

PICUM Submission to the Migrant Workers' Committee and Committee on the Rights of the Child Joint General Comment on the Human Rights of Children in the Context of International Migration

29 February 2016

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of about 150 organisations working with undocumented migrants in 31 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

I. Introduction

This submission gives a brief overview of PICUM's main concerns¹ regarding the human rights situation of children in an irregular migration situation in Europe, the group of children in the context of migration in which PICUM specialises. 'Children in an irregular migration' includes both children who are undocumented themselves and children whose own status is regular, and may even be a citizen of the country, but who are nonetheless affected by the irregular status of a parent or other primary caregiver.²

The guiding principles of the CRC: non-discrimination, the best interests of the child, the right to life, survival and development and respect for the views of the child are systematically violated in the case of undocumented children, representing both direct violations and serious barriers to the enjoyment of all other rights. These violations are highlighted throughout the submission, though an independent section on the right to life is also necessary to give due attention to the increasing number of deaths of migrant children attempting to reach Europe.

II. Brief overview of the human rights situation

Undocumented children are falling through the gaps in protection in both migration and social policy frameworks. Important developments have been made in the area of migration recognizing the need for additional protections for certain categories of migrant children. However, children, and child rights, are not yet adequately integrated into migration law, policy or practice. One result is that children are more at risk of becoming undocumented, as their status is linked to their parents' and their individual situations are rarely considered in decisions to grant or refuse residence permits or claims for international protection.

At the same time, while migrant children are increasingly targeted in public policies, undocumented children are usually not considered or specifically excluded. Once undocumented, children are usually subject to the same immigration control measures as their parents, including detention, deportation and restrictions on basic social rights, without due consideration of the impacts on children, their rights, and their well-being and development in the short and long term.

They face systematic discrimination in law and practice due to their residence status, disproportionate impacts due to their age, and multiple and intersecting discrimination, for example when they live in non-traditional family structures, or are disabled.

The right to life and development

The lack of possibilities for migrant children and families to reach Europe regularly and safely to seek protection, work, family reunification, study and other opportunities mean that many feel they have no option but to embark on life threatening and extremely dangerous journeys.

Not a new phenomenon, the numbers risking such journeys has increased over the past year. An IOM- UNICEF Data brief³ covering the year until publication on 30 November 2015 shows:

- Of 870,000 refugees and migrants that arrived by sea to Europe, 1 in 5 was a child.
- Of the 730,000 sea arrivals in Greece, children made up an estimated one-quarter.
- Over 3,500 refugees and migrants died in the Mediterranean Sea, the majority in the Central Mediterranean between Libya and Italy.
- In the Eastern Mediterranean, where more families are travelling, at least 30 per cent of deaths in the time period were children.
- Most of the children who drowned during the year were from Syria, Afghanistan and Iraq, and under the age of 12.
- In October 2015 alone, at least 90 children died in the Eastern Mediterranean, with nearly one in 5 under the age of 2 years.

Available data for January 2016 shows that the proportion of children among those risking the dangerous sea crossing is increasing. According to UNICEF and IOM figures:⁴

- Children currently account for 36% of those risking the sea crossing between Greece and Turkey, with 19,781 children (accompanied and unaccompanied) recording as arriving in Greece in January 2016.
- During the same time period, one in every five people who drowned while making this journey was a child; IOM estimates that children account for 60 of the 272 deaths on this 'Eastern Mediterranean route' in January.
- The first known migrant casualty of 2016 was a two-year-old boy who drowned after the crowded dinghy he was travelling in slammed into rocks off Greece's Agathonisi Island on 2 January 2016.⁵

An average of two children drowned every day between September 2015 and February 2016 as their families try to cross the eastern Mediterranean.⁶

As well as from the drivers for migration in countries of origin, residence and transit, the deaths of children and families attempting to reach Europe result from the extremely limited regular migration channels to the European Union, border control and surveillance measures that push migrants to use alternative and more dangerous routes, and inadequate search and rescue operations.

Right to a name, identity and to a nationality

Undocumented children face discrimination in nationality procedures, including those to tackle statelessness, and serious challenges to birth registration. Combined with additional practical barriers resulting from living irregularly, undocumented children face numerous barriers to accessing nationality, which can place them at particular risk of statelessness.

