



Implementation of Prevention and Therapy of STIs  
(including HIV and HBV infections) for Undocumented  
Migrants in Europe: New Challenges

**The need for European and national policies &  
coordination**

**Alyna C. Smith, PICUM**

Sunday 23 July 2017, 5-7PM, Room 251

## P I C U M

- International NGO with 155+ members
- Focus: rights of undocumented migrants, including right to health
- Members engaged in direct service provision, advocacy
- Bridge between local reality and policy at EU and global levels



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# Changing context

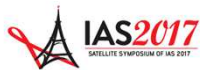
## 2008

- 1.9-3.8 estimated UDM in EU27
- Irregular entry the least common pathway to irregular status

## 2017



Source: <http://migration.iom.int/europe/>



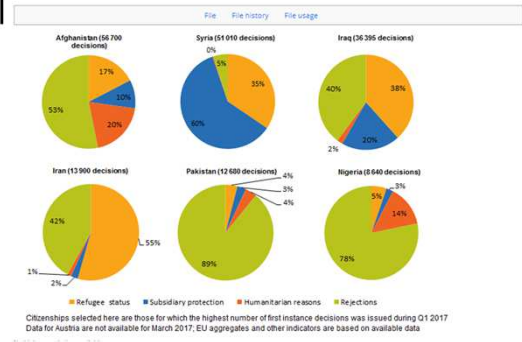
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# Increasing irregularity

- 2016: 1.1M first instance decisions in all MS on asylum applications (Eurostat)
  - 61% positive outcome (17% positive upon appeal)

File: First instance decisions in the EU-28 by outcome, selected citizenships, 1st quarter 2017 V2.PNG



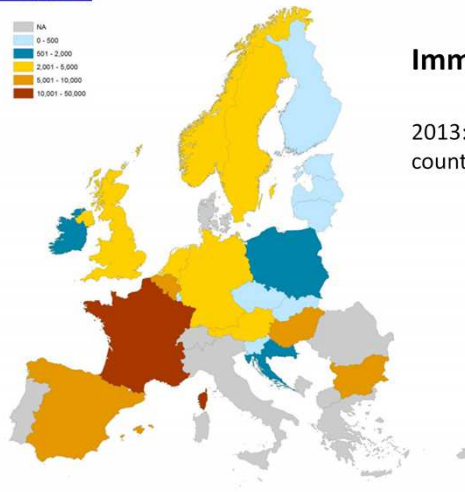
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Source: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics)

Source: [EMN Study \(2014\)](#)



## Immigration Detention

2013: Est. 92 575 detained in 23 EU countries

EUROPEAN COMMISSION

Brussels, 7.3.2017  
C(2017) 1600 final

COMMISSION RECOMMENDATION

of 7.3.2017

more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council

- (16) Detention can be an essential element for enhancing the effectiveness of the Union's return system, which should only be used if no other sufficient but less coercive measures can be applied effectively in accordance with Article 15(1) of Directive 2008/115/EC. In particular, where necessary, to ensure that illegally staying third-country nationals do not abscond, detention can allow for a successful preparation and organisation of return operations.



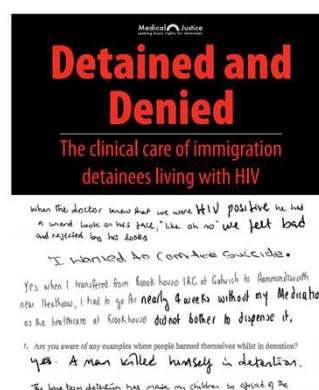
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“This report argues that the treatment of people with HIV, detained for immigration purposes, is perpetuating a health crisis”

- Key findings (UK, 2011):
  - Interruptions & disruptions in ARV therapy occur repeatedly in detention
  - When detained, people may be subjected to demeaning, degrading practices that can worsen their condition
  - Detainees deported with less than a 3mos supply of ARVs



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## Undocumented = Heightened Risk

- Exclusion from essential services, protection and justice undermines control of sexual health
  - Greater risk of violence because of inability to safely report, seek protection and support (including shelter)
  - May practice transactional sex in context of income and housing insecurity or as sex workers
  - Restricted access to health care reduces access to contraception, information and sexual health, prevention
  - Fear that confidentiality will not be respected regarding immigration status (“firewall”)
  - Lack of awareness about entitlement to HIV testing, treatment



