

nobody

can be

illegal

**Sans-Papiers –
You have rights!**

This publication is available in German, French, Spanish, Portuguese, Serbian/Bosnian/Croatian, Albanian, Turkish and English.

2012 – Produced by the Trade Union Unia and the Swiss Information Centres for Sans-Papiers.

Do you reside and work in Switzerland without a residence permit?

If so, then you're not alone! At least 100,000 people sharing a similar situation live in Switzerland. They are commonly referred to as «Sans-Papiers» or «illegal immigrants.» Most of them are workers without an official residence permit. In reality, they clean, work as nannies, labour on construction sites, take part in the restaurant industry or work for farmers.

Even if you live in Switzerland without a residence permit, you have basic rights. Human rights are not connected to a residence status – they apply to everyone!

This brochure contains useful information for everyday use and clarifies your basic rights. Additional assistance and information can be gained from information centres for Sans-Papiers, solidarity groups, trade unions and lawyers (see addresses on back).



1. Legalisation of your residence

Persons from outside Europe seldom have the possibility to gain a residence permit in Switzerland. As a Sans-Papiers, your possibilities of receiving a legal residence status are restricted almost exclusively to cases of hardship («Härtefall») or marriage.

Permit in hardship cases (Härtefall)

The law states that migrants illegally residing in Switzerland must leave the country immediately except in cases of acute personal hardship. An expulsion must be ruled on by the responsible migration office.

In cases of acute personal hardship, persons may submit an individual appeal/application to the authorities. Each application for a «Permit in a Case of Hardship» is reviewed. Criteria such as length of stay in Switzerland, employment, degree of integration, education of children, health and others are all taken into consideration.

The authorities assume that a hardship case generally does not exist if the individual has been resident in Switzerland for less than five years. Only in cases of a longer stay will the authorities seriously review and consider your application. Today (2012), the future of these individual hardship case regulations is highly uncertain.

The situation for former asylum seekers who have gone into hiding is even more difficult: They have virtually no possibility for a new process or for an application for a hardship case.

Note! Decisions on applications for cases of hardship are the responsibility of the cantons, and if approved must also be obtain consent at the federal level. The authorities decide on applications for hardship cases at their own discretion, and the practice varies from one canton to another. Check with your information centre.

Marriage

Every person has the right to marry. In reality however, this is not easy for Sans-Papiers due to the lack of a residence permit. Since the beginning of 2011, all foreign nationals wishing to marry must provide proof of their legal right to residence in Switzerland. Moreover, registrars' offices are obliged to notify the migration authorities about illegal spouses. However, the Federal Court has ruled that, in principle, sans-papiers may not be denied the right to marry in Switzerland.

This means that each individual case must be reviewed. The practice varies from canton to canton. Check the local procedure with your information centre.

If a sham marriage (marriage of convenience) is suspected, the registrar in Switzerland may refuse to perform the marriage ceremony.

Note! If you divorce within the first three years of marriage, you run the risk of losing your residence permit.

Call for collective regulation

For years Sans-Papiers and support groups have been campaigning for collective regulation. Some achievements have been made, such as the granting of more than one thousand residence permits as well as the right to health insurance coverage. In regions where Sans-Papiers are well organised, new doors may be opened. A large campaign in Geneva led to the canton demanding 5,000 residence permits from Berne for domestic/home workers.

Get involved and help the cause through various Sans-Papiers collectives and groups.

2. Health

Sans-Papiers live under difficult conditions. Work is often strenuous and hard on the health. Added to this is the stress of living without an authorised residence status as well as being far from your home country. All of these factors may seriously impact your physical health and mental wellbeing. Some warning signals that you should pay attention to and take seriously are back aches, bad moods and depression to name a few.

Don't just live for others and the distant future. Set aside time for activities and things that you enjoy doing. Join and participate in a group or hang out with people to break away from isolation.

The health guidelines issued by the Swiss Red Cross, Caritas and the Federal Office of Health (Bundesamt für Gesundheit/BAG) provide further information (obtainable from the information centres for sans-papiers or from www.migesplus.ch).

Right to receive medical care

Health is a human right, and that also applies to Sans-Papiers. If you are sick or injured, you are entitled to receive medical care even if you are not insured.

Hospitals have social workers who can help you if you have any problems.

Doctors and hospital staff are bound to secrecy. They may not share any of your personal information with anyone or inform the police or migration office. Violating the confidentiality obligation is a punishable offence.

