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Advancing Inclusive Sexual and Reproductive Health Rights (SRHR) Policies Toward Migrants in European States: A Comprehensive Examination and Reform Proposal

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Executive Summary

This paper provides critical insights into the formulation of a comprehensive and effective Sexual and Reproductive Health Rights (SRHR) policy, considering the diverse needs of migrants across European states. Examining the implementation of current SRHR policies, particularly in regions with restrictive measures, the paper addresses obstacles to migrants' access to SRHR-related services and proposes improvements for more accessible, affordable, and culturally acceptable policies.

While all European Union (EU) member states offer emergency healthcare, including life-saving measures related to SRHR, 17 out of 27 countries do not provide health services free of charge to undocumented

migrants. This not only poses a significant health concern for migrants but also raises fundamental human rights issues. Fear of deportation prevents immigrants from seeking healthcare services. Access to SRHR services remains problematic, even for citizens, especially in regions with contingent SRHR policy restrictions.

The right of Physicians and healthcare practitioners to conscientious object should not impede women's right to terminate unwanted pregnancies. Prioritizing access to contraceptives on demand and facilitating the procedure for terminating unwanted pregnancies in countries with restrictive national policies is crucial. The EU should leverage its influence to address these concerns, ensuring SRHR for both citizens and migrants.

Reliable and comparable data collection mechanisms regarding migrants' access to SRHR services should be a focal point in each country. Migrants often experience feelings of shame, anxiety, and discrimination, highlighting the importance of 'culturally tailored educational interventions', 'group education', and 'individual counselling' by healthcare providers proficient in the migrants' language.

In conclusion, universal access to SRHR is a fundamental right that must be ensured and protected for everyone, regardless of their migration status. In other words, prioritizing a rights-based approach to SRHR for migrants is essential. This policy paper calls for comprehensive policy reforms, emphasizing the importance of inclusivity, accessibility, and cultural sensitivity in the provision of SRHR services across European states.

Introduction and Background of the Policy Issue

This paper concerns the SRHR of migrants in Europe, especially in the settings where access to SRHR and related goods and services are already restricted in the pre-existing legal framework and how it affects migrants.

In this paper, migrant is used as an "umbrella term to refer to any person who moves away from their usual place of residence, whether internally or across a border, and regardless of whether the movement is 'forced' or voluntary" (UNHCR 2019). SRHR mainly includes "safe motherhood; aspects related to unwanted pregnancy; family planning; sexually transmitted infections (including HIV/AIDS); and sexual and gender-based violence, including harmful traditional practices such as female genital mutilation" (Janssens et al. 2005: 15). The acknowledgment of sexual and reproductive health services for refugees began to gain traction in the 1990s. The need for addressing the difficulties faced by migrant women in reaching reproductive health care and the threats posed to their reproductive health and rights was firstly addressed in the United Nations International Conference on Population and Development (ICPD) held in Cairo in 1994 (United Nations Population Fund 2023). Then, in 1999, the Convention on the Elimination of All Forms of Discrimination against Women committee in its General Recommendation No.24 strongly emphasized that particular attention should be paid to "vulnerable and disadvantaged women such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities" (CEDAW 1999). Subsequently, the Inter-European Parliamentary Forum on Population and Development in its 2003 meeting in Lisbon announced its commitment to the ICPD program of action regarding universal access to SRHR (Janssens et al. 2005).

Ensuring universal access to sexual and reproductive health is important for society and policy makers because it is first and foremost a fundamental human right. It aligns with the United Nations' Sustainable Development Goal (SDG) 3, focusing on reducing maternal mortality, and supports the attainment of SDG5, which emphasizes promoting gender equality and empowering women (UNDP 2023). Even women citizens of certain countries have difficulties in reaching sexual and reproductive services but migrant women, especially those who were forcibly displaced are the most vulnerable population group regarding access to sexual and reproductive rights. Ensuring free, equal, and universal access to sexual and reproductive

healthcare services is important for the health and wellbeing of the societies at large as it prevents maternal mortality and morbidity, minimize the risk of infertility and contagion of sexually transmitted diseases that often result from unsafe sexual activity.

Problem statement/Research Overview

Reproductive rights are human rights. Women's right to health includes universal access to sexual and reproductive rights. It is vital to prioritize the SRHR for asylum seekers, refugees, undocumented migrants, especially women, the most vulnerable group. Their undocumented status poses access challenges in access to healthcare services including SRH. In case of conflict situations, they may suffer from sexual and physical abuse during relocation that needs urgent intervention and treatment from healthcare providers. Addressing these issues is essential.

