawful residents/Case law: medical assistance for undocumented children	March 3, 1965 (ESC)	May 29, 1998 (Revised ESC)	May 3, 2006 (Revised ESC)
Article 35 Charter of Fundamental Rights of the European Union	Right to health care; scope presently unclear	December 1, 2009 (entry into force Treaty of Lisbon)	December 1, 2009 (entry into force Treaty of Lisbon)	December 1, 2009 (entry into force Treaty of Lisbon)

sanitation, safe and healthy working conditions, and a healthy environment. This means that when we focus on the health of undocumented migrants, we also need to pay attention to their socio-economic conditions.

General Comment 14 clarifies that these principles also cover undocumented migrants: “States are under an obligation to respect the right to health by refraining from denying or limiting equal access for all persons, including (...) asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”³⁸ This principle is also verified in General Comment 20 from CESCR: “The ground of nationality should not bar access to Covenant rights (...). The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”³⁹

We find similar guarantees in more specific UN treaties, the most important of which are Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Article 24 of the Convention on the Rights of the Child (CRC).^{40,41} These provisions grant all women and children a right to health, without regard to legal status. Accordingly, undocumented migrant women and children enjoy special protection under these provisions. With regard to women, there is a concrete legal obligation to ensure appropriate services in connection with pregnancy, confinement, and the postnatal period, granting free services when necessary. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) are left aside here, as ICRMW has not been ratified by the countries in the current analysis and both allow for distinction between citizens and non-citizens.

Council of Europe treaties

At the Council of Europe level, we find the “right to protection of health” in Article 11 of the (Revised) European Social Charter (Revised ESC), which has a wide scope similar to Article 12 ICESCR. Furthermore, Article 13 recognizes the right to social and medical assistance, while Article 17 recognizes the right to social, legal, and economic protection of

children and young people. Although in principle the rights in the Revised ESC are granted only to lawfully residing residents, ESC case law is gradually expanding the scope of these provisions, particularly when it comes to the needs of undocumented children. Denmark has not ratified the Revised ESC and is therefore bound by the more limited ESC, but Articles 11 and 13 have remained largely unchanged.^{42,43} Lastly, at the level of the European Union, Article 35 of the Charter of Fundamental Rights of the European Union recognizes a right to preventive and medical services for “everyone.”⁴⁴ As of yet, the scope and implications of this provision are uncertain.

Denmark, Sweden, and the Netherlands have ratified most of these human rights treaties, and are therefore legally bound by the mentioned treaty provisions. These are presented in Table 2.

Discussion of findings from a human rights perspective

International human rights law recognizes that a right to health benefits everyone residing in a state’s territory. Thus, undocumented migrants have a right to health care on a non-discriminatory basis. By not providing the full range of services, Denmark and Sweden are violating the right to health under international law. In the Netherlands, undocumented migrants have access to a wider range of health care services; therefore, the Netherlands is, in principle, meeting its international obligations. Nonetheless, undocumented migrants encounter several formal and informal barriers when seeking access to health care, including the financial barriers for general access to health care services, the reported unwillingness of some health care providers to treat undocumented migrants, and the lack of access to acute dental care.

In Denmark and Sweden, the regional councils and the counties can claim reimbursement for service costs, while doctors in the Netherlands have to give evidence of the undocumented migrants’ inability to pay. These conditions may not be in accordance with international human rights law, as the Committee on Economic, Social, and Cultural Rights recognizes the right to affordable health services for all. Thus, health services should be economically accessible and should comply with the principle of equity by not disproportionately burdening socially disadvantaged groups.

As mentioned, specific legal obligations result from the CEDAW and the CRC. The CEDAW Committee

has emphasized the duty of states' parties to ensure women's right to safe motherhood and emergency obstetric services, and they should allocate the maximum extent of available resources to these services.⁴⁵ In Denmark and Sweden, where undocumented women only have access to emergency medical services, this obligation is not met. Furthermore, the right to health in the CRC recognizes that all children have the right to health. This includes undocumented children, with the exception of undocumented children who have not applied for asylum (themselves or their parents). According to the CRC, Denmark violates the right to health by not providing adequate health care services to undocumented children. Furthermore, in light of this provision, the inaccessibility of the child vaccination program in the Netherlands is problematic.

According to international human rights law, governments that fail to provide sufficient health care can be held accountable for not meeting human rights standards. The Right to Health Initiative in Sweden demonstrates that accountability is not only about bringing legal cases to court; it can also entail a wider political process wherein health professionals work with human rights lawyers and NGOs to bring attention to discrepancies between international human rights law, national law, policies, and implementation in practice.