Right to obtain medical insurance

You have the right to obtain medical and accident insurance. Costs for medical treatment, hospital stays, pregnancy and giving birth will be covered by the health insurance company. Dental care is not covered under a standard health insurance policy.

However, health insurance in Switzerland is not free. You make a monthly payment referred to as a «Prämie» or premium. In addition to the premiums, you must pay part of the cost of medical treatment – an annual franchise. Once the cost of treatment exceeds this franchise, you must contribute another 10% towards the costs («excess»). For those on a low income, several cantons offer a discount. This is referred to as «Prämienverbilligung» (reduction), and must be applied for (your local information centre can assist you with this matter).

The health insurance companies are also bound to secrecy. However, we suggest that when you take out an insurance policy, you provide the address of a reliable «legal» third party.

Contraception and disease prevention (HIV–Aids and other sexually transmitted diseases)

You can obtain information on contraceptives and abortion from doctors, hospitals and outreach centers (see addresses on back).

Condoms protect you from HIV/Aids and other sexually transmitted diseases. They do not require a doctor's prescription and can be purchased over the counter at any pharmacy or department store. You can undergo an HIV test free of charge and anonymously at special clinics.

Information on HIV/Aids can be obtained in various languages at www.aids.ch or www.migesplus.ch.

3. Work/Employment

If you agree to work for a person or company for a salary or wage, even if the agreement is verbal, it counts as a valid employment contract.

An employment contract guarantees you minimal working conditions:

- Right to a salary in accordance with local and professional guidelines.
- Right to paid leave (generally four weeks per year).
- Sick pay for a defined period in the event of accident or illness
- Minors under fifteen years of age are not permitted to work. Those under eighteen years of age may not work nights or weekends. Minors may not work more than nine hours a day. If you are domestically employed, your employer is obliged to provide you with accommodation that protects your private sphere.

- A reasonable period of notice for termination of employment. The employer informs you an adequate time in advance if he/she no longer wishes to employ you.
- AHV/IV (Social Security/Retirement Arrangement and Disability Insurance) (see chapter on social insurances)

Over and over again, Sans-Papiers receive too little pay or no wages at all. If a direct discussion with your employer doesn't bring any results, in some cantons you may take your case to the employment tribunal. Check with your trade union or information centre!

You may grant someone power of attorney to lodge an appeal with the employment tribunal and represent you in court. You can even lodge an appeal within five years of returning to your home country.

Tip: When you meet an employer for the first time, ask questions about the work: How much will you earn? How many hours must you work? What types of tasks must you perform or not perform? Try to make your working hours as clear as possible. This is especially important if you live on your employer's premises (domestic work). Arrange with them your days off. Ask if you can have the above-mentioned agreements in writing, in the form of a contract. Your employer is legally obliged to provide a written contract (Article 330b, Swiss Code of Obligations).

Tip: Keep a daily record of your working hours and tasks. This way, if there is a problem or dispute with your employer you can prove to them what you have done and when.

Tip: As a Sans-Papiers you may join a trade union without any risk. They can help and support you with legal issues and fight for better working conditions.

Social insurances

Social insurances are obligatory for all persons living in Switzerland. The most important of them are the Social Security/Retirement Arrangement (AHV), Disability/Invalidity Insurance (IV), Unemployment Insurance (ALV), Accident Insurance (UVG) and a Pension Fund (Pensionskasse).

Every employer is obliged to register their employees with the various insurances. The insurances are not permitted to report sans-papiers to the migration authorities. Check first with an information centre.



Once you are registered with the social insurances, you will receive a AHV card. While your employer still employs you illegally, you are at least insured against disability/invalidity and will receive a small pension when you retire (even if you have returned to your home country).

Note! There are some employers who make various deductions from your salary but do not deposit them with the insurance companies and institutions. If you have not received an AHV-card this means your employer has not insured you.

Tip: Speak to your employer about the possibility of registering you with the various social insurances. Under all circumstances, find out in advance what is the usual practice in your canton of residence.

Tip: Before returning to your home country, it is essential to obtain information on the social insurance payout options.

4. Kindergarten and school

State-run schools must educate all children irrespective of their residence status (including Sans-Papiers children). This applies to the compulsory nine years of schooling. Attendance at kindergarten is also compulsory in some cantons.

In some cantons Sans-Papiers children may continue their education past the compulsory nine years. (e.g. high school or «Gymnasium»). Young Sans-Papiers individuals are not permitted to enter an apprenticeship, but a change in the law is planned.