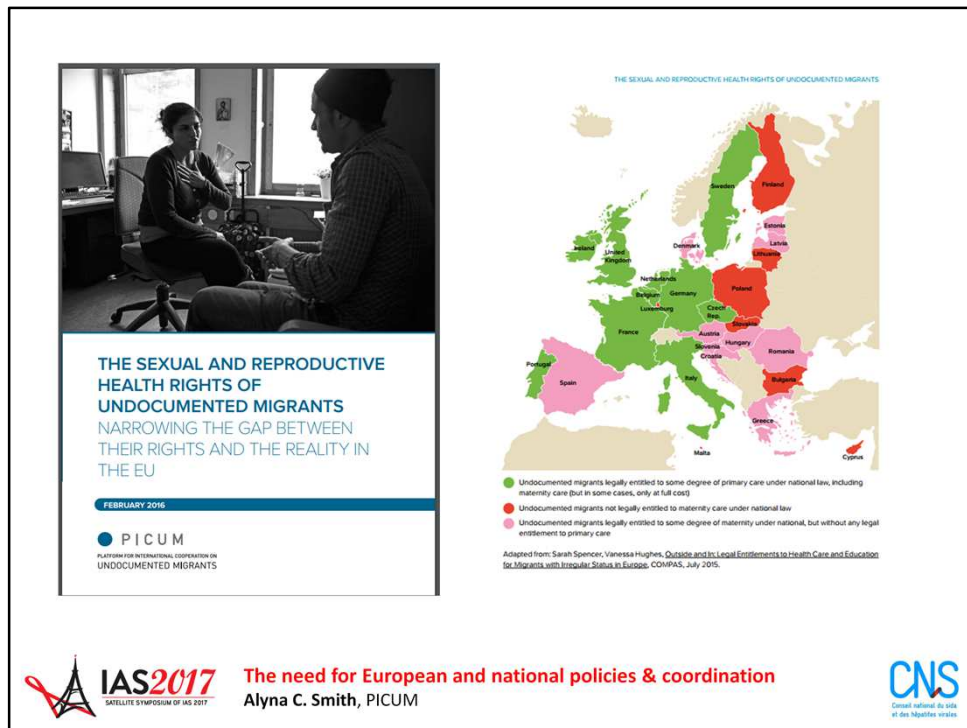
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Reference: Deblonde et al., BMC Public Health (2015) 15:1228

“As of 1st of February 2016, private tenancy leases beginning on this date or later require that landlords check one’s residence status in the UK. There are penalties for renting property to someone that has no right of abode or indefinite leave to remain in the UK. This ‘right to rent’ home office guideline also requires that the landlord make a report to the home office when one’s right of abode expires. The guidance uses the terminology ‘illegal migrant’. For many on HIV treatment, housing, and the right kind, is an important component of their treatment and well-being regime. The ability to adhere to treatment, make sexual health decisions and have children requires a stable home environment. Poor housing or none will further exacerbate the issue of mental health and the right to a family life for undocumented migrants caught up in this – not to mention their susceptibility to co-infections.” – Nyambe Makelabai, European AIDS Treatment Group (EATG) (UK) – PICUM SHRH report



[http://picum.org/picum.org/uploads/publication/Sexual%20and%20Reproductive%20Health%20Rights\\_EN\\_FINAL.pdf](http://picum.org/picum.org/uploads/publication/Sexual%20and%20Reproductive%20Health%20Rights_EN_FINAL.pdf)

- Gathers existing research, including 2015 Oxford study on entitlements to care
- Main findings: broad exclusion from health systems – carve outs in some MS for pregnant women and for certain communicable diseases, such as HIV (i.e., 16 member states allow access to screening for HIV (Belgium, Croatia, Cyprus, France, Germany, Greece, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Spain, Sweden and the UK), eleven of which also allow access to treatment (Belgium, Cyprus, France, Greece, Italy, Malta, Netherlands, Portugal, Spain, Sweden and the UK. See Spencer (2015)
- However, often disconnected from access to primary health care

ECDC 2016 report on the country level implementation of the Dublin Declaration on HIV/AIDS in the EU and EECA

<http://ecdc.europa.eu/en/healthtopics/aids/Documents/hiv%20dublin%20declaration%20special%20report%20europe%202016.pdf>

“Migrants also remain disproportionately affected and although some of them are infected prior to arriving in the country where they are



diagnosed, there is growing evidence that sub-groups are at risk of acquiring HIV after arrival in the EU/EEA.”

(...)

Undocumented migrants face particular difficulties in accessing HIV treatment, with half of the EU/EEA countries not providing treatment for this population

(...)

Migrants from sub-Saharan Africa and south and south-east Asia are more likely to be diagnosed late than non-migrants.

(...)

Almost half of all EU/EEA countries report major gaps in testing services for undocumented migrants, and around one in four report major gaps in testing services for migrants from high-prevalence countries, MSM and sex workers”

## Main policy challenges

- Access to health care viewed through the lens of migration management
  - Limiting entitlement to services to deter migration
  - Linking services and immigration enforcement
- Stigmatization, myths about migrants as vectors of disease
- Highly politicised nature of the issue



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Some member states (Austria, Hungary, Latvia, and Greece) have adopted mandatory HIV testing for migrant sex workers, a discriminatory practice that has been condemned for reinforcing stereotypes about migration and sex work, and the notion of migration as a security health threat. Keygnaert (2014) op. cit. note 11, at 221.