As a result, several hospitals and 19 of the 21 county councils have adopted a more generous policy towards undocumented migrants, expanding the indications for treatment and increasing flexibility on the demand for payment. After two years of split opinion, the government could finally unite behind a directive to start the work of a governmental official report to develop a new and more generous law. The results of the inquiry were released in a recent report suggesting a law giving equal health services to undocumented migrants.¹⁹ The argumentation was largely based on human rights legislations.

The Minister for Migration Affairs immediately turned down the report, and the inquiry was stopped, although it should have been referred to Swedish organizations and authorities for consideration and a public debate before a decision from parliament.⁴⁶

Instead, the Swedish government made an agreement with the Green Party and in September 2012, it was proposed that "persons without permission to stay in Sweden" should be entitled to the same subsidized

health care as asylum seekers. That includes "health care that could not be deferred" which is vaguely defined as care where a delay may lead to serious consequences for the patient.

However, the proposed law still claims that "the content and the funding of the health care a person seeking care in Sweden should be offered is not just dependent on what concrete need of health care the person concerned has but also on what person group he or she belongs to."⁴⁷ We do not consider this statement to be in accordance with the non-discriminatory basis of human rights. The proposed law will be sent to a referral and is expected to be in place by July 2013.

While the emphasis in this paper is on the human rights perspective of the provision of health care for undocumented migrants, it is important also pay attention to medical-ethical principles that apply to health care providers. In fact, human rights law and medical ethics are very much connected when it comes to defining an adequate standard of care. While human rights are focused on defining rights to health care of individuals, medical ethics provide an elaborate and sophisticated set of norms defining the health care provider's duties to his patients.⁴⁸ When providing care to undocumented migrants, health care professionals may face complex ethical dilemmas as they experience tension between their duty to care for patients and government restrictions on providing such care. Such dilemmas are often addressed as "dual loyalty" or "mixed agency" and arise when doctors' professional duty to provide the best possible care is not in conformity with laws and policies restricting access to health care for undocumented migrants. Where legislation and policies are not clear, health professionals must assume the heavy responsibility of navigating their interactions with this patient group. Such dilemmas may also strain the budgets and schedules of health care providers. Eventually, doctors may endanger their professional positions when they elect to provide restricted health care to undocumented migrants.

The issue of undocumented migrants' rights and right to health care is a controversial political topic in Europe, especially in light of the current economic recession. It is to be expected, given the economic situation, that states will further limit undocumented migrants' access to health care.⁴⁹ Those who oppose expanding undocumented migrants' entitlements

argue that more undocumented migrants will move to Europe in order to obtain health care, thereby undermining welfare systems.⁵⁰

However, from both an economic and public health perspective, there are also sound reasons for providing a broader range of health care services to undocumented migrants. While most countries provide emergency care for undocumented migrants, it can be argued that providing early care is cheaper than waiting until a condition requires emergency care. Few studies have explored this idea, but one study from 2004 argues that it is feasible for European health care systems to provide health care for undocumented migrants without undergoing major changes to the funding or organization.⁵¹

CONCLUSION

Our results and analyses show disparities between Denmark, Sweden, and the Netherlands in entitlements and actual access to health care services for undocumented migrants. In the Netherlands, undocumented migrants' right to health care is largely acknowledged, although shortcomings remain, especially when it comes to implementing the existing regulation. Denmark and Sweden provide limited access to health care for undocumented migrants, revealing major discrepancies with human rights law. We argue that a uniform pan-European approach, based on human rights, should be considered in order to ensure undocumented migrants' right to health care. To achieve this, collaborative work between legislators, policy makers, human rights experts, health professionals, and NGOs may be a useful strategy.

