

# CITY-LEVEL RESPONSES TO MIGRANT FAMILIES WITH RESTRICTED ACCESS TO WELFARE BENEFITS



## A European pilot study

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This report examines the way in which entitlements and restrictions to welfare benefits for migrant families in the cities of Berlin and Madrid are constructed in law and policy, and implemented in practice. We look at how migrants access or are unable to access services to which by law they are entitled, the implications when they are not entitled or able to access those services, and city-level responses to any problems these restrictions create.

This study comes at a time of flux for European welfare states, where a gradual process of recalibration has intensified since the beginning of the financial crisis in 2008, with countries including Spain seeing considerable cuts to spending on public services. If restrictive welfare policies applying to migrant families are to intensify across Europe, it is important to understand the impact of these policies and to build an evidence base for policymaking at national, regional and local levels.

The research questions in this study are divided into four groups. First, we explored how law and policy frame entitlements and restrictions for different categories of migrant to

welfare benefits in the two cities. Second, we sought to identify among them who the migrants are that are in need of such support. We then investigated how that support is implemented (or not) in practice and finally whether systems adapt to address any gaps in the support framework.

Berlin and Madrid have their own regional governments with considerable law and policymaking powers. The cities were chosen for this study because they have different migration histories, the German and Spanish welfare systems are characterised by different models ('welfare regime') and these countries have contrasting experiences of the financial crisis. Fifty-five interviews were conducted across the two cities with social workers, lawyers, welfare rights advisors, voluntary sector advocates and integration specialists across the statutory and NGO sectors. These were conducted over two weeks of fieldwork in each city during summer 2013, in each case three months apart.



Accommodation project for destitute migrant families, outskirts of Madrid  
Photo by Jonathan Price

# Findings

## Legal and policy frameworks

Four tiers of welfare benefits or subsidiary financial and accommodation support available to migrant families were identified in both cities:

- contributory social security
- non-contributory welfare benefits (including child benefit);
- social services support (which can include accommodation and financial support)
- asylum support

Provision of non-contributory benefits was found to be the most contested of these benefits, with considerable restrictions on entitlements and problems identified in the assessment and provision of these benefits. The main non-contributory welfare benefit in Germany is known as Hartz IV and in Spain is *Renta Mínima de Ingresión* (RMI). Migrants in both cities/regions must be lawfully present in order to make claims for most welfare benefits. This is with the exception of 'basic social services'<sup>1</sup> (which cannot constitute ongoing accommodation and financial support) in Madrid and support for those who are given certain temporary immigration titles in Germany.

Gaps in welfare benefit provisions therefore mainly impact on irregular migrants (without lawful immigration status). Additionally in Germany, those whose residence is solely for the purpose of looking for work (largely affecting mobile EU citizens) and in Madrid, those with less than a year's lawful residence in the territory of that autonomous community, are excluded from key non-contributory benefits.

For those whose immigration status excludes them from non-contributory benefits, no statutory safety net support exists in Madrid. In Germany, the right for migrants with irregular status to safety net support under the Asylum Seeker Benefits Act is compromised by the implications of accessing this support: potential removal from the country.

Families with dependent children do not, on the whole, enjoy a particularly privileged position over and above single adults, with the exception of entitlement to child benefit, an additional non-contributory benefit for families in both cities. Some forms of accommodation support are not subject to any exclusions in either city, namely winter shelters and support for those fleeing domestic violence, showing that some safeguarding risks for individuals and families 'trump' the priority otherwise attached to restrictive migration policies relating to welfare.

## Migrant profiles

Migrant service users were identified as having differing immigration statuses in the two cities:

In Berlin, participants most frequently described their service users as: EU citizens, Romanians or specifically Roma, asylum seekers, those with *Duldung* status<sup>2</sup> and nationals of African countries who had been granted humanitarian status in Italy.

In Madrid, participants most frequently described their services users as: migrants with irregular status, including people who had lost their residence permits, Romanians or specifically Roma, and Latin Americans.

## Implementation

Participants identified problems in the implementation of laws and policies, such that even in situations where a family has legal entitlement to support, statutory authorities may fail in their duties to provide it. Four broad problems identified in the implementation of policy are detailed below:

### I. Variation in practice

Almost every participant claimed that the responses of public authorities in the assessment of need and provision of services to migrant families were inconsistent. Variation in practice was evident at different levels, from the micro-level decisions of 'street-level bureaucrats' (public employees enacting statutory powers and duties) to the perceived and substantive approaches of institutions and the decisions of social courts. Variation in practice was noted in the services of both statutory and non-governmental organisations to varying degrees.