Furthermore, compared to native population, migrant women in Europe have restricted access to sexual and reproductive health services due to language barriers, lack of health literacy, cultural differences (Barrio-Ruiz et al. 2023). They are more vulnerable to sexually transmitted diseases. Therefore, the risk of death for those in reproductive age is higher among migrant population (Åkerman et al. 2019). A review of migrants' access to sexual and reproductive health in high level income European countries also shows that feeling of fear, shame, anxiety, and discrimination, unable to understand or not being understood by healthcare professionals are the most reported factors that inhibit migrant women's access and use of SRH (Barrio-Ruiz et al. 2023).

Current Policies

Within the European Union (EU) member states reproductive rights is characterized by a lack of uniformity, manifesting divergent trajectories among distinct countries.

All migrants included undocumented ones are entitled to emergency health care —implying life-saving measures —including SRH related services. However, undocumented migrants are excluded from primary and secondary health services with some exceptions such as in case of infectious diseases in 17 countries which are Austria, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia, Spain. HIV screening is provided in 15 out of 27 EU member states but only 10 of them provides treatment which are Belgium, France, Greece, Italy, Malta, Netherlands, Portugal, Spain, Sweden (Spencer 2015).

Moreover, migrants often live in fear of deportation, deterring them from seeking healthcare at public hospitals. In Denmark, for example, migrant women delay accessing maternity care in public hospitals until the last moment of high necessity due to the fear of deportation. Describing her experience, a pregnant migrant woman expressed that when she sought care for severe stomach pain at a public hospital, she felt it was a choice between potential death or accessing healthcare, as deceased individuals cannot be deported (Funge et al. 2020). NGOs and facilities offering counselling for HIV/AIDS patients have reported that a primary concern for these individuals is the fear of deportation stemming from their illness (Janssens et al. 2005).

Certain countries have highly restrictive reproductive right policies that completely ban abortion or limited the circumstances under which abortion can be performed, constrained the prescription and usage of contraceptives. In countries with restrictive sexual and reproductive policies, like Croatia, Poland, Malta and Hungary the limited availability of contraceptives violates the principle of addressing unwanted pregnancies in sexual and reproductive health rights (International Federation for Human Rights 2022). The access of migrant women to healthcare in relation to unwanted pregnancies in Ireland and Poland due to abortion bans is problematic. Many women opt for going abroad where pregnancy termination is much easier to have,

but again, the most vulnerable population is women with poor economic standing including asylum seekers and refugee women who are faced with travel restrictions due to both economic challenges and uncertainty about official identity documentation and visas in their destination countries. The internationally publicized Ms. Y case in 1992, also known as the X case in Ireland, serves as a stark illustration of the challenges faced by migrant women seeking to terminate unwanted pregnancies in countries with highly restrictive abortion laws. Ms. Y, an asylum seeker in Ireland, had been raped in her home country and, upon discovering her pregnancy and experiencing suicidal thoughts, sought an abortion. However, the restrictive abortion laws at that time denied her request, and she was unable to travel to the United

Kingdom, the common practice for Irish citizens. Despite her hunger strike and evident mental health struggles, the High Court in Ireland ruled to hydrate her against her will. Ms. Y, an asylum seeker, faced significant barriers not only in securing her right to abortion but also in dealing with immigration authorities and social service agencies in both the UK and Ireland (Fletcher 2014; Side 2016; Challis 2023). While Ireland has since liberalized its abortion laws, the impact on migrant women under the new legislation remains an area yet to be studied.

The pre-existing legal framework regarding sexual and reproductive health policy is severely restrictive in countries like Poland, Hungary, Serbia, and Slovakia. This is particularly problematic for migrant women whose accession to those services is more difficult compared to nationals. Not only Ukrainian but also Romani women and women of African descent are facing difficulties in such contexts regarding access to contraceptive methods including emergency contraception and other contraceptive methods, abortion related services, pre- and post-natal care and treatment for sexually transmitted diseases. Besides, most of the time, in these contexts, the sexual and reproductive health rights violations is accompanied by racism and different forms of discriminations (International Federation for Human Rights 2022). Poland, for instance, received the highest number of Ukrainian people—954,600 individuals—who fled from the conflict situation in Europe (UNHCR 2023). Europe has witnessed the forced migration of Ukrainian women from their country, where abortion is completely legal and access to contraceptives is easy, to another country — Poland — where abortion was almost illegal and contraceptive accession is the most restrictive in Europe (Center for Reproductive Rights 2023).

In certain countries there is also an issue of conscientious objection which gives physicians and medical practitioners the right to opt out from prescribing contraception, or performing abortion due to their world views, religious, moral, or philosophical beliefs. 22 out of 28 European countries recognize right to conscientious objection for physicians and medical practitioners. There is no uniform implementation of conscientious objection across European Union countries. However, there is evidence that the existence of right to conscientious objection in especially six countries which are Poland, Croatia, Italy, Czech Republic, Portugal, and Sweden, constrained access to SRH goods and services. These countries also do not pay attention to the effect of conscientious objection on vulnerable groups (Andedda et al. 2018).