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REFERENCES

1. A. Triandafyllidou (ed), *Irregular migration in Europe: Myths and realities* (Surrey, UK: Ashgate Publishing Limited, 2010).
2. Clandestino Research Project, Comparative policy brief: Size of irregular migration (2009). Available at http://irregularmigration.hwvi.net/typo3_upload/groups/31/4.Background_Information/4.2.Policy_Briefs_EN/ComparativePolicyBrief
3. Platform for International Cooperation on Undocumented Migrants (PICUM), Access to Health Care for Undocumented Migrants (2007). Available at http://picum.org/picum.org/uploads/file_/Access_to_Health_Care_for_Undocumented_Migrants.pdf.
4. Health for Undocumented Migrants and Asylum Seekers Network, Access to health care for undocumented migrants and asylum seekers in 10 EU countries: Law and practice (2009). Available at http://www.huma-network.org/content/download/11250/106632/file/HUMA_report_Law_and_Practice.pdf.
5. U. Karl-Trummer, S. Novak-Zezula, and B. Metzler, "Access to health care for undocumented migrants in the EU: A first landscape of NowHereland," *Eurohealth* 16/1 (2010), pp. 13-16.
6. H. Castaneda, "Illegality as risk factor: A survey of unauthorized migrant patients in a Berlin clinic," *Social Science & Medicine* 68/8 (2009), pp. 1552-1560.
7. Médecins Sans Frontières, Experiences of Gömda in Sweden, Exclusion from health care for immigrants living without legal status (2005). Available at <http://www.lakareutangranser.se/Global/documents/Rapporter/ReportGomdaSwedenEn.pdf>.
8. Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health, UN Doc. No. E/C.12/2000/4 (2000). Available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En).
9. Undocumented Worker Transitions (UWT), Denmark Country Report (2007). Available at http://www.undocumentedmigrants.eu/london-met/library/s15990_3.pdf.
10. E. Envall, S. Vestin, C. Björngren Cuadra et al., "Papperslösa, Social Rapport 2010," *Socialstyrelsen* (2010), pp. 267-92. Available at http://www.socialstyrelsen.se/publikationer2010/2010-3-11/Documents/2010-3-11_Kap_8_Papperslosa.pdf.
11. Dutch Immigration and Naturalisation Service. Available at <http://www.ind.nl/nl/inbedrijf/actueel/>

[Nieuwe cijfers omvang illegalenpopulatie.asp.](#)

12. Bekendtgørelse om ret til sygehusbehandling m.v. af nr. 95 af 7. februar 2008 [Executive Order on Right to Hospital Treatment], (Denmark 2008), para 6.
13. A. R. Hansen, A. Krasnik, and E. Hog, "Access to health care for undocumented immigrants: Rights and practice," *Danish Medical Bulletin* 54/1 (2007), pp. 50-51.
14. National Board of Health, Vedrørende hospitalssøgende med falsk identification [Concerning persons using false identification to seek health care], (Denmark, National Board of Health, 2003).
15. R. Aabenhus and P. Hallas. "Sundhedsloven og sundhedsydelse hos udokumenterede migranter [The Danish Health Act and health-care services to undocumented migrants]," *Ugeskrift for Læger* 174/38 (2012), pp. 2216-2219.
16. Lovbekendtgørelse af sundhedsloven nr. 95 af 7. februar 2008 [Danish Health Act], (Denmark, 2008), para. 80-81.
17. L.Torp, Fødsler i ingenmandsland [Childbirth in no-man's land], *Amnesty Bladet* 1 (2010).
18. Lovbekendtgørelse af udlændingeloven nr. 808 af 8. juli 2008 [Danish Aliens Act], (Denmark, 2008), para. 42 a.
19. D. Biswas, M. Kristiansen, A Krasnik, and M. Norredam, "Access to healthcare and alternative health-seeking strategies among undocumented migrants in Denmark," *BMC Public Health* 11/520 (2011).
20. N. K. Jensen, M. Norredam, and T. Draebel, "Providing medical care for undocumented migrants in Denmark: What are the challenges for health professionals?" *BMC Health Serv Res* 11/154 (2011)
21. Dansk Røde Kors, Sundhedsklinik for udokumenterede migranter: Halvårsrapport 24. August 2011 – 29. Februar 2012 [Health clinic for undocumented migrants: Half-year report 24 August 2011 – 29 February 2012], (Denmark, 2012). Available at http://www.rodekors.dk/files/DRK_2011/Nyheder/halv%C3%A5rsrapport.pdf.
22. Statens Offentliga Utredningar, *Vård efter behov och på lika villkor - en mänsklig rättighet* [Health care on the basis of needs and on equal basis - a human right] (Sweden, 2011). Available at <http://www.regeringen.se/content/1/c6/16/98/15/1ce2f996.pdf>.
23. Committee on the Rights of the Child, Concluding Observations: Sweden, UN Doc. No. CRC/C/15/Add101 (1999). Available at <http://www.unhcr.org/refworld/docid/3ae6aefd24.html>.
24. H. Ascher, A. Björkman, L. Kjellström, and T. Lindberg, "Diskriminering av papperslösa i vården leder till lidande och död [Discrimination of undocumented migrants leads to suffering and death]," *Läkartidningen* 105/8 (2008), pp. 538-41.
25. Médecins Sans Frontières, Gömda in Sweden: *Exclusion from health care for immigrants living without legal status: Results from a survey by Médecins Sans Frontières*. (Stockholm: Médecins Sans Frontières, 2005). Available at <http://www.lakareutangranser.se/Global/documents/Rapporter/ReportGomdaSwedenEn.pdf>.
26. Médecins du Monde, *Access to healthcare for undocumented migrants in 11 European countries*. (European Observatory: Médecins du Monde, 2009). Available at <http://www.lakareivarlden.org/files/rapporter/HUMA%20final%20-EN.pdf>.
27. Paul Hunt, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to Sweden, UN Doc. No. A/HRC/4/28/Add.2 (2007). Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/111/82/PDF/G0711182.pdf?OpenElement>.
28. Right to Health Care-Initiative. Available at <http://www.vardforpapperslosa.se>.
29. E Sigvardsson, Presenting the absent. An account on undocumentedness in Sweden. (Uppsala: Uppsala University, 2012). Available at <http://uu.diva-portal.org/smash/get/diva2:516978/FULLTEXT01>.
30. Koppelingswet [Linkage Act], (Stb, 1998), 203.
31. D. Ingleby, "Zorg voor ongedocumenteerden [Health care for undocumented migrants]," *Cultuur*