In Berlin, variation in practice was most commonly noted in the assessments and decisions of the Job Centre in relation to the administration of Hartz IV (non-contributory benefit), the decisions of social courts and to a lesser extent in social services departments.

In Madrid, variation in practice was most commonly noted in the prior process of registering with the local authority (*padrón*) and to a lesser extent in social services departments.

Variation in practice can be explained by four observations. First, participants felt that the personal values of street-level bureaucrats impacted on their approach to service provision, assessments and decision-making in both cities, underpinned by differing perceptions of deservingness and belonging. The 'moral agency' of street-level bureaucrats manifested itself in the level of information they were willing to provide to service users to help them resolve their situations, which varied from one worker to the next. For some NGO participants, the approach of statutory authorities was felt to be discriminatory.

Second, variation in practice can partly be explained by the complexity of the legal and policy frameworks determining entitlements and restrictions to welfare benefits (especially in Berlin), and the apparent lack of training for staff. Third, flexibility is built into both legal and policy frameworks, for example giving public service providers the power to sanction families who claim welfare benefits. This is evident in the discretionary nature of social services provision in Madrid; and powers to sanction welfare claimants in Berlin by revoking/failing to renew their residence permits. Fourth, in Madrid, the level of indebtedness of the local authority was felt to impact their capacity to respond to welfare needs, the resources of some drying up more quickly than others.

## 2. Gatekeeping

Excessive 'gatekeeping' of services was reported by participants to take place in the same places as variation in practice was reported: at the Job Centre in Berlin and, to a lesser extent, at social services; and in Madrid at the municipal register and at social services. However, participants did not report excessive gatekeeping of RMI in Madrid. In Berlin, gatekeeping migrants' Hartz IV access was felt to be systematic, with all applications from migrants receiving an initial refusal with an expectation that claimants should challenge decisions in the courts to receive a fair assessment.

The key difference here is the relationship between decision-maker and budget holder. For RMI in Spain, the decision-maker (social services) and budget holder (the regional government) are one-step removed. For Hartz IV, decision-maker and budget holder are the same institution, suggesting that decisions about service provision may in the case of Hartz IV be driven by budgetary considerations rather than, in the case of RMI, by service need. In Madrid, gatekeeping was reported, in contrast, to take place at the municipal register. The municipality is the budget holder for social services, for which successful registration is a prerequisite.

Gatekeeping techniques included, in Berlin, refusing to accept applications for support and using difficult language to create barriers to access. In both cities, participants noted the tendency for service providers and administrators to use bureaucracy as a gatekeeping tool, asking for documents that no longer existed or asking for more documents than their policy required. This imposed burdensome, time consuming administrative requirements on NGOs helping migrants secure support.

## 3. Accountability

One of the most striking differences between the statutory welfare services of Berlin and Madrid was the extent to which processes of accountability are built into the welfare support systems.

NGO service providers in Madrid were frequently resigned to minimal statutory responses to services users' welfare needs and legal checks and balances of municipality decision-making are rare, limiting the ability of claimants and their advocates to hold public authorities to account.

In Berlin on the other hand, internal reviews and legal challenges of Job Centre assessments formed a core part of the decision-making process. Comparatively high rates of negative Hartz IV decisions overturned at the social courts expose flaws in initial decision-making and the failure to meet statutory duties, and is an example of deferring responsibility to a higher authority. Although this was an important mechanism for some migrant families to secure support to which they were entitled (albeit slow and requiring legal support in short supply), such accountability appeared to have little impact on initial decisions, as inconsistency and gatekeeping takes place in the welfare services of both cities.

## 4. Capacity dwindling, demand increasing

The 2008 financial crisis precipitated cuts in public services in Spain at a time when demand for services was increasing. Social services were overwhelmed by the level of needs in their communities, whilst non-essential services, including some crisis intervention programmes, were being cut, and social worker numbers dwindling. Participants noted an increasing tendency for local authorities to rely on NGOs to plug the gaps in statutory support and increasing delays in decision-making on assessments. The 'boom years' preceding the crisis were described as 'precarious' for migrants by one participant and when job opportunities declined, the lives of many migrant families reportedly fell apart.

In stark contrast, the only context in which the financial crisis was mentioned by participants in Berlin was in reference to increasing numbers of migrants from Southern Europe arriving in the city in search of work.

