

Ethical Guidelines

Some Guidelines for Assisting Undocumented Migrants

These guidelines are meant to be instrumental for a discussion within PICUM. This discussion could lead to a degree of consensus between the different organizations within PICUM, and give clarity about the position of the various organizations. As PICUM is a platform, it is not the forum to establish any enforceable ethical code for its participants. However, organizations could use these guidelines as a basis for eventually developing their own ethical code.

These guidelines aim to address social workers, aid workers, advisors, advocates and supporters. In the following we will use the term “social worker”, referring to all these roles and professions.

General Principles

- Social workers are committed to principles of social justice and inclusion, and recognize, promote and protect the human dignity of all individuals.
- Social workers do not discriminate, disadvantage or prejudice clients.
- Social workers and others come into contact with undocumented migrants either via their organization or by chance. However, their main task is first to provide social work, advice or support to their clients, in conjunction with their professional ethics.
- Social workers therefore include undocumented migrants in their work.
- Forced migration is a problem derived from the lack of political and economical balance in the world. Therefore, individual or group solutions will always have a pragmatic character.
- Passing the buck by the authorities and their increasing use of tactics of depriving individual undocumented migrants put these and voluntary agencies trying to assist them in an extremely difficult position: in many situations there is no long-term solution and the choice is usually between bad and worse.
- Undocumented migrants are usually extremely dependent on their surroundings. They are therefore vulnerable to exploitation, maltreatment and misuse: forced prostitution, forced criminality, work without any protection of their rights, exploitation in the housing sector, blackmail, exploitation by traffickers, etc.

The Relation Between the Client and the Help Provider

1. It should be made clear at any time what assistance can be provided, what are the limits, and why. The obligations of both the provider of assistance and of the client should constantly be clarified as a part of the process of reaching or upholding consensus regarding the assistance. In this sense the relation should be based on

mutual understanding and should have the character of an unwritten contract, so that the client knows what he/she can expect and what is expected from him/her.

Amongst many other things, the process of providing assistance is also negotiating. That is why a careful and thorough intake is of utmost importance, as it is at this time and place that the tone and the main aims and limits of the contract will be put on the agenda.

During this stage of the process and throughout the whole process, the worker should be aware that s/he is the stronger, even dominating partner in the relation. This requires respect and a reserved, self-critical attitude from the worker.

Organizations offering assistance to undocumented migrants have to define clear instructions for their workers regarding the acceptance and refusal of help, working methods, peer control, pointing out structural problems both within the organization and in a broader context, the (legal) position of workers (insurance, accounting for their work). This to protect both the workers and the clients. Both workers and clients should have the opportunity to appeal to someone else within the organization.

2. The relation of the help provider should not be different if a worker is paid or works on a voluntary basis. This should be guaranteed by a written agreement between the organization and its volunteers.
3. The circumstances under which the worker can temporarily or completely discontinue the relationship should be clarified, for example:
 - If the client remains passive to whatever the social worker tries to do, if s/he is not willing to seek and create a situation in which s/he can (temporarily) survive in an ethically acceptable way;
 - If it appears that the client is intentionally providing false information, seriously frustrating the trust put in him/her and thus harming the organization or rendering the assistance impossible;
 - If a client abuses or attacks staff, volunteers or other clients;
 - If it appears that the client committed serious crimes (e.g. crimes against humanity, human rights abuses, serious common crimes), either in the country of origin or in the country of current residence without having had a fair trial.
4. All workers should see that they keep their professional distance from clients for their own and the client's protection. As soon as the character of the relationship becomes personal, the worker should stop providing formal assistance. Peer control should play a decisive role in this kind of situation.

Aims of Providing Assistance

5. The aim of providing assistance is to efficiently deliver a particular service or to find a solution in which the client can survive in an ethically acceptable way. This situation can be temporary or durable. It is essential that the client is able to support him/herself in one way or another.
6. The seeking of this “acceptable situation of survival” constitutes the core of the “unwritten contract” between the provider of assistance and his/her client.
7. Possible solutions include:
 - a. Regularisation of the residence status. The following should be noted concerning unfounded requests for residence procedures: it is not advisable to sustain a totally unfounded request for a residence procedure if it could cause a stricter procedure on the short or long term, and could harm the credibility of the organization, which in the end could render it impossible to provide assistance.
 - b. Voluntary return. Organizations and workers should adhere to the “Guidelines for NGOs in Relation to Government Repatriation Projects” (See annex. Note: only English version is available).
 - c. Continued irregular residence and work. In this case the main task of the provider of assistance is to minimize as much as possible the chance of marginalization, exploitation, discrimination and misuse.
8. Any essential step in the process will be discussed with the client and will not be taken without his/her consent. If the worker (preferably after consulting colleagues or a supervisor) has no alternatives to offer that are acceptable to the client and cannot meet the options or wishes of the client, he/she can end the relation, because there is no definable aim to the process.
9. The aim can change in the course of the process: the workers should be flexible and creative in adjusting their methods and aims: they should be able “to make the impossible possible”. For example, the organization can offer a limited time period for the undocumented migrant to make up his/her mind. After the pre-established time limit has passed, it has to be considered if a new “contract” can be negotiated.