Migratie Gezondheid 7/4 (2010), pp. 216-225.

32. T. Veenema, T. Wieggers, and W. Devillé, "Toegankelijkheid van gezondheidszorg voor 'illegalen' in Nederland: een update [Accessibility of health care for 'illegals': An update]" (Utrecht: Nivel, 2009).

33. C. B. Cuadra, Policies on health care for undocumented migrants in EU27: Country report, The Netherlands, (Krems: Health Care in Nowhereland, 2010). Available at <http://files.nowhereland.info/667.pdf>.

34. J. Sijmons and V. Derckx, "Zorg aan vreemdelingen zonder papieren: een chronisch gebrek? [Health care for undocumented migrants – a chronic illness?]," *Nederlands Juristenblad* 27 (2010), pp.1747-1754.

35. Health Insurance Act [Zorgverzekeringswet], (Stb., 2005), pp. 358.

36. T. Dorn, M. Ceelen, M. Tang, et al., "Health care seeking among detained undocumented migrants: a cross-sectional study," *BMC Public Health* 11/190 (2011).

37. S. Paauw, "Slechte toegang tot zorg illegalen in Nederland' [Inadequate access to healthcare for undocumented migrants in the Netherlands]," *Medisch Contact* 16 (2012), pp. 948.

38. International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), Art. xx. (1966). Available at <http://www2.ohchr.org/english/law/cescr.htm>.

39. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in Economic, Social and Cultural Rights, UN Doc. No. E/C.12/GC/20 (2009). Available at <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.doc>.

40. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180 (1979). Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

41. Convention on the Rights of the Child (CRC), G.A. Res. 44/25 (1989). Available at <http://www2.ohchr.org/english/law/crc.htm>.

42. European Social Charter, (1961). Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp

43. Revised European Social Charter, (1996). Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp

44. Charter of Fundamental Rights of the European Union, Official Journal of the European Communities 200/C, 364/01 (2000). Available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

45. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24, Women and Health, UN Doc. No. CEDAW/C/1999/1/WG.II/WP.2/Rev.1 (1999). Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/77bae3190a903f8d80256785005599ff?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/77bae3190a903f8d80256785005599ff?OpenDocument).

46. S. Åsgård, "M vill skjuta upp beslut om vård för papperslösa [The Conservatives want to postpone decision on health care for undocumented]," *Dagens Medicin* 28/9 (2011).

47. Ministry of Health and Social Affairs, Hälso- och sjukvård till personer som vistas i Sverige utan tillstånd [Health care for persons without permission to stay in Sweden], (Government offices in Sweden: [Ministry of Health and Social Affairs](http://www.regeringen.se/download/8cce15cb.pdf?major=1&minor=200285&cn=attachmentPublDuplicator_0_attachment) 201236, 2012), pp. 36. Available at http://www.regeringen.se/download/8cce15cb.pdf?major=1&minor=200285&cn=attachmentPublDuplicator_0_attachment.

48. World Medical Association, International Code of Medical Ethics, (1948). Available at <http://www.wma.net/en/30publications/10policies/g1/index.html>.

49. Mediciens du Monde: Access to Health Care for Vulnerable Groups in the European Union in 2012, (France: Mediciens du Monde, 2012).

50. L. Quass, "DF afviser mere lægehjælp til illegale indvandrere," *Berlingske Tidende* 24/10 (2011). Available at <http://www.b.dk/politiko/df-afviser-mere-laegehjaelp-til-illegale-indvandrere-0>.

51. R. Romero-Ortuño, "Access to health care for illegal immigrants in the EU: Should we be concerned?" *European Journal of Health Law* 11 (2004), pp. 245-272.