Schools and teachers are not permitted to pass on any information about children to the police.

Tip: Teachers are confidants and therefore almost always show understanding for the difficult situation in which Sans-Papiers children find themselves. Attend parents' evenings and other events related to your child's school. If you are afraid, bring someone along.



5. Language courses

We recommend that you learn the local language. This is of great advantage for living in Switzerland and will make it easier for you to participate in everyday life and advocate your interests. Contact information centres for appropriate language courses.



6. Living/Accommodation

It may prove difficult to find accommodation without a valid residence permit. Sans-Papiers are often obliged to rent small over-priced apartments.

The easiest way to find an apartment is for a person residing legally to rent one on your behalf. But by doing so this person makes him-/herself liable to prosecution.

The landlord/lessor may not demand a price that exceeds the customary local rate. Additionally, the rent may not greatly exceed that of the previous tenant/leesee.

By law, a landlord/lessor must not demand more than three months' rent as a deposit. If you pay your rent and cause no damages, the deposit will be returned to you when the accommodation is handed over. Demand a receipt for your deposit payment.

Tip: Ask the landlord/lessor to provide you with deposit/payment slips. Pay the rent under your name at the post office. You will then be given a stamped receipt. Payment receipts are the best evidence that you have paid your rent and for subsequent claims on the landlord/lessor.

Tip: If the landlord/lessor demands too high a rent or refuses to refund your deposit, talk to someone at an information centre so that they may negotiate with him/her. If this does produce no results, you have the option in some cantons to take your case to an arbitration tribunal.

7. Police

In the eyes of the authorities, sans-papiers are breaking the law by their mere presence in Switzerland. And you are committing a further crime by working without a permit.

If the authorities find out about your residence or stay in Switzerland, you will generally be deported and banned from entering the country for 2-3 years. Additionally you can receive a fine and/or custodial sentence.

The migration authorities may order deportation detention. If this is the case, you will remain in detention until the authorities can arrange your deportation. The legality of your detention must be examined by a judge within 96 hours of detention. Detention pending deportation, plus a possible custodial sentence, may last a maximum of **18 months**.

You can appeal against the detention ruling but must pay the legal and administrative costs. Moreover, an extension of the detention is examined by a judge at a hearing every three months. Ask for a lawyer (free of charge) before your detention is reviewed.

Police stop-and-search operations and your rights

- The police are authorised to stop you and check your personal details.
- If you don't have a residence permit you will most likely be taken to the police station. If this is the case, demand that you are given the opportunity to contact a lawyer/attorney or information centre.
- You will subsequently be interrogated. The interrogator must treat you respectfully and may not threaten or assault you.

- Demand an interpreter/translator for the interrogation. Do not answer or sign anything unless you completely understand.
- You have the right to remain silent. You do not have to provide any information about your address, employer or friends. You may simply answer: «Ich habe dazu nichts zu sagen». (No comment). Say nothing rather than tell lies. Lies are usually found out and you lose credibility. Your personal details: last name, first name, date of birth and home country are the only information you have to provide to the authorities.
- During a basic check the police may not perform a body and/or cavity search unless they have probable cause. However, if you are searched, demand for an officer of the same sex.

- The police may only search your home if they have a search warrant. Under the Law on Foreigners (Article 70), the police are also permitted to search a person who is the subject of a deportation or expulsion order, as well as their belongings, without any search warrant, in order to check for travel documents and ID.
- Demand a receipt for any confiscated belongings. Demand that your private notes, diary, etc. be kept under bond. Police officers are not allowed to inspect these or make copies. Only the examining magistrate or judge has the power to lift the bond.
- Notify the human rights organization «Augen auf» regarding any instances of brutality or violations of your rights.

Useful Addresses

Aargau

Spagat, Sans-Papiers Anlaufstelle AG/SO für Gesundheit und soziale Fragen

Augustin-Keller-Strasse 1, 5001 Aarau,
T +41 62 836 30 20, Mobile +41 79 728 60 96 (Social Insurance),
Mobile +41 79 728 58 97 (Health), spagat@heks.ch,
www.sans-papiers.ch

Basel

Anlaufstelle für Sans-Papiers

Rebgasse 1 (1st floor), 4058 Basel,
Social and Legal Advice: T +41 61 681 56 10, Health Advice
and Healthcare: T +41 61 683 04 21, basel@sans-papiers.ch,
www.sans-papiers.ch