- Limited birth registration

In many countries of origin, rates of birth registration remain low, and children are not issued with any identity documents. When they have documents or are included on their parents' documents, these may be lost or expire, especially when children and families migrate or are residing in an irregular way. These factors increase the risk that children are unable to prove their nationality if they were not registered in their countries of origin before migrating.

Children born in Europe who do not have their birth registered in either their country of birth or in their parent's country as a national may have difficulties in proving their nationality and accessing citizenship in either country. Barriers to birth registration for undocumented families in Europe may result from law or practice.

There is a lack of a clear policy on birth registration in many EU countries. Only a few countries, such as the Netherlands, provide for undocumented children's right to birth registration explicitly in law, while in other countries, undocumented children are included only implicitly. Implicit laws often lead to barriers in practice, including lack of awareness on the part of civil servants of undocumented children's rights, discretionary and discriminatory refusals, and risks of denunciation (intentional or unintentional).

Other practical obstacles include lack of awareness on the part of parents; bureaucratic and complicated procedures, including requirements for documentation that parents are unable to provide (e.g. passports and other official identity documents may have been withheld by agents or employers, or otherwise unavailable for both parents, marriage certificates may be inaccessible, etc); limited access to maternity services where medical professionals are involved in the birth registration process; and costs, both direct, in terms of registration fees and fines for late registration, and indirect, such as costs of travel, time off work, etc. There are also reported cases of migrant women being refused necessary documents for birth registration because they could not pay the expenses of the delivery.

While there is generally a separation between civil registries and immigration enforcement, undocumented parents may also fear detection. This fear can be legitimate, particularly in countries where civil servants have a duty to report undocumented migrants, which may be the case if irregular entry or residence is criminalized in the law.

- **Barriers to nationality**

There is no country in Europe where access to nationality is purely based on birth on the territory or *jus soli*, and the additional requirements usually explicitly exclude undocumented children and families, meaning children born undocumented in Europe must take the nationality of their parents.

However, there are cases where children are unable to get the nationality of parents at birth. This may be because their parents are unable to transmit their nationality, their parents are stateless, or there are additional requirements to *jus sanguinis* transmission that cannot be met. It may also be the case that children born to undocumented migrants in Europe have a right to their parent's nationality but it is not automatic and an application is required. This presents a number of practical and other administrative barriers, particularly for undocumented migrants. For example, undocumented migrants are not able to travel to their country of origin to apply, or obtain paperwork.

At the same time, irregular residence is often discounted or at least under-counted in naturalisation processes, and very few options for undocumented children to regularise their residence status in Europe. This is even the case for statelessness determination procedures, where they are in place. Many countries in Europe require regular residence of the parent or child in the requirements for statelessness recognition.

Due process guarantees and access to justice

The best interests of the child are largely absent from migration and asylum decision-making, including granting or refusing applications, decisions regarding detention, deportation and restrictions on access to services, as well as decisions regarding family unity, when the best interests of the child should be paramount. While references to the best interests of the child have been integrated into some migration decisions – with decisions formally stating that the best interests of the child have been considered – this usually does not reflect formal or systematic Best Interests of the Child Assessment and Determination procedures,⁷ procedures that give appropriate weight to fulfilling child protection objectives in both the short and long term in decision-making affecting children, meet due process safeguards and include participation of child welfare authorities.⁸ Further, the staff making such decisions are often untrained in the specifics of child rights and best-interests determination procedures, and the implementation of such assessments is evidently uneven and unsystematic.