Among European Union member countries in Poland, Slovakia, Bulgaria, Lithuania, Finland, and Cyprus undocumented migrants are not entitled for maternity care (PICUM 2016). Healthcare policy, outlined in a 2011 report in Poland, Malta, Cyprus, and Romania presents challenges for migrants, especially asylum seekers and undocumented migrants. Undocumented migrants lack health rights, are ineligible for insurance in Poland, and must pay for healthcare, including reproductive health services. Financial constraints often lead to the deprivation of essential health services. Restrictive measures in the legal framework further limit their access (Collantes et al 2011). In 2016, the main obstacle remained the cost of care. Undocumented migrants in Poland have to pay for treatment in public hospitals, except in emergency situations or cases of infectious diseases, where free treatment is provided by emergency teams outside of hospitals. Undocumented migrants remained excluded from SRHR in Malta and Cyprus including maternity care (PICUM 2016). The situation in 2022 reveals persistent challenges in Poland, Moldova, Romania, Hungary, and Slovakia. Existing limitations in legal frameworks, coupled with cost barriers, continue to impede access to sexual and reproductive health rights (SRHR). Consequently, women and girls, including undocumented

migrants and marginalized populations like Ukrainian refugees, Roma women, and African women, face inadequate SRHR provisions in these regions (International Federation for Human Rights 2022).

Policy Recommendations and Implementation Strategies

1. The EU needs to push for a uniform, standard policy for its member states regarding sexual and reproductive rights. Universal access to SRH related goods and services must be guaranteed for everyone regardless of their legal status — be it refugee, asylum seeker or undocumented migrant— since healthcare is a fundamental human right that should be accessible to all. The countries which also have pre-existing legal and policy restrictions to sexual and reproductive rights should fully implement the Minimum Initial Service Package for Sexual and Reproductive Health in crisis situations (MISP for SRH) (United Nations Population Fund 2020). MISP, or the Minimum Initial Service Package, comprises essential activities during the initial stages of a humanitarian crisis, be it conflict or a natural disaster. It encompasses various crucial components, such as the prevention of sexual violence, reduction of HIV transmissions, treatment of sexually transmitted infections, and the reduction of maternal and newborn mortality and morbidity. Additionally, it emphasizes the importance of ensuring access to contraceptives on demand and facilitating the procedure for terminating unwanted pregnancies upon request. Ensuring rights-based approach to SRHR for migrants must be prioritized. Ensuring confidentiality in public hospitals is crucial, and migrants should be informed that seeking assistance from public hospitals and contact with healthcare provider does not pose a risk of deportation.
2. To ensure that no woman is deprived of access to Sexual and Reproductive Health (SRH), particularly in cases of unwanted pregnancies, conscientious objectors should guide women in need to other experienced healthcare practitioners. The availability of healthcare practitioners must be ensured in rural areas, and the EU should diligently monitor the practices of member countries. Keeping track of data on the extent of conscientious objection and its role in impeding access to SRH is crucial, especially in countries where such data is lacking (Andedda et al. 2018).
3. Legal and budgetary challenges pose obstacles to the universal implementation of SRHR. Monitoring and providing treatment for all migrants, including undocumented individuals, could incur significant costs. However, prioritizing accessible, affordable, and culturally acceptable SRH services for everyone, irrespective of their legal status, is not only a fundamental human right but also contributes to the overall health and well-being of society. It is imperative for the European Union, its organs, and member states to actively work towards ensuring this goal.
4. An additional hurdle to establishing a uniform and harmonized Sexual and Reproductive Health and Rights (SRHR) policy across member states is outlined in Article 168 of the Treaty on the Functioning of the European Union (TFEU). This article designates a complementary role for the EU in relation to the national health policies of its member states. While member states retain authority over defining health policies (Andedda et al. 2018), this complexity complicates the development of a shared and standardized SRHR policy. Nonetheless, the EU can leverage its influence on member states, especially those not addressing the SRH needs of undocumented migrants, with exceptions for emergency situations.
5. Migrants constitute a diverse group with varying reasons for migration, ethnicities, cultures, and backgrounds. To enhance migrants' Sexual and Reproductive Health and Rights (SRHR) literacy, it is essential to implement “culturally tailored education programs” (Brevik et al. 2020) for both healthcare providers and migrants. This approach involves deploying translators or individuals fluent in the native language of those seeking assistance and seeking support from psychologists.

These measures aim to eliminate barriers during SRHR provision, fostering better communication between service providers and migrants, and minimizing feelings of shame, anxiety, and discrimination among migrants.

6. The academic community needs to intensify its research focus on the SRHR needs of migrants, especially in regions where existing legal frameworks on SRH policies are restrictive. This concentrated effort would assist policymakers in pinpointing necessary actions. Prioritizing comparable and reliable data collection on the rights of migrants, including undocumented individuals, is of utmost importance.

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