## HIV is political priority

- EU Action Plan on HIV/AIDS 2014-2016
- 2004 Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia
- 2007 Bremen Declaration of Responsibility and Partnership – Together Against HIV/AIDS
- UN Declaration of Commitment in 2001, 2006
- 2011 UN Political Declaration on HIV and AIDS
- SDGs (ending TB, AIDS by 2030)
- WHO Action Plan on HIV, TB and Viral Hepatitis



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## Opportunities for cooperation

- SDGs (“no one left behind”) as a framework for advocacy
  - Integrate EU indicators on STIs, undocumented
- Engagement of health professionals alongside communities in advocacy
  - Alternatives to immigration detention
  - Right to stay for medical reasons
  - Promoting access to HIV and co-infection services, regardless of residence or insurance status
  - Attention to factors outside health system that contribute to increased risk of HIV infection, poor outcomes



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International Detention Coalition (2015), There are alternatives: A handbook for preventing unnecessary immigration detention (revised edition) - <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>

Right to stay for medical reasons:

### **EUROPEAN COURT FOR HUMAN RIGHTS / Court rules that deportation of migrant with serious illness would have been human rights violation**

The Grand Chambers of the European Court for Human Rights (ECtHR) issued its ruling in Paposhvili v. Belgium (Application no. 41738/10) on 13 December 2016. The case concerned a seriously ill Georgian national. He sought, and was repeatedly refused by Belgian authorities, leave to remain in the country due to his illness. The applicant brought his case to the ECtHR in July 2010 alleging violations of Articles 2 (right to life), Article 3 (prohibition against torture) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR, or Convention) in connection with his removal to Georgia. After his death in June 2016, his wife and children were allowed to pursue the case on his behalf. The applicant arrived in Belgium via Italy in November 1998 with his wife and young daughter. Between 1998 and 2005, he

was arrested multiple times and served prison sentences for various offences. In 2006, while serving a prison term, the applicant was diagnosed with chronic lymphocytic leukemia and in 2007 requested regularisation due to his state of health under section 9ter of the Aliens Act, and citing Articles 2 and 3 of the ECHR. His request was refused because of the serious nature of the offences he had committed. His subsequent 9ter application was also refused. In its judgment, the Court affirmed the general premise that migrants subject to deportation cannot in principle claim the right to stay to continue to benefit from medical care or other forms of assistance provided by the state. However, the Court clarified that circumstances giving rise to a breach of Article 3 include cases where the applicant is close to death, as well as those where a seriously ill person for whom there is no risk of imminent death would face a real risk, due to the lack of “appropriate treatment in the receiving country or access to that treatment, of being exposed to serious, rapid and irreversible decline in their state of health, resulting in intense suffering or significant reduction in life expectancy.” States therefore have a positive duty to ensure appropriate procedures allowing the individual to bring evidence of the potential risks faced upon return, and to examine foreseeable consequences considering the general situation and the individual’s circumstances. Where doubts remain about the impact of removal, the returning state must get assurances from the receiving country as a precondition for removal that appropriate treatment will be available and accessible. The Court ruled that his removal would have been a violation of Article 3 if the Belgian authorities would not have assessed the risks he faced resulting from his state of health. It also found a violation of Article 8 because Belgian authorities did not examine the degree to which he was dependent on his family, due to his deteriorating health. The Court ruled that the Belgian state has to pay the applicant’s family €5,000 within three months. The ruling is available [here](#).

# Arguments for policy change

- Human rights & ethics

*"The Committee draws the attention of States parties, in particular, to the fact that enjoyment of the Covenant rights should not depend on the legal status of the persons concerned. The lack of documentation frequently makes it impossible for parents to send their children to school, or for migrants to have access to health care, including emergency medical treatment, to take up employment, to apply for social housing or to engage in an economic activity in a self-employed capacity. That situation cannot be tolerated."*

- Statement, UN Committee on ESCR, March 2017

- Public health

*"There is an urgent need to increase access to and uptake of HIV testing among key populations, especially those who are most at risk or harder to reach within these populations, in order to reduce the proportion of people living with HIV who do not know their status and who are diagnosed late in the EU/EEA"....*

- ECDC (2016), The status of HIV response in the EU/EEA

- Cost of exclusion

*"This report shows that providing regular preventive care, as opposed to providing only emergency care, is cost-saving for healthcare systems. Even when using a simple model to estimate costs, the implications are clear: treating a condition only when it becomes an emergency not only endangers the health of a patient, but also results in a greater economic burden to healthcare systems."*

- FRA (2015), Cost of exclusion from healthcare: The case of migrants in an irregular situation



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# World Medical Association



**“Physicians have a duty to provide appropriate medical care regardless of the civil or political status of the patient, and governments should not deny patients the right to receive such care, nor should they interfere with physicians' obligation to administer treatment on the basis of clinical need alone.”**

**“National Medical Associations and physicians should actively support and promote the right of all people to receive medical care on the basis of clinical need alone and speak out against legislation and practices that are in opposition to this fundamental right.”**



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