- **Decisions on immigration and asylum applications**

Although children have the right to state protection as individuals, children are often subsumed by authorities within their family units. This is evident in the lack of data on children in immigration and asylum processes and justice proceedings, as well as in the consideration of claims for international protection, where children's circumstances are usually not considered individually. Therefore, if a parent's claim for asylum is rejected, the child's claim also fails without individual scrutiny, and they also become undocumented.⁹ Research also indicates that a lack of adequate information to properly assess the child's situation and best interests, inappropriate questioning techniques, and misperceptions and stereotypes about children's

symptoms, experiences of persecution and needs for asylum, protection and care, play a large role in inappropriate refusals of children's applications.¹⁰

There are also significant obstacles to young migrants who do not have protection claims but may have lived in a country for a long period of time regularising their status. These include a lack of avenues for regularisation and poor quality decision-making by immigration agencies, which fail to adequately consider children's best interests and long-term futures.¹¹

In this context, children are vulnerable to miscarriages of justice regarding their residence status. It can also elongate application processing times through successive appeal processes, which are at times already inordinately long periods of time during children's lives, when they may have limited access to education, health care and other services, with direct impact on their health, well-being and development.¹²

As children's residence status is often linked directly to their parents, they are also vulnerable to losing their status, for example, when their parent loses their job or leaves an abusive partner, on which their residence permit was dependent.

The treatment of children as adults when their age is in dispute is also a major concern that leads to numerous child rights violations, including age assessment procedures that include medical examinations that are inaccurate, inappropriate and unethical.¹³

- **Deportation**

Repatriation of children should only be carried out as a protection measure, for example, to reunite children with their families in countries of origin when in their best interests,¹⁴ so the prevalent punitive practices of deportation are a direct violation of children's rights.

Enforcement measures, such as detection raids and deportation proceedings include practices such as arresting parents from their homes, and transporting families with little or no notice to detention facilities,¹⁵ or arresting, detaining and deporting parents without giving them the opportunity to see or make arrangements for their children.¹⁶

Children, and particularly older adolescent children, may be subjected to violence by state agents during arrest, transfer to detention facilities and deportation proceedings, including use of disproportionate force and restraint measures and verbal abuse.¹⁷ The behaviour of guards is not always adequately monitored, especially if they are employed by private security companies.¹⁸ When children are not subjected to violence themselves, they often witness violence against their parents, or others, which can be traumatising.¹⁹

The conditions which children face in countries of return can be harmful to their health and development and clearly contrary to their best interests. For example, a UNICEF study on children deported from Germany to Kosovo found that the experience of deportation was highly traumatic: half of the children described their return as the worst experience of their lives, a third were suffering post-traumatic stress syndrome, and a quarter reported suicidal ideation. Nearly one in two teenagers was suffering from depression. For children that were not born in Kosovo or from ethnic minorities, integration in Kosovo was particularly

problematic, with difficulties learning the language, school system and culture. Children were subject to bullying and discrimination. Opportunities for education, training, work, as well as health services and living conditions were much below the standards in Germany.²⁰

Deportation of parents can also occur, particularly in cases of mixed status families, leading to family separation, even when it results in children being placed in alternative care. For example, in the United States, where many citizen children have undocumented parents, research found that nearly 5,100 children were in care in November 2011 because their parents had been deported or detained.²¹ Once separated, a lack of formal policy among child welfare authorities to deal with cases of deported parents makes reunification difficult, with authorities often opting to terminate parental rights rather than pursue reunification.²²

- **Lack of legal representation**

Undocumented children are often unable access to legal representation and legal aid, meaning the quality of their cases, and their ability to challenge inappropriate decisions, avoid rights violations and claim redress, is extremely limited.

Especially in light of the high success rate at appeal in some countries,²³ the importance of good legal representation cannot be underestimated. For example, in the United States, if migrant children cannot afford a private lawyer and do not manage to arrange pro-bono representation, they must represent themselves before immigration judges to challenge their deportation, filing supporting documents and testifying.²⁴

In the United Kingdom, changes to legislation in 2013 resulted in the removal of legal aid for all immigration applications, leaving many undocumented young people and families unable to take steps to regularise their status. In addition, the UK government is currently proposing to introduce a residency test in order to qualify for legal aid in the United Kingdom, such that to qualify for assistance one must be regularly residing and have lawfully resided in the country for at least 12 months. This will leave yet more children without access to justice. For example, the residency test would discriminate against undocumented families leaving domestic violence, destitute undocumented families and young people, child refugees, and abandoned or abused undocumented children, who have often grown up in the UK and may not know of their irregular residence status.²⁵ The proposals will affect access to all categories of legal aid, and leave children vulnerable to homeless, violence and abuse.²⁶ While access to legal aid is similarly restricted in many countries, such retrogressive measures regarding access to justice and the protection of vulnerable children and families are marked.

- **Risk of violence and lack of access to protection and justice due to immigration enforcement**

When reporting violence, abuse or exploitation to police or other relevant authorities, undocumented migrants regularly face immigration enforcement rather than protection, support services and access to redress mechanisms. PICUM has documented cases in a number of EU member states in which migrant women who have telephoned the police when under attack in their home, or visited a police station to report a previous attack have been promptly arrested and deported without any action being taken against the abuser. Even if criminal

proceedings are initiated, undocumented migrants are often unable to participate, being deported before court hearings take place.

The lack of access to justice and services for survivors of violence make undocumented women, often mothers, vulnerable to violence and exploitation in the home and workplace settings, and can trap them in such situations of violence. Where access to refuge accommodation is dependent on access to welfare benefits then undocumented victims of abuse are unable to move to safe accommodation. Women and children frequently become undocumented as a result of domestic abuse, because their status is dependent on the perpetrator.²⁷ Some women interviewed by PICUM described their children witnessing this violence or being directly subjected to violence and abuse themselves, and yet fearing to report the abuse to the police. One case was described by a Finnish organisation working with undocumented women, of an asylum-seeker from Nigeria who decided to live in private rental accommodation with her one-and-a-half year old Finnish-born son, rather than in the reception centre for asylum seekers, for fear of deportation if her claim would be rejected. The landlord repeatedly sexually abused the young boy, but the mother was too fearful of the potential negative consequences to report the abuser to the police. She found alternative accommodation.²⁸ Contrary to the perception that child victims of trafficking are entirely hidden away from society, many attend school, church or doctor's clinics, but feel too afraid to admit the abuse.²⁹

The policies that mean that undocumented migrants and their children are unable to report violence to the police and seek redress without risk of detention and deportation. By prioritising the detection of migrants over their protection from violence, abuse and exploitation, they make children more vulnerable to experiencing violence or witnessing violence against a parent. As 'zero risk' victims, these children face limited possibilities to exit violent situations and seek redress when violence occurs. Restrictions on access to justice - to independent complaints and redress mechanisms – are pivotal in creating a culture of impunity for violence inflicted on undocumented children and their families, whether by state or non-state actors, when in transit, at borders or in destination countries.

Personal freedom – Non-detention

European Union law (the 'Returns Directive')³⁰ governing the detention of irregular migrants does not meet child rights standards, but it provides for the detention of children and families only as a measure of last resort and for the shortest appropriate period of time. It does establish that the best interests of the child shall be a primary consideration in the context of the detention of children pending removal.

Despite these limitations of use, and although the laws in many EU member states prohibit detention of vulnerable people or limit their detention to "exceptional circumstances", detention of children and families is nonetheless widespread in practice. The following were key findings of an EU-funded evaluation of the implementation of the Returns' Directive³¹:

- 17 EU countries reportedly detain unaccompanied children (15 member states, and 2 Schengen Associated Countries). The evaluation notes that some of these countries detain unaccompanied children only occasionally in practice (Austria, Czech Republic,

Lithuania, Luxembourg, Malta, Slovenia and Sweden). 11 countries reported that they do not detain unaccompanied children in practice.

- Evidence collected suggests that 19 countries detain families with children. 8 reported that they do not detain families with children.

A comparative study³² of detention and use of alternatives in six EU member states - Austria, Belgium, Lithuania, Slovenia, Sweden and the United Kingdom – found that alternatives are underused and only a small number of individuals are submitted to these schemes. Austria is the only country of the six that is using alternatives to detention almost as much as detention.³³

Length varies enormously. For example, in Luxembourg, the period of detention of persons or families accompanied by children may not exceed 72 hours, and in practice rarely exceeds 24 hours. In the Czech Republic, children may be detained for 90 days. In Poland, the initial detention order, issued by the courts, can be for a maximum of 90 days, which can be extended to a maximum of one year. In Switzerland, children can be detained for 12 months. However, even a very short period of detention has been found to have significant negative effects,³⁴ and is a violation of children's rights.