Augenauf Postfach, 4005 Basel, T +41 61 681 55 22, www.augenauf.ch

Gewerkschaft Unia Rebgasse 1, CH-4058 Basel, T +41 61 686 73 00,
www.nordwestschweiz.unia.ch, www.unia.ch

Union der Arbeiter/-innen ohne geregelten Aufenthalt

c/o Interprofessionelle Gewerkschaft der Arbeiter/-innen (IGA),
Oetlingerstrasse 74, 4057 Basel, T +41 61 681 92 91,
www.viavia.ch/iga

Bern

Berner Beratungsstelle für Sans-Papiers

Eigerplatz 5, 3007 Bern,
T +41 31 385 18 27, beratung@sans-papiers-contact.ch,
www.sans-papiers.ch

Augenauf Quartiergasse 17, 3013 Bern 11, T +41 31 332 02 35

(Mo 16–20 Uhr, sonst Anrufbeantworter), www.augenauf.ch

Bleiberecht-Kollektiv Bern bern@bleiberechtfueralle.ch,

www.bleiberechtbern.ch

Gewerkschaft Unia Monbijoustr. 61, 3001 Bern, T +41 31 385 22 22,

www.bern.unia.ch, www.unia.ch

Bern

Kirchliche Anlaufstelle Zwangsmassnahmen Kanton Bern

Postfach 465, 3000 Bern 25, T/F +41 31 332 00 50,
[www.refbejuso.ch/inhalte/migration-integration/
zwangsmassnahmen.html](http://www.refbejuso.ch/inhalte/migration-integration/zwangsmassnahmen.html)

Schweizerisches Rotes Kreuz, Gesundheitsversorgung für

Sans-Papiers Werkstrasse 16, 3007 Bern, T +41 31 960 77 77,
T +41 79 666 95 72, gesundheit-sanspapiers@redcross.ch,
www.redcross.ch/activities/health/sanspapier/index-de.php

Zentrum für Familienplanung Effingerstrasse 102, Geschoss D,
3010 Bern, T +41 31 632 12 60, familienplanung.fkl@insel.ch

Fribourg

Centre de contact suisse-immigrés (CCSI) Rue des alpes 11,
1700 Fribourg, T +41 26 424 21 25, www.ccsi-fr.ch

Fri-Santé, Permanence médicale 12, rue François-Guillimann,
1700 Fribourg, T +41 26 341 03 30, www.fri-sante.ch

Syndicat Unia Route des Arsenaux 15, 1700 Fribourg,
T +41 26 347 31 31, www.fribourg.unia.ch, www.unia.ch

Genève

Collectif de soutien aux sans-papiers 25, rte des Acacias,
1227 Les Acacias, Genève, T +41 22 301 63 33,
collectifsanspapiers@ccsi.ch, www.sans-papiers.ch

Collectif des travailleuses et travailleurs sans statut légal (CTSSL) c/o Centre de contact suisses-immigrés (CCSI),
25, rte des Acacias, 1227 Genève, T +41 79 218 30 56

Syndicat Unia 5, chemin Surinam, 1211 Genève, T +41 22 949 12 00,
www.geneve.unia.ch, www.unia.ch

Syndicat SIT Rue des Chaudronniers 16, case postale 3287,
1211 Genève 3, T +41 22 818 03 00, www.sit-syndicat.ch

Centre de Contact Suisses-Immigrés (CCSI) Route des Acacias 25,
1227 Les Acacias, Genève, T +41 22 304 48 60, www.ccsi.ch

Genève

Consultation ambulatoire mobile de soins communautaires

(CAMSCO) Rue Hugo-de-Senger 4, 1205 Genève, T +41 22 382 53 11,
<http://premier-recours.hug-ge.ch>, rubrique «précarité/sans-papiers»

Luzern

Verein Kontakt- und Beratungsstelle für Sans-Papiers Luzern

St. Karlstrasse 23, 6004 Luzern, T +41 41 240 24 10,
luzern@sans-papiers.ch, www.sans-papiers.ch

Solothurn

Spagat, Sans-Papiers Anlaufstelle AG/SO für Gesundheit und soziale Fragen

Rossmarktplatz 2, 4500 Solothurn,
T +41 62 836 30 20, Mobile +41 79 728 60 96 (Social Insurance),
Mobile +41 79 728 58 97 (Health), spagat@heks.ch,
www.sans-papiers.ch