Standard of Services

10. An undocumented immigrant is morally equal to any other individual. It should therefore be ensured that the client obtains access to the usual services available and that the service given is as close to the standard as possible.

Prioritizing

11. The overall aspiration should be to serve all those in need. If this is impossible, for example, due to lack of resources, then clear criteria and prioritizing mechanisms should be applied. From the beginning, the provider of assistance and his/her

organization should be clear about what criteria they apply in providing or denying assistance, and if the reasons for denial are based on shortage of means, limited working methods and/or principle.

12. Clients should preferably not be accepted without any form of selection if the limited means of the organization will at some moment force it to close its doors.
13. The urgency of the need for assistance is defined in different ways by different organizations:
 - Urgent humanitarian need, great vulnerability: e.g. families with (small) children, medical or psychiatric needs, other severe situations, etc.
 - Perspective of a (durable/temporary) solution (asylum, residence permit based on humanitarian grounds, further migration, repatriation, undeclared work without too much exploitation).
14. If the organization is unable to provide the assistance required, the social workers should try to suggest alternatives or refer to other agencies that could help. No client should be sent away without first trying all channels.

Secrecy

15. It should be identified in the beginning what kind and how much information is required to solve the problem brought forth by the client. It should also be considered within the perspective of the purpose of the service offered by the organization. Data that is not relevant for the case should not be collected.
16. All information given by a client in the context of providing assistance is guaranteed to remain secret. Other workers under the code of the organization, however, have access to the information as long as this has a clear function (e.g. continuity of the process of assistance, control by authorized people within the organization). In this sense and within these limits, information is not given to this individual worker, but to the organization. However, there is one exception: if the social worker happens to obtain information on real, ongoing or planned serious criminal acts, the civic responsibility overrules the professional duty of confidentiality. This should be made clear to all clients during the intake.
17. If and when the provider obtains information on crimes by third parties during the course of his/her duties (e.g. trafficking in human beings, exploitation, misuse, forced sex work, domestic violence, blackmailing of undocumented migrants), s/he should try to find ways and means to put an end to these practices. Problem solving strategies could include informing the public and authorities, without doing any harm to the client(s) who provided the information.

18. No information should be provided to third parties without the clear consent of the client, except for the one case mentioned in Article 16.
19. The client has the right to see his/her complete file at any moment. When the relationship comes to an end, the client has the right to take his/her file. Nonetheless, the organization is entitled to keep the client's essential personal data. If the client requests assistance again, s/he has to once again make the whole file available to the organization.

Political and Social Action. Transparency

20. Providing individual assistance without active openness towards the surrounding society is like swimming against the tide.
21. Organizations assisting undocumented migrants should be open and transparent regarding their finances, their working methods, the number of clients they are able to help, their contacts with authorities and with other organizations.
22. It is an essential task of organizations assisting undocumented migrants to inform society of the problems faced by their clients. The organizations and/or their networks or umbrella-organizations (regional, national, European) should invest in informing media and in lobbying politicians on the issue. This presupposes a focus on signals from the field and instruments (time, well-equipped people) to incorporate and handle these data and to develop a common strategy.
23. Possible involvement of clients in public actions should be considered with great caution (e.g. demonstrations, church-asylum). Clients should be fully informed of the possible scenarios and their consequences. It should be clear what to do if the action fails in one way or the other. The publication of photographs and of personal testimonies of clients should be avoided without their explicit consent.

Legitimacy and Its Limits

24. In the EU member states, there is a relatively high degree of democracy. Under these circumstances, the legitimacy of disobeying laws is far more remote than under a clearly undemocratic regime. However, if a state excludes its inhabitants from essential means of survival, these residents have the right to disobey laws in order to survive. Their actions should be in proportion to this aim and should do as little harm to others as possible.
25. This does not legitimize the breaking of the law by those who assist undocumented migrants. However, they have to defend, situate and explain the behavior of their clients in this respect. If they are involved in a situation that is not strictly legal, it should be agreed upon with the client that his/her illegal action in which s/he is assisted is completely the client's responsibility. If a worker is in the situation that

only a breach of the law could lead to the most efficient assistance for the client, this should always be discussed and agreed upon with a team. The consequences of this illegal action for other undocumented migrants, society at large, public perception, etc., should be taken in consideration. In no case shall a worker in an organization individually decide on such a case.

26. In some countries it is forbidden by law to assist undocumented migrants. These types of laws are subordinate to fundamental ethics that therefore have priority.

27. Actions undertaken, working methods and rules such as these guidelines that are used by organizations assisting undocumented migrants should be open and transparent. This appears to be a condition to earn the cooperation and support of other organizations, of the public and sometimes of (local) authorities.

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