There is little data available on numbers of children in detention. Many states fail to collect or publish regular data on numbers in, length of and reasons for the detention of children. The issue is further complicated by different types and classifications of 'detention'. Therefore there are currently no EU-wide estimates. Data that is available is often published by non-governmental organisations or researchers that have requested the information specifically or gathered it directly at national level.³⁵

- Family separation due to detention of a parent

Some of the countries that report that they do not detain children, separate children from their parents in order to detain the parent and not the child. This is particularly the case when there is more than one parent, but there have also been cases of children with only one parent being placed into alternative care while their parent is detained.³⁶

Further, research shows that family separation due to the detention of parents can have serious negative impacts on the well-being and safety of children. A study³⁷ by the UK-based Bail for Immigration Detainees (BID) examined the cases of 111 parents who were separated from 200 children by immigration detention between 2009 and 2012. The findings indicated that 85 of these children were in fostering arrangements or local authority care during their parent's detention. Some children moved between unstable care arrangements, were neglected, and were placed at risk of serious harm. Children lost weight, had nightmares, suffered from insomnia, cried frequently and became extremely isolated during their parents' detention. Parents were detained without time limit, for an average of 270 days. In fifteen cases, parents were deported or removed from the UK without their children, and in 92 out of 111 cases, parents were eventually released, their detention having served no purpose.

Right to family life

As well as family separation due to the detention or deportation of a parent, children in an irregular migration situation are also more likely to experience family separation in contradiction with their best interests in the context of custody rights and child protection, when the concerns are regarding material living conditions and poverty and prejudice against undocumented migrants rather than protection from violence, exploitation and abuse. Undocumented parents have also been found to face bias due to cultural discrimination and lack of provision of interpretation services and other due process guarantees.³⁸

Where authorities hold child protection and safeguarding duties, there have been cases where these duties have been discharged through separating the child from their parents. For example, in the UK, there have been cases where local authorities have fulfilled their duty to accommodate children in need in their area by accommodating only the child, in breach of their right to family life, or at least threatened to do so in order to deter parents from seeking assistance in the context of highly limited resources.³⁹ In this context, the institution of child protection in countries of transit and destination is used punitively for migrant families and can lead to family separation in breach of the child's rights. Fear of having their children taken from them is also one of the common barriers to accessing essential services and protection for themselves and their children reported by parents.⁴⁰

Right to health

Laws regarding access to health care for undocumented children at the national level vary enormously across Europe (see Annex in PICUM [Protecting undocumented children: Promising policies and practices from governments at all levels](#), March 2015 for legal entitlements for undocumented children to access health care in the 28 EU member states). In most EU countries, undocumented children receive health care under the same conditions as adult undocumented migrants, with no extra protection.

Emergency health care cannot be denied in any EU member state. However, in some countries, even this care may be subject to charging. Many countries provide emergency care free of charge. Other care that is provided inclusively and free of charge in a number of countries includes testing and treatment for communicable diseases (though treatment for TB and HIV is more limited) and childhood vaccinations/ immunisations.⁴¹ Aside from this, there is wide variation in the care that is provided to undocumented children and at what cost.

Numerous practical barriers affect children's ability to access the care they are entitled to. For example, there may be varying interpretations of what care undocumented children are entitled to, particularly in countries where entitlement depends on whether the care is considered 'urgent' or 'essential' and these terms are not adequately defined or are decided by administrative staff rather than medical professionals. While differing interpretations and discretion on the local level can lead to children receiving a wider range of services, it can equally lead to inappropriate denials of access. Other barriers include excessive costs, fear and risk of detection/ denunciation, lack of awareness about children's entitlements to services both on the part of service providers and families, and lack of medical records.

Children's health may also suffer generally due to a lack of continuous care, lack of access to specialist and mental health care, and due to conditions related to living in an irregular migration situation, such as poor housing conditions, stress, etc.

Data collected from across Médecins du Monde (MdM) clinics in 2014, covering over 22,000 patients in 24 cities in nine European countries,⁴² reveals, for example, a massive gap between levels of vaccination for tetanus and measles, mumps and rubella. Levels of vaccination among the general population are 90% at age two compared to 