Tessin

Movimento dei Senza Voce Casella Postale 4635, 6904 Lugano,
T +41 91 647 46 47, +41 77 448 85 72, senzavoce@bluewin.ch,
www.movimentodeisenzavoce.org, www.sans-papiers.ch

Vaud VD

La Fraternité (CSP-VD) Place Arlaud 2, 1003 Lausanne,
T +41 21 213 03 53, frat@csp-vd.ch, www.csp.ch

Collectif des Sans-Papiers de La Côte c/o l'autre syndicat,
5, chemin du Ruttet, 1196 Gland, T +41 22 362 69 88,
lacote@sans-papiers.ch, www.sans-papiers.ch

Collectif droit de rester coordination Asile-Migration,
Case postale 5744, 1002 Lausanne, collectif@stoprenvoi.ch,
www.droit-de-rester.blogspot.com/p/propos-du-collectif.html

Collectif vaudois de soutien aux sans-papiers (CVSSP)

Case postale, 1000 Lausanne, T +41 76 432 62 67,
anne@sans-papiers-vd.ch, www.sans-papiers-vd.ch

Vaud VD

Syndicat Unia Place de la Riponne 4, 1002 Lausanne,
T +41 21 310 66 00, www.vaud.unia.ch, www.unia.ch

Valais

Centre suisse-immigrés (CSI) Rue de l'Industrie 10,
Case postale 280, 1950 Sion, T +41 27 323 12 16, csivs@bluewin.ch

Zürich

Sans-Papiers-Anlaufstelle Zürich (SPAZ)

Birmensdorferstrasse 200, Postfach 1536, 8026 Zürich,
T +41 43 243 95 78, zuerich@sans-papiers.ch, www.sans-papiers.ch

FIZ Fachstelle Frauenhandel und Frauenmigration

Badenerstrasse 682, 8048 Zürich, T +41 44 436 90 00,
contact@fiz-info.ch, www.fiz-info.ch

Colectivo Sin Papeles Zurich Postfach, 8023 Zürich,
colectivosinpapeleszurich@yahoo.es

Gewerkschaft Unia Stauffacherstrasse 60, 8004 Zürich,
T +41 44 296 18 18, www.zuerich-schaffhausen.unia.ch, www.unia.ch

Meditrina (Health Centre) Kronenstrasse 10, 8006 Zürich,
T +41 44 360 28 72, [www.srk-zuerich.ch/srk/lch-suche-Hilfe/
fuer-Migrantinnen/Meditrina/index.php](http://www.srk-zuerich.ch/srk/lch-suche-Hilfe/fuer-Migrantinnen/Meditrina/index.php)

**SRK Kanton Zürich, Rechts- und Rückkehrberatung
im Flughafengefängnis Zürich-Kloten** Kronenstrasse 10,
8006 Zürich, T +41 44 360 28 60, [www.srk-zuerich.ch/srk/
Was-wir-tun/Migration-Asyl/Sozial-Rechts-Rueckkehrberatung/index.php](http://www.srk-zuerich.ch/srk/
Was-wir-tun/Migration-Asyl/Sozial-Rechts-Rueckkehrberatung/index.php)

Augenauf Postfach, 8026 Zürich, T +41 44 241 11 77,
zuerich@augenauf.ch, www.augenauf.ch

Switzerland in general

Sans-Papiers www.sans-papiers.ch
(general information and political work)

Unia Zentralsekretariat Weltpoststrasse 20, 3000 Bern 15,
T +41 31 350 21 11, www.unia.ch

Lawyers Demokratische Jurist/-innen Schweiz, www.djs-jds.ch

Healthcare for Sans-Papiers www.sante-sans-papiers.ch

SRK (Swiss Red Cross) www.transkulturelle-kompetenz.ch,
vgl. Sans-Papiers

Brochures on health-related issues in various languages
www.migesplus.ch

Information and e-mail advice in 16 languages www.migraweb.ch

International

Politics and campaigns Platform for International Cooperation on
Undocumented Migrants (PICUM), www.picum.org

Addresses in Europe European Network against nationalism, racism,
fascism and in support of migrants and refugees,
info@unitedagainstracism.org, www.unitedagainstracism.org

**Information and e-mail advice on staying in Europe
in four languages** www.w2eu.info



UNIA

**Die Gewerkschaft.
Le Syndicat.
Il Sindacato.**



This publication was created by the Unia Trade Union and the Information Centres for Sans-Papiers; supported by the Democratic Attorneys of Switzerland, the Gertrud Kurz Foundation and HEKS Contact Point for Human Rights.