### *Implications, solutions and adaptations*

For those who fall through the gaps of statutory safety net support, whether by design of law and policy or the failure of welfare services to carry out statutory duties, the implications for migrant families can be severe, destitution in particular being a condition seen frequently by service providers. The term 'destitution' entailed complex and varied circumstances. References to street homelessness were rare, although some families were living in parks and public encampments. A lack of such visibility of needs presented difficulties for organisations in addressing potential safeguarding concerns. Research participants suggested that these included precarious housing, sofa-surfing, families sleeping on shop floors and in ruined buildings, and informal and illegal tenancies (often sublet to them). This could entail power-relationships presenting risks to women and children in particular.

A cushion for some of these families was provided by social and community networks, an insecure and unpredictable form of support that could also lead to safeguarding risks.

Whilst governments have felt it necessary to exclude certain migrant families from welfare benefits, they have simultaneously implemented systems to deal with part of the fall-out from these policies. Special provisions for destitute migrant families take the form, in Berlin, of the formalised 'Duldung' system for those deemed to be 'tolerated' or 'imminently deportable', and in Madrid in a less formalised but nonetheless government-funded, network of NGO-managed temporary housing and subsistence support. Longer-term solutions for these families, particularly those with longer periods of residence in those cities, are sought via small-scale regularisation programmes: the *Härtefallkommission* in Berlin and *La Figura del Arraigo* in Madrid. Regularising immigration status brings migrant families within scope of statutory welfare benefit provisions and was seen by participants as one way to resolve their destitution.

1. The law governing 'basic social services' does not provide clarity on what constitutes 'basic'. It is therefore left to each autonomous community to interpret this law in deciding what support will be available to this group of service users, with some regions being more flexible than others. It may, for instance, include discretionary payments to help with rent arrears, food, clothes or other essential items.

2. An immigration title that is usually granted to people who are temporarily unable to leave the country.

## Conclusions

A certain degree of inclusion in the provision of welfare benefits for migrant families can be found in Berlin and Madrid, including for refugees, those with subsidiary humanitarian status (granted in that country), some third-country nationals, asylum seekers, some EU citizens and those with a longer period of residence. Further, certain forms of statutory accommodation and financial support are not subject to any immigration restrictions, namely support for those fleeing domestic violence and winter shelters.

Two key problems have nonetheless been identified:

1. The consequences of gaps in the legal framework that primarily affect migrants with irregular status, some EU citizens and migrant families with shorter periods of residence, including destitution and other associated safeguarding concerns.
2. Where migrant families do enjoy entitlements to benefits they can still face exclusions resulting from poor implementation of policies: inconsistency of practice, excessive gatekeeping and, in the case of Madrid, the failure to carry out statutory duties due to limited capacity following the financial crisis. Similarly, poor implementation can lead to destitution and other associated safeguarding risks. Where accountability mechanisms exist, in Berlin, this appears to have little impact on initial decisions, with inconsistency and gatekeeping taking place in the welfare services of both cities.

Some direct and indirect formal attempts to address the destitution of migrant families are evident in policies that formalise irregular status to bring families within scope of statutory accommodation and financial provisions. Although these adaptations can go some way to resolving the impact of welfare benefit exclusions, this approach is a sticking-plaster solution, unsustainably operating at the margins. More evidence on the safeguarding risks for destitute migrant families of welfare benefit exclusions is needed to inform debate on a more appropriate and proportionate balance between welfare benefit inclusion, on the one hand, and migration enforcement and the protection of public resources on the other.

## Recommendations

Dialogue is needed between national, regional and local tiers of government on the appropriate and proportionate balance of immigration enforcement vis-à-vis prevention of safeguarding risks, regardless of immigration status. This could form the basis for developing systems for the protection from risks that, rather than operating on the margins, are sustainable for migrants and for the municipalities responsible for them.

Dialogue would also be of value between Member States and between European cities to learn from policy and practice approaches to the welfare benefit inclusion and exclusion of migrant families so that lessons are taken into account in future policy and practice. Entitlements relating to protection from domestic violence in Berlin and Madrid is one positive example on which to build.

At European level there is arguably a need to strengthen the legal basis for minimum standards of existence for migrant families; and to explore ways to ensure the realisation of the fundamental economic and social rights protected by the European Social Charter, given its particular relevance to this vulnerable group.

Further research is needed to understand practices in other European cities in order to strengthen the evidence base for local, national and European policymaking, identifying whether the priorities for reform are changes in law and policy or in practices of local implementation. Evidence is urgently needed on the nature and extent of the safeguarding risks for children and vulnerable adults who are excluded from welfare support.



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