

Realising the Rights of Children and Families in an Irregular Migration Situation

CONFERENCE REPORT

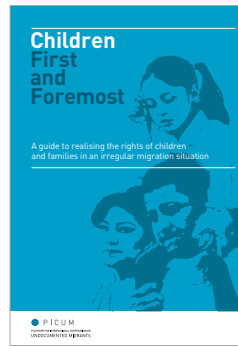


PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

On 26 February 2013, over 200 civil society advocates, front-line organisations, undocumented families, social service professionals, public officials, and national and European policy makers came together for PICUM's international conference "Children First and Foremost: Realising the Rights of Children and Families in an Irregular Migration Situation." The conference marked the culmination of PICUM's two year project, "Building Strategies to Improve the Protection of Undocumented Children in Europe."

At the conference, PICUM released the project's final publication, a guide on realising the rights of children and families in an irregular migration situation.

This publication is intended to explain and demystify the legal and policy framework governing undocumented children's rights, lay out key, pervasive practical and administrative challenges undocumented children face in exercising those rights, and provide tools and strategies to surmount these challenges, in order to fully realise undocumented children's rights. It is available online in English, French and Spanish at: <http://picum.org/en/publications/reports/>



Report produced by Sangeetha Iengar, Project Officer and Michele LeVoy, Director

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Introduction

The current political, economic and social reality is one in which there are an increasing number of migrant children arriving to Europe, as well as children being born in Europe to migrant parents, all with specific vulnerabilities that must be addressed. Yet migration policies are designed to target adult undocumented migrants and the lack of a child-centred approach has resulted in situations in which migrant children face significant barriers to upholding their human rights.

In 2011, the Council of Europe's Parliamentary Assembly¹ issued a recommendation stating that "a child is first, foremost and only, a child. Only then a migrant." Despite the acknowledgement that all children are children, regardless of migration status, undocumented children in Europe live at a high risk of poverty, exploitation, violence and social exclusion.



Conference participants

There are many strategies in place across Europe undertaken by NGOs, professionals, local authorities, as well as undocumented migrants themselves to surmount barriers faced by undocumented children in upholding their rights. This conference sought to showcase some of these strategies, to display the diversity of approaches employed in overcoming barriers to protect undocumented children and families, and to facilitate a forum of information and experience sharing in order to support, develop and widely reproduce these strategies.

¹ The Council of Europe's Parliamentary Assembly's Recommendation 1985 (2011) "Undocumented Migrant Children in an Irregular Situation: a real cause for concern". Full text of the recommendation is available online at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm>

Undocumented Children: Accompanied and Excluded

While political agendas are increasingly giving space and visibility to the needs of unaccompanied and trafficked children, there has been an almost complete lack of attention by policy makers to accompanied children living with their families in Europe, and the barriers they face as a family unit in accessing their rights.

Michele LeVoy, PICUM Director, explained that migration control mechanisms, under the guises of 'security management' and 'border control', have taken priority over any due consideration for child protection, the principle of the best interests of the child, and the fundamental right to family life. Children and families in an irregular migration situation are accompanied, and excluded, yet somehow justifiably differentiated from unaccompanied and trafficked children, despite being children, first and foremost.

“A child is a child, is a child. There is no such thing as an ‘illegal’ child.”

Michele LeVoy, Director, PICUM

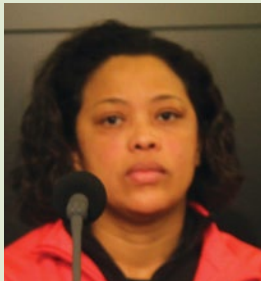
Although undocumented children and families are excluded across Europe, they are subject to varying degrees of exclusion, or rather, have widely varying degrees of protection across Europe.

first-hand insight



Undocumented Perspectives

MARIA, a Formerly Undocumented Mother in Belgium



Maria, the mother of a 7-year old child, spoke candidly about what life was like for her living with her family in an irregular migration situation in Belgium. Maria recently become regularized after being undocumented in Belgium for eight years.

The main difficulty she raised was finding adequate and appropriate housing. She has found housing very expensive, and difficult to secure, which in turn has had a significant impact on her and her child's health. Apartments that are less expensive have been dirty, unhygienic, poorly aerated, yet still expensive for what they are. As a result, both she and her daughter have developed severe allergies and asthma whilst living in Belgium.

Maria said that while her daughter might have a better quality of life in Belgium than in Brazil, their situation is precarious. She explained that doesn't want government hand-outs or benefits, but wants to be able to work and support her family herself. Maria's testimony reminded participants of the struggles faced by undocumented parents and highlighted the urgent need for action in this area.

“Housing is unaffordable, it is difficult to find decent flats, and poor living conditions have a serious impact on our health.”

Maria, a formerly undocumented mother living in Belgium

RECENT EU LEGISLATIVE AND POLICY DEVELOPMENTS PROTECTING THE RIGHTS OF ALL CHILDREN TO ACCESS THE FUNDAMENTAL RIGHTS DISCUSSED AT THE PICUM CONFERENCE

Framework provided by the European Union Agency for Fundamental Rights

Article 3 of the Treaty on the European Union

- Includes the EU's obligation to promote the protection of the rights of the child Article 24 of the Charter of the Fundamental Rights of the European Union (2000)
- Recognises that children have the right to such protection and care as is necessary for their well-being

Article 35 of the Charter of the Fundamental Rights of the European Union (2000)

- Notes the right to access preventive health care and medical treatment, with a high level of human health protection to be ensured in EU policies

Article 14 of the Charter of the Fundamental Rights of the European Union (2000)

- Affirms the right to education and to access continuing and vocational training (including free compulsory education)

Stockholm Programme

- States that border controls should not prevent access to protection systems by those persons entitled to benefit from them

EPSCO Council Conclusions 4 October 2012

- Call for a multi-disciplinary and multi-dimensional approach incorporating actions to guarantee equal opportunities for all children and involving the relevant services

Commission Recommendation 20 February 2013 – previewed in its 'EU Agenda for the Rights of the Child' of 15 February 2011

- Calls on Member States to always take the child's best interests as a primary consideration and recognize the status of children as independent rights-holders, whilst supporting all families, including those in vulnerable situations and living in disadvantaged areas, ensuring their access to affordable, quality early childhood education and care.

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Variance in Legal Protections for Undocumented Children and Families Across Europe



DR MARIA AMOR ESTÉBANEZ, European Union Agency for Fundamental Rights



All the Member States of the EU have signed and ratified the UN Convention on the Rights of the Child (UN CRC). In addition, either EU Member States or EU institutions have endorsed the EU legislation and policies to protect the rights of the child relevant to the themes of this conference (as laid out in the adjacent box). These provisions can be seen, respectively, as a legally binding commitment and as a political endorsement of cooperation, within the Union, to achieve these formally-set objectives. The legislation and policies strongly draw on the UN CRC, adding an EU integration perspective to the UN CRC implementation. These legislation and policies have set the framework in which the fundamental rights of undocumented children, as other children, ought to be realised within the EU. .

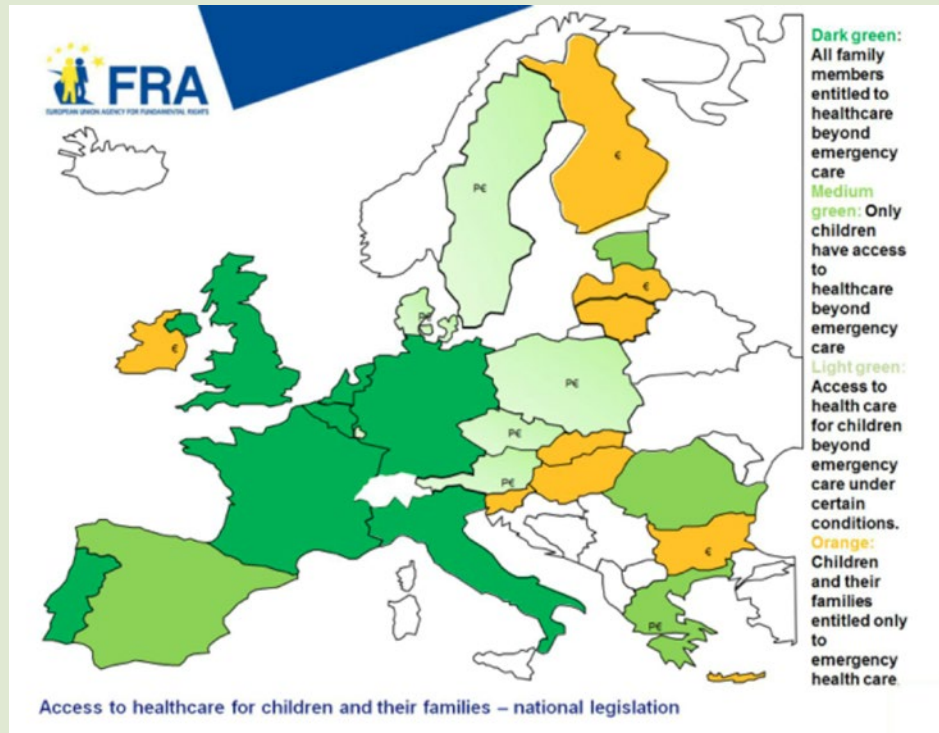
The European Commission has recommended that children be always recognised as independent rights-bearers and families supported as primary carers, with the reference to 'care' more generally resulting in a broadly-construed and comprehensive concept of child protection.

As it comes to the actual practice at the EU level, the following two maps figuratively show broad variation from country to country, and the difference in the degree of legal protection for undocumented children and families, amongst EU member states:





Map 1: Access to healthcare for children and their families – national legislation

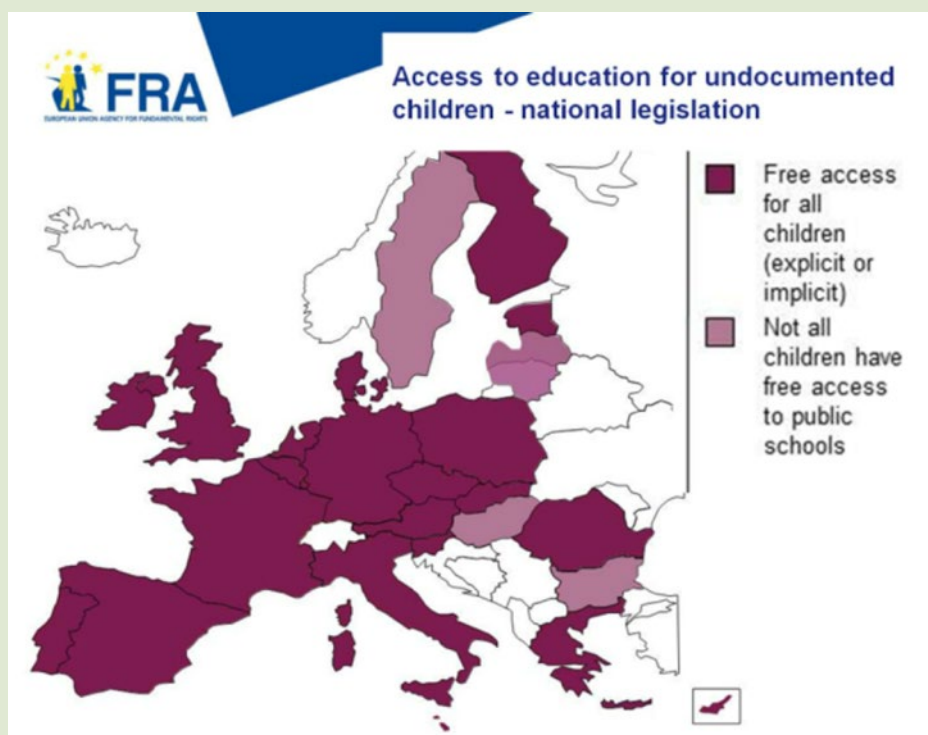


Map 1, which shows access to healthcare in under national legislation in the EU member states, reveals differential treatment amongst children. Access to healthcare beyond emergency care is provided for free to all children who attend school regardless of their legal status in Poland for instance. However, those children in an irregular situation who do not attend school would not be granted access to healthcare beyond emergency care.



...

Map 2: Access to education for undocumented children – national legislation



Regarding Map 2, it should be noted that although a large number of EU Member States provide free access to education to children in an irregular migration situation, only a few (Belgium, Spain, Italy The Netherlands) have legislation expressly mentioning the right of these children to primary and secondary education, removing possible doubts that school administrators, teachers etc. may have regarding the entitlement of these children to education.

In addition to the information reflected in the maps it should be noted that in practice, due to apprehension practices and data exchanges around or in connection with school attendance and stay at hospital of irregular migrants, the latter often refrain from sending their children to school or seeking healthcare for them. Therefore, despite the EU legislation and policies protecting undocumented children mentioned before, these children continue to be excluded from the enjoyment of some of their fundamental rights in practical terms.

Despite these (varying) legal protections at national level, the implementation of increasingly rigorous immigration control mechanisms impedes undocumented children's ability to exercise even these often very minimal, legal protections.

Dr Nando Sigona, Fellow, Institute for Research into Superdiversity (IRiS), University of Birmingham, published a research report in 2012 on undocumented children in the UK, entitled "No Way Out, No Way In,"² which mapped

this hidden population in the UK. Through qualitative and quantitative research, this research project drew a profile of undocumented children by looking at their rights and entitlements, and assessing the impact of immigration and child welfare legislation on the statutory duties of public service providers. The report speaks to the ongoing policy debate on how to reconcile and balance the implications of two seemingly divergent policy objectives, one of child protection and the other of immigration control, that are affecting the lives of undocumented children.

² Full text of the publication is available online at: http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO_WAY_OUT_NO_WAY_IN_FINAL.pdf

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Key Research Evidence: Immigration Enforcement and Undocumented Children's Legal Protections

DR NANDO SIGONA, Institute for Research into Superdiversity, University of Birmingham

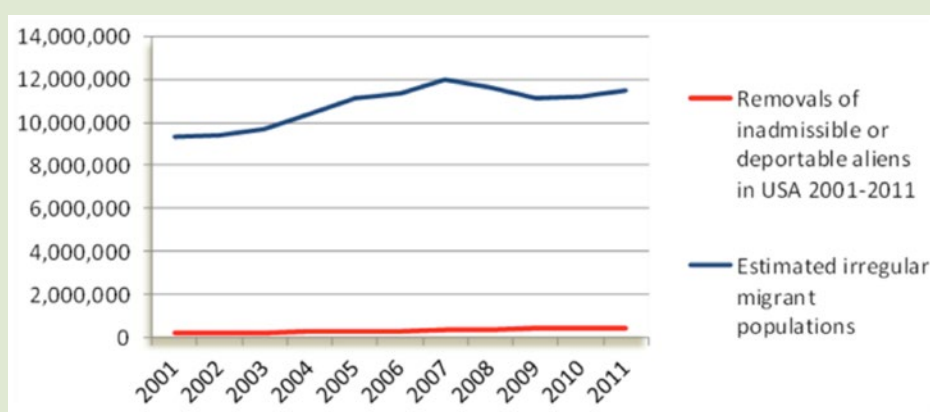


There is an inherent difficulty at the very outset of any research, which is, who are undocumented children? Even among people familiar with the immigration issue, there seems to be an assumption that any research on undocumented children should limit itself to look at unaccompanied children. This lack of consideration for accompanied undocumented children sits incongruously with the scale of the issue. Research I coordinated at the University of Oxford (Sigona and Hughes 2012) has estimated 120,000 undocumented children in the UK at the end of 2011, reflecting the grave need to acknowledge and assess this group of children in their own right. The large majority of these children live in families, and over half are born in the UK to undocumented parents.



...

Analysing official figures from the US reveals that deportation is being increasingly used as a tool for migration management, but it is an ineffective implement in achieving this end. Despite the rising number of deportations over the last ten years, the stock of irregular migrants has also been rising over the same period (see graph below on the US), underlining that despite political assertions to the contrary, deportation is not an effective tool for managing irregular migration, particularly so far as children are concerned.



(Sources: Department of Homeland Security and Pew Research Center)

This is the result of the tension between a State's obligation to protect children, and the increasing pressure on immigration authorities to enforce immigration control more stringently. Caught in a gap between protection and enforcement, undocumented children in the UK are struggling to access fundamental support services. Dependent migrant children are treated primarily as migrants, not as children. Whilst child protection legislation has not changed significantly, the increased use of deportation and controls on access to key public services has negatively impacted on the practical accessibility of child protection systems for undocumented children.

The most profound example is perhaps the linkage between service providers and immigration authorities, with the NHS, for example, currently communicating crucial information to the Home Office, such that migrants with outstanding NHS debts are 'black-listed' and not allowed to re-enter the UK. The severe impact of such practices on maternal and newborn health is generally overlooked. In certain cases local authorities even have UKBA (Border Agency) employees seconded to their offices, making social service provision much less accessible to irregular migrant people.

The DREAM Movement in the United States

The United States is one of only three countries worldwide that has not ratified the United Nations Convention on the Rights of the Child, the most fundamental and comprehensive international legal instrument protecting the rights of the child.

Despite the lack of ratification of these sets of universal rights for the protection of the child, the United States has borne one of the most effective, largest, strongest and most prominent of movements for the rights of undocumented youth, the DREAM movement. Carlos Saavedra, a formerly undocumented youth from the USA, spoke candidly about how the DREAM movement was catalysed by and for undocumented youth.

first-hand insight



Learning from the American Dream Movement

CARLOS SAAVEDRA, United We Dream



Carlos first came to the United States aged twelve from Lima, Peru, with his parents and younger brother, who was aged four. The family came to the USA because the mother had lost her job and was trying to find a means for the family to survive financially. The family entered on a tourist visa, and became undocumented six months later when their visa expired.

Carlos explained how he had grown up concealing his immigration status from his peers, feeling ashamed that it was a point of distinction between him and other young people. At the age of 16, he revealed his status to a peer, and after doing so, found solidarity knowing there were several other young undocumented people in a similar situation to him.

In the last three years of high school, Carlos and his peer group stood bravely together, as undocumented youth, campaigning for a law to allow undocumented students to attend university without paying exorbitant out-of-State fees. They went to 60 schools across the state of Massachusetts; they boldly 'came out' in the media, and used their own realities to lobby the State to change the law. The governor of Massachusetts at the time, Mitt Romney, decided to veto the legislation, and took on his own campaign to find and stop the 'illegal benefit askers.'

In response, Carlos and his peers built the Student Immigrant Movement of Massachusetts. The organisation's founding event was to bring 400 undocumented students to the steps of State House, visibly and vocally standing up for the rights of undocumented youth in USA. The organisation had success, but as the DREAM movement grew in support, so too did the platform and the organisation grew to what is now the 'United We Dream' national network.

The American Dream Movement is so named because of the DREAM Act, an acronym for the Development, Relief and Education for Alien Minors Act, a legislative proposal that would provide conditional residency for undocumented young people who meet certain criteria and have lived in the United States for five years continuously prior to the bill's enactment. The legislative proposal has been bolstered by a Dream Movement, a mobilisation of undocumented youth in the United States, campaigning for, advocating for, and 'coming out' in support of the DREAM Act.

“The more invisible we are, the more vulnerable we are. Being in the shadows takes the power away from us, and this is what politicians want.”

Carlos Saavedra, National Coordinator,
United We Dream

The DREAM movement continues its campaign to enable undocumented young people to gain work authorisation, eligibility for permanent residence (green card), and eligibility to work for the military. On June 15, 2012, President Obama announced the "Deferred Action for Childhood Arrivals" programme that would allow up to 1.4 million undocumented youth who fulfilled certain criteria to apply for administrative leave in the United States.

United We Dream continues its work in the hope that in 2 to 3 years' time, 10 million more undocumented migrants will be granted the same rights.

Carlos believes that "the more we remain in the shadows, the more vulnerable we are." Through solidarity, and participation, undocumented young people in the USA have been empowered through the DREAM movement.

Institutional Protections for Undocumented Children

International Context



The UN Committee on the Rights of the Child held a Day of General Discussion (DGD) in 2012 on 'The Rights of All Children in the Context of International Migration.' The Committee's report of the DGD includes key recommendations for States to ensure that their laws, policies and practices are in accordance with the UN Convention on the Rights of the Child (UNCRC)³.

The significance and importance of the UNCRC cannot be over-stated, as it has universal ratification in all EU member states. Using the Convention on the Rights of the Child as the legal framework, one can see that a child's right to health, education and social protection are explicitly enshrined in law. States that have ratified the UN CRC are legally bound to remove all and any administrative, financial and gender-based barriers, in order to ensure full access to rights in practice.

³ Full text of the Convention is available online at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

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Using the UN Framework to Realise the Rights of Children and Families in an Irregular Migration Situation



VERENA KNAUS, UNICEF



It is of fundamental importance to uphold the UN Convention on the Rights of the Child (UN CRC) as the key, grounding framework for *all* children. What different groups of migrant children share – whether they are ‘unaccompanied’, ‘accompanied’ or ‘trafficked’ – are the multiple layers of vulnerabilities, rights and needs. In categorisation it is easy to lose sight that ultimately, they are all children, first and foremost. We should strive to recognise these multiple vulnerabilities, making sure that all children, regardless of status or ‘category’, have all barriers to their rights effectively removed.

It is useful to approach the UN CRC as a tool to challenge the following three concepts:

- 1) The persistent criminalisation of migrant children
- 2) The securitisation of any discourse on migration
- 3) The categorisation of children into institutional categories

Firstly, with regards to criminalisation, no child can ever be illegal. Undocumented migrant children must be universally recognised as children first, above all else. To counter the securitisation dialogue, we must ensure the principle of the best interests of the child supersedes all other interests. Securitisation must never over-ride consideration for the best interests of the child. With categorisation we run the risk of exclusion. Undocumented children are largely invisible, so any ‘numbers’ of children we obtain can only ever be shadow estimates. Relying on shadow estimates, we run the risk of excluding a huge group of children who equally, need their rights realised.

How to apply the key principles and rights enshrined in the UN CRC in practice? To ensure more universal application of the UN CRC, we must make undocumented children more visible. The collation of statistics and stories that give visibility and value to their reality helps prevent the invisible abuses of their human rights. In making undocumented children more visible, we will implicitly be making their rights and needs more visible.

“What all different groups of migrant children have in common, are the multiple layers of abuse and rights violations. We have to avoid the temptation to categorise children so they would fit into specific policy agendas.”

Verena Knaus, Senior Policy Advisor, UNICEF

At the EU level this must be met with a concerted effort to mainstream the rights of children in all migration policies. This involves policy action – changing laws, directives and strategies as well as front-line action, including training of all relevant institutional actors who come into contact with undocumented children and parents, to ensure that a child rights approach is mainstreamed in their work. The approach and handling of undocumented children and families must be consistent at all levels. To ensure this, there must be rigorous and systematic monitoring of the implementation of the UN CRC to ensure it covers all children residing in the territory.

European Context

European institutions safeguard the rights of undocumented children and families through many different direct and indirect means.

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Recommendations for Civil Society Organizations on Engaging European Institutional Protections

MARK NEVILLE, Parliamentary Assembly, Council of Europe



All advocates should read and refer to three key documents of the Council of Europe as a starting point for realising the rights of undocumented children:

- (1) Council of Europe, Parliamentary Assembly Report (2011) Document No. 12718 on “Undocumented Migrant Children in an Irregular Situation: a real cause for concern”⁴
- (2) Parliamentary Assembly’s Recommendation 1985 (2011) “Undocumented Migrant Children in an Irregular Situation: a real cause for concern”⁵
- (3) Committee of Ministers’ Reply to Recommendation 1985 (2011)⁶

In addition, civil society organisations may consider some other ways to engage with European institutions to uphold the rights of undocumented children, including:

1. Analyse the case law of the European Court of Human Rights (ECHR) that has developed and provide civil society with a guide on how to use and develop this case law to better protect the rights of undocumented children.
2. NGOs that have a status to file a collective complaint within the European Social Charter should use this mechanism more frequently.
3. Consider which other actors have the right to engage the European Social Charter’s Collective Complaints Mechanism – for example, two of the current Ombudsmen organisations (the European Network of Ombudspersons for Children (ENOC) and the European Ombudsman Institute (EOI) have this status – and urge them to avail of this mechanism for the rights of undocumented children.
4. Widely use all of the different mechanisms that the Council of Europe has to offer (for example the Council of Europe’s Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe, ECRI, etc.). Send them information relevant to their work and use their results in your work.
5. Produce a joint statement on 18th December, International Migrants Day, specifically highlighting the issue facing children of undocumented migrants.

⁴ Full text available online at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=13007&Language=EN>

⁵ Full text available online at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1985.htm>

⁶ Full text available online at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19192&Language=EN>

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EU Policy Measures in the Area of Social Inclusion and their Relevance to Undocumented Children



JULIUS OP DE BEKE, DG Employment, Social Affairs and Inclusion,
European Commission



There are two key 'tools' the European Commission has developed to promote the social inclusion of children: the Social Investment Package (SIP) and the Returns Directive. The SIP consists of a main communication that sets out the general policy framework and concrete actions for member states to take, and it also provides guidance on the use of EU funds to support positive reforms.

The SIP contains a Recommendation, entitled "Investing in Children – breaking the cycle of disadvantage" along with six other Commission Staff Working Documents which cover the areas of active inclusion, health, long term care, homelessness and social services.

The "Investing in Children" Recommendation calls on member states to concentrate on social investment that is targeted at children. It also explains how EU financial instruments can better be mobilised to this end. The achievement of more inclusive growth depends on Europe's capacity to invest in its children. Without the necessary investment in their upbringing and education, many adults will not be able to live up to their full potential, which could in turn jeopardise the prosperity of future generations of Europeans. The Recommendation calls on member states to adopt a child's rights approach and to promote progressive universalism, e.g. by combining universal policies with targeted approaches supporting children most in need, such as migrant children.

The Recommendation has a universal value, in that it wants to be applied to all children. However, there is an innate problem in that the policy measures have been designed for children who are in a regular situation only.

"Children are key to our future. Breaking the transmission of poverty across generations cannot be achieved by only improving children's material conditions; we must also address immaterial areas that influence children's outcomes such as child participation, supporting parents' access to the labour market and guaranteeing access to basic services."

Julius Op de Beke, DG Employment, Social Affairs and Inclusion of the European Commission





Having this as a baseline for the Commission's approach to children, one now has to analyse other instruments that can promote the social inclusion of undocumented children.

The Returns Directive clearly states how to address third country nationals not lawfully present in member states, noting that it will no longer be permissible to suspend migrants in a 'legal limbo' where they are often deprived of basic civil or socio-economic rights. The Directive in fact guarantees that those in an irregular migration situation are provided with a minimum set of basic rights, pending their removal, which includes access to emergency health care and education. The directive provides specific guarantees for children and families, going further to say that removal can in some cases be postponed.

The Commission intends to strictly monitor all human rights aspects of undocumented persons from third countries, specifically in the context of irregular migration and criminalisation, and in particular, when it comes to protecting women and children against abuse.

We all have a mutual obligation to protect and guarantee the basic human rights and dignity of all persons who are residing within our territory.

National Context: Engaging the Ombudsman for Children



In addition to international and European policy measures, there are several key national actors that can support the advocacy work of civil society organisations.

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The Role and Remit of National Ombudsmen in Protecting the Rights of Undocumented Children

RÉPUBLIQUE FRANÇAISE

LE DÉFENSEUR
DES DROITS



MARIE DERAÏN, Ombudsman for Children, Deputy Defender of Rights, France



The role of the Ombudsman can be a useful tool for migrants' rights organizations to engage with in their work protecting the rights of undocumented children.

Indeed, the Ombudsman's role is to first assess whether the system of assistance and protection is in place, and then to facilitate cooperation with bordering countries and countries of origin in order to better understand and manage migration at national level. In order to have a full, objective picture of the reality facing undocumented children, the Ombudsman relies on civil society's input, and so building an open channel of communication between civil society organizations and the national Ombudsman is crucial.

There needs to be a constant oversight of protection measures. Even where there is a system of protection in place for undocumented children, and when they are provided with housing, for example, there is a lack of possibilities offered to those children in terms of education, labor and social inclusion. The ombudsman must evaluate the level of protections, beyond mere basic provisions of housing, assessing whether the best interests of the child has been fulfilled by the State's protection system. Advocates should engage their national Ombudsman as often they can to act as an intermediary between stakeholders, the Ministry of Justice and heads of local councils. The Ombudsman can then make formal observations and recommendations in order to ensure sustainable solutions for children.

Also, there is a need to keep national Ombudsmen constantly informed of these highly vulnerable children, and highlight the problems they are facing. In France, for example, the phenomenon of unaccompanied children is well known, but data on undocumented children who are accompanied by their parents or other caregivers remains scarce. Crucially, even with regards to unaccompanied children, the populations are constantly changing. Since the beginning of the phenomenon in 2000, France saw large numbers of unaccompanied children coming from Romania, China, and later Sub-Saharan Africa and northern Africa (Morocco). Now, there seem to be increasing numbers always from Sub-Saharan Africa and Afghanistan, Pakistan and northern Africa (Egypt, Tunisia...). The constant evolution of the demographics of this highly vulnerable population requires that the Ombudsman is constantly kept updated with new information.

Parallel Working Groups: Strategies to Overcome Barriers for Undocumented Children and their Families

The conference had three parallel afternoon working groups which facilitated collaborative work on building strategies to overcome barriers for undocumented children and their families. Each working group was chaired by an NGO working specifically on access to that particular thematic right: access to housing, healthcare and education.

Each of the following three sections begins with a short overview of these NGOs' contributions to the workshop discussion. The working groups had presentations of two different good practice examples from across Europe before then settling into a group exercise led by a facilitator. These exercises created the space for participants to strategize together on realising the rights of undocumented children and families.

Legal Strategies to Improve Access to Housing

The right to housing for undocumented children and families is a very broad right, including the prevention of homelessness, access to accommodation, affordability and the adequacy of housing. The right to housing is also very poorly protected by law, and hence this workshop session focused on legal strategies to improve undocumented children and their families' access to housing.

FEANTSA (*The European Federation of National Organisations Working with the Homeless*) work towards improving access to housing for undocumented children and families. They brought a collective complaint using the European Social Charter against France,⁷ alleging that France violated



Article 31 of the Revised Social Charter, concerning the right to housing. FEANTSA argued that France had failed to effectively implement the right to housing for all, more specifically, that it failed to meet the housing needs of the most vulnerable people in France. FEANTSA won the case, but this was only the first step in the overall fight for access to adequate housing. The case allowed a political, legal and public discussion to open on the issue of the right to housing for undocumented families, which has been very positively influential in France.

FEANTSA have also taken a case against Slovenia, and are currently bringing a case against the Netherlands. With all of these cases, they note that the case itself is only ever the starting point and that there must be a significant amount of follow-up work to ensure that rights are fully realised.

case study



Defence for Children International (DCI) v Netherlands



CARLA VAN OS, Defence for Children International



Migrant families and children were systematically being denied shelter in reception centres once their asylum applications were refused, and as a result, DCI, together with Pim Fischer, a lawyer, launched a collective complaint to the European Committee of Social Rights, using two specific examples of violations of the right to housing. The first example was of Kamil, who had been separated from his mother, who continued to remain homeless. The second was of Hevien, an undocumented child living on the street, on a public bench.

The Committee of Ministers ruled in DCI's favour on 27 October 2009, however, the Dutch government responded by saying they could only provide housing for children, and not for the family unit. Even after 'winning' the court case, DCI had to continue their advocacy work by writing a booklet recording the experiences and testimonies of undocumented children living on the street, organising media work and arranging meetings with MPs. They also organised a national demonstration where supporters occupied bus shelters throughout the country, visually underlining the injustice of children sleeping in bus shelters. A video was made in support of the campaign, which started to have an effect on judgments in local courts, impact public awareness and cause MPs to question the Netherlands' failure to follow the Committee's recommendation.

As a result, undocumented families and children are granted housing in special reception centres. However, DCI notes that the conditions reported in these centres are far from adequate.

⁷ FEANTSA v France CC39/2006

case study



Developing Comprehensive Strategies for Realising Rights – The Case of Belgium

LAETITIA VAN DER VENNET, Plate-Forme Mineurs en Exil



In Belgium, undocumented children and families have a right to urgent medical help, which includes preventive, curative and follow-up care, as well as the right to material assistance which comes down to housing in a reception centre. Yet since 2009, there exists a structural reception crisis in Belgium, with insufficient space in reception centres. Non-asylum seeking migrants and accompanied children have thus systematically been refused access to housing in reception centres. In essence, existing laws are not applied, resulting in (human) rights violations.

The Belgian example underlines the value and importance of taking a comprehensive approach to ensuring access to rights for undocumented children and their families. The following questions should be considered at the very outset of building a case:

- Should a case be brought at the national or international level?
- Should an individual or collective complaint be made?
- Should rights be demanded, or a practice be condemned?
- Who should file the case before the relevant court – an individual whose rights are violated or an NGO?

There are several national level remedies one can pursue first. In Belgium for example, a federal service is in charge of housing; therefore it is possible to file a complaint with the Federal Ombudsman. However, the Ombudsman issues non-binding recommendations, which authorities do not always follow.

Several collective and individual cases concerning undocumented children's access to housing in reception centres were brought at national level, engaging judicial bodies such as the Labour Courts. On the international level, a collective complaint remains pending before the European Committee of Social Rights.

KEY POINTERS FOR FILING A COMPLAINT TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

1. Is the Charter applicable to irregular migrant children?

Although the Annex to the Charter itself states that the Charter is only applicable for regular residents, precedent jurisprudence has established that where violations of 'human dignity' are at stake, even where these violations are felt by irregular migrants, the Charter is applicable.

2. What key evidence should be collected?

All violations should be fully documented. In addition to taking witness evidence, DCI Belgium collected many articles from the press about the reception crisis, underlining the structural problem in relation to the reception of undocumented migrant families.

3. What case strategy to take?

Legal strategies should be complementary at all levels and combined. In this example, national cases were brought through several different courts and using the European Social Charter. Civil society organisations should work together as a network. Evidence should be diligently collected, as should legal research into precedent case law.

expert insight



Four Questions to Ask Yourself As You Build any Legal Case

PIM FISCHER, Fischer Advocaten



1. Simplify the case into a three sentence story.
2. Always bear in mind who can 'solve' your problem which authority has the capacity and remit to address your problem?
3. How might you lose your case? Always consider the opponent's argument before building your own case strategy, and ensure you account for how to 'lose' when doing so.
4. How can you overcome these weaknesses in your case, to win and have the authority 'solve' your problem?

group exercise



Key Recommendations for Using Legal Strategies

- When bringing forward a collective complaint, such as through the European Social Charter, one should strongly consider the impact of a negative result. Cases brought at this level can have great positive impact on the shape of jurisprudence; however negative results can cause more restrictive changes to national legislation.
- Develop a solid evidential basis for any case. Ensure the case is fully evidenced before taking it to court. Ensure all legal arguments are fully supported by the professional opinions of those working in the field.
- Try to collect evidence to show that the problem is a systemic, structural one, rather than a one-off anomaly.
- Combine strategies on different complementary levels – e.g. using legal, advocacy and communications strategies – to bolster the case itself.
- Develop alliances and work in coordination with other civil society organisations and professionals.
- Use precedent case law and build upon it.



Group discussions during workshop session on “Legal Strategies to Improve Access to Housing”

Developing an Evidence Base to Promote Access to Healthcare

Undocumented migrant children are amongst the most socially excluded and vulnerable populations, yet they are also one of the most discriminated against for accessing basic services, such as health care. Key barriers prevent undocumented children from accessing continuous, affordable, and timely health care. These include administrative barriers, such as the lack of sufficient legal entitlements; the requirement to produce ID documentation before being given treatment; and a health service provider's duty to report; as well as practical barriers, such as the lack of available translation services and a lack of cultural understanding.

Eurodiaconia is a network of Christian based NGOs with 40 service provider members across 22 countries. These organisations not only provide assistance first-hand, but also conduct evidence-based research that Eurodiaconia then use for lobbying activities and advocacy work at national and European level. Through their wide network, Eurodiaconia are able to identify key barriers preventing undocumented children from accessing healthcare.

The following case studies show how evidence can be used to push for a change and positively work to realise the rights of undocumented children and families.

case study



Research Activities of the Gruppo di Lavoro Nazionale per il Bambino Immigrato (GLNBI)

SIMONA LA PLACA, SIMM (Italian Medical Society for Migrants) on behalf of Gruppo di Lavoro Nazionale per il Bambino Immigrato (GLNBI)



In Italy there has been successful collaboration between a research group and the Italian Society for Paediatricians, who jointly have established an Italian working group on migrant children, the GLNBI.

The first aim of the working group was to identify the health status of all migrant children. Through the first-hand experience of the paediatricians, the working group was able to consolidate research on access to primary healthcare for migrant children, and how this affected their access to subsequent rights, such as to housing, education and their overall wellbeing.





In Italy, the legal context of access to healthcare for undocumented children varies widely. Health care is managed on a local level, not at national level, so access for undocumented children depends largely on the region they are in. In 2013, in only four out of the 20 Italian regions were undocumented children entitled to access the national health system, and were provided with access to a family paediatrician.

The Puglia region of Italy provides a good example and has the most effective healthcare for undocumented children, yet statistics show, this is provided with no extra expenditure. Puglia ensures access to a family paediatrician, rather than access to only emergency care, which the working group has proven to be most financially, and medically, effective.

The research collected by the GNLBI is then used for advocacy purposes. In 2010 the Italian Society of Paediatricians and SIMM issued a joint statement about the fundamental rights of migrant children. The statement called for access to a family paediatrician for all children. It became one of the most relevant issues carried out in the inter-regional taskforce set up between national and regional levels of government to analyse access to healthcare for migrants. The joint statement among regions was approved in December 2012 and will become law in 2013. Although not having the full effect of law, it stands as an official document urging regions in Italy to implement and interpret current legislation to guarantee access to a family paediatrician for all children, without variance among the regions.

case study



Médicos del Mundo Inquiry into the Healthcare of Undocumented Migrants after the Royal Decree



MARISSA MARTINEZ, Médicos del Mundo



Medicos del Mundo focuses its work on human rights violations in relation to access to healthcare. The Royal Decree of April 16/2012⁸ entirely reformed the nature of access to healthcare for undocumented migrants. The decree limits undocumented migrants' access to healthcare, except in the following areas: emergency care; pre-natal, delivery and post-delivery care; treatment for victims of trafficking; asylum seekers, and healthcare for undocumented children. Healthcare is still guaranteed only in these five circumstances.

The new restrictions imposed by the Royal Decree for undocumented adults impacts the wellbeing of undocumented children, who are affected by the Royal Decree, even if the decree itself doesn't directly change their own levels of access to healthcare. The new restrictions will have an impact on undocumented children's access to healthcare in practice, as their parents' ability to access healthcare will be severely limited.

Now the main problem with children is prejudice and the lack of correct information from health centres which frequently deny access to health cards for undocumented parents and their children. Undocumented children's living conditions will also be negatively affected by their parents' poorer health conditions.

Medicos del Mundo conducted an inquiry into the implementation of the Royal Decree in order to assess whether the Autonomous Regions of Spain had properly implemented the provisions foreseen in the decree, and what the effects were. The research revealed wide discrepancy in health service provision for undocumented migrants amongst the regions, but some regions continue attending undocumented migrants and other do not respect the exceptions of the decree.

Without civil society organisations conducting such qualitative and quantitative research on the impact of policies on vulnerable populations, States would not be able to effectively re-evaluate and adapt their policies.

⁸ On April 20 2012 the Spanish government issued a Royal Decree to limit adult undocumented migrants' access to health care to emergency health care only. The proposed decree does not affect undocumented children's access to healthcare. Full text of the Decree is available online at: http://noticias.juridicas.com/base_datos/Admin/rd16-2012.html

case study



Linking Research to Policy and Practice

ALFONSO LARA MONTERO, European Social Network



The European Social Network (ESN) is an independent network of directors of local public health and social care services in Europe, with over 90 members in 30 European countries. With regards to evidence based research, ESN has surveyed its members to see whether they evaluate their interventions, and has collated and gathered data on programmes that 'work' in Europe, with a particular focus on their cost-effectiveness. It has also launched a working group on leadership, performance and innovation which has looked at the implementation of evidence-based practice in health and social care.

What is needed to conduct evidence-based strategies?

1. Data on the needs of user groups; e.g. undocumented children and families.
2. Cost-benefit analysis (including social return on investment) for public authorities and service providers to see how they can best allocate finances to serve the needs of undocumented children and families.
3. Data on programmes that 'work' to address the needs of undocumented children and families.

Taking into account the lack of quantitative and qualitative data on undocumented children and families, there is great potential in evidence hubs of stakeholders' partnerships to collect data, set up and evaluate policies. However, the specific characteristics of a user group like undocumented migrants means that there are difficulties in sharing data across all agencies. It would be useful for organisations working with undocumented children and families to have a common data registration framework to help develop policies and services that address the needs of this population based on the input data.

group exercise



Key Points for Building an Evidence Base

- Good practice examples show how evidence can be a powerful tool to push for change.
- There are different kinds of data – on needs, on cost benefit, on what works – and different ways in which data can be used, depending on what kind of data research organisations are looking for.
- One must bear in mind the issues of comparability and transferability of data based on different health systems, the issue of cost benefits and how civil society can make data available.
- There is a desperate need for a firewall between data collection and immigration enforcement. The availability of data and evidence only becomes tenable so as long as the firewall exists.



Participants during workshop on “Developing an Evidence Base to Promote Access to Healthcare”.

Media and Empowerment Strategies to Surmount Barriers to Education

Access to education can be a hurdle facing undocumented families, with administrative difficulties in the enrolment process and fear of detection posing significant barriers to children's access to education. The process of enrolment can be unpredictable and testing, with certain schools demanding documentation or proof of residence in the area, despite not being legally required for registration in schools. Once enrolled, children can face additional discrimination due to language barriers and inappropriate segregation into 'special education' classes instead of mainstream education.

Eurochild is a network of over 100 member organisations that work towards promoting the rights of the child. Eurochild and its members work towards addressing this significant gap between legal protections of the right to education, and the situation in practice for undocumented children trying to access education.



case study



Can Social Media and Digital Technology Help Undocumented Migrants Realise their Rights?



SARAH CUTLER, Paul Hamlyn Foundation



Many migrants' rights organisations are working in a hostile context with a 'squeeze' of services and support, as there is less public spending in general. Two key questions facing undocumented young people are:

- How can they access their rights?
- How can they trust the information they are given?

The Supported Options Initiative (SOI) of the Paul Hamlyn Foundation, in partnership with Unbound Philanthropy, aims to provide support and advice to young people and children living in an irregular migration situation in the UK. The initiative developed as a result of the findings of Paul Hamlyn Foundation's research report, "*No Right to Dream*"⁹ which was published in 2009.

The initiative funds seven projects in the UK, providing face-to-face information and support to children and young people.



⁹ Full text publication available online at: www.phf.org.uk/downloaddoc.asp?id=284



In addition to the funding for advice and support to young people, SOI, commissioned On Road Media to deliver a social media project called '*DigitalUndoc*'.¹⁰ The aim of the project was to explore whether and how social media and digital technology could be used to improve support and information for young people. The project created an on-line and offline community of designers, developers and those who know how to build conduits of information, with lawyers, health workers, advocates and NGOs. The process was to get young undocumented migrants to identify what they felt the gaps in their life were, and to see how to provide them with information. The methodology of the project was a social innovation camp which was held in July 2012. Participants worked together across different disciplines, to identify responses to real and practical problems facing undocumented young people. For example: how can a young person access information about the place they have just arrived in and how can they access information without revealing that they are undocumented? Paul Hamlyn Foundation then funded three of the winning ideas from the digital camp which will be produced in Spring 2013.

Although social media is now a huge part of many people's lives, its use must be targeted, and cannot be a replacement for face-to-face or frontline work.

¹⁰ Project website available online at: <http://digitalundoc.com/>

POTENTIAL AVENUES TO EXPLORE USING DIGITAL TECHNOLOGY

- Linking information between EU states with countries of potential return, so that young people who do face deportation are not left floundering for information.
- Linking information from international development agencies to undocumented migrants in Europe.
- Consider how to best capitalise on skills, capacity and funding for migrant and youth organisations in order to develop social media as part of their existing work plan.

case study



Empowering and Mobilising Support for Undocumented Children and Families

RICHARD MOYON, Réseau Education Sans Frontières (RESF)



Réseau Education Sans Frontières (RESF) campaigns against the deportation and removal of migrant children from France. The movement was born in 2004 by teachers who wanted to provide education, equality and freedom for all of their pupils, without fear of deportation. RESF is now a network that has grown significantly in size and scope. The campaign works not only to stop deportations, but to educate the next generation of their peers, who are living in an irregular migration situation.

The network describes itself as fighting a battle to defend rights. The battle is in support of young people whose parents are in an irregular situation. These young people, whatever their situation, must still be able to defend their rights. RESF's objective is to ensure that all children can fully enjoy their rights.

Crucially, we must consider the difference between legality and legitimacy. There are laws and acts that generate undocumented migrants by reducing routes to regularity. There are laws that allow the State to deport those who do not satisfy specific criteria. However, RESF would urge advocates to contest the law, and challenge whether these laws are legitimate. RESF urges society to look beyond legality, into the legitimacy of legislation.

RESF works to mobilise young people in an irregular migration situation, and in doing so, to empower them to realise their own rights. There is a need to make young people in an irregular situation more visible. RESF also works to raise awareness amongst parents of the other pupils, friends and neighbours in the community who live in irregularity, yet whose situation is legitimate. In France there is the advantage that all children must go to school, as a legal obligation, not merely a legal right.

group exercise



Using Participation and Empowerment Strategies to Realise Undocumented Children's Rights

- **What is Empowerment?**

Empowerment is power. It is the creation of an enabling environment in which one person can reach their potential, gain access to concrete physical resources, and have a reliable channel for them to be heard. It is supporting people to be unafraid, through cooperation, and instilling a sense of ownership in them.

- **How can we support the leadership of migrant and undocumented communities?**

Through leadership, information and experience sharing and awareness-raising, civil society organisations can support the process of self-organising. Advocates can offer financial and other material assistance to facilitate undocumented migrants' viewpoints being heard.

- **What are some examples of simple actions that civil society organisations can do to empower and support migrant communities?**

Build a network of funders/philanthropists committed to a significant period of time, such as ten years, to enable sustainable and lasting work. Build broader coalitions in support of undocumented children's rights, beyond merely the 'migrant' network. Create platforms amongst youth by using music festivals, concerts, to engage all youth in the issue.

- **What are the organisations / programmes that we need to build to support and empower migrant communities?**

We need to focus on peer education by kick-starting something that can go 'viral' or perpetuate support. Consider involving the private sector by creating guaranteed training/work programmes for undocumented young people when they reach the age of 18.



Participants discussion group exercise during workshop on "Media and Empowerment Strategies to Surmount Barriers to Education".

The Way Forward

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The European Parliament and Protecting Undocumented Children

JEAN LAMBERT, MEP Greens/European Free Alliance, European Parliament



There is a striking political and public difference between taking a 'borders mentality' approach to policy, as opposed to a 'social mentality' approach. We have witnessed a politically-justified lack of concern for society and individual rights.

A recent report produced by the LIBE Committee of the European Parliament focuses on the issue of integration. The perspectives of people who come to the discussion matter, and this is this case the minimal report on integration provided by the Vlaams Belang, Belgian far-right political party in the Flemish Region, was useful in building a strong opposition which allowed a more productive and fruitful result. Because the EMPL Committee is not looking at integration as an issue of admission to the EU, but an important element of social inclusion, issues raised in the EMPL Committee were different and, for example, regularisation was hardly discussed.

Another report currently before the Employment Committee looks at access to care for vulnerable groups in times of crisis. The report was tabled to the Employment committee on 4 February 2013 and the Committee will vote on it on 30 May 2013.

During the present times of recession and austerity, we are noticing that member states are increasingly restricting access to healthcare, not on the grounds of lack of need, but purely on the grounds of lack of regular migration status. The restriction to healthcare based on what documents you possess, needs to be changed. This restriction is damaging to society as a whole.

“We need to acknowledge practical integration processes and regularisation as solutions for social cohesion.”

Jean Lambert, MEP Greens / European Free Alliance, European Parliament

expert insight

Protecting the Rights of Undocumented Migrant Children and Families

FRANCOIS CRÉPEAU, UN Special Rapporteur on the Human Rights of Migrants



States seem to have difficulty considering irregular migrants as full rights holders, and wrongly believe their legal obligations extend only to nationals, and not to migrants who happen to be in their territory. To further compound this, national immigration authorities do not always understand why undocumented migrant children should be treated differently from undocumented adults. There is a gap in common acceptance of undocumented children, as children first and foremost. The focus of state action should always be to ensure the best interests of the child are protected.

Children in an irregular migration situation face numerous obstacles purely because of their immigration status. They are especially vulnerable and their protection requires proactive institutional support. This protection is often lacking.

The use of inappropriate terminology such as “illegal” migrants contributes to the criminalisation of irregular migration, and to the further alienation, marginalisation, xenophobia and violence they face. This can also lead to further restrictions of human rights and access to social rights such as housing, healthcare, education or access to justice.





KEY RECOMMENDATIONS FOR THE PROTECTION OF UNDOCUMENTED CHILDREN

1. All persons under the age of 18 are children, and should be treated as children first, regardless of immigration status.
2. No child is illegal, and all children have rights, regardless of their migratory status..
3. The provisions of the UN Convention on the Rights of the Child (CRC) should be fully implemented in relation to migrant children.
4. A child-rights based approach should be mainstreamed in relation to migration policies.
5. Children should not be detained. Detention centres are not suitable places for children and families, and alternatives to detention should always be provided.
6. All children, even those in detention, should have access to adequate and affordable legal representation.
7. National human rights institutions should be empowered to address the issue of migrant children. Often national human rights institutions refrain from addressing the issue of undocumented migrants, but it is important that the issue is taken on at this level.
8. The family unit and the right to family life must always be protected and promoted.
9. Regularisation processes should be used as tools to ensure family unity and reunification.
10. There should be active awareness-raising campaigns to ensure that empathy is widely felt throughout the general population. It is important to show that migrants and migrant children are not numbers, but human beings, with parents, who live with real fears and need effective human rights guarantees.

CONCLUDING REMARKS

Protecting Rights in a Climate of Austerity

DON FLYNN, Migrants Rights Network and PICUM Chair



In the wake of the recent austerity measures, policy seems to be less evidence-based, and more financially motivated. We have observed an increasing categorisation in recent policies of the 'good' from the 'bad', to justify the development of restrictive migration policies against irregular migration. In practice however, the world cannot be divided by binary opposition, and 'good' and 'bad' cannot be used to justify the removal of people's rights.

Much positive work is being done on empowerment and participation which has mobilised undocumented young people to speak out, and speak for their rights. Undocumented young people need to feel that a social space can be created so they can lead with their own arguments and ideas. The process is an ongoing one, and empowerment must be coupled with campaigns to increase awareness of the issues amongst policy makers.

“There is a need for a moral voice to emerge from society, and it is the voice of the young people themselves. How can we inspire youths to take the lead? Only when we answer this will we see a change in policies, and public mind-set.”

Don Flynn, Migrants Rights Network and PICUM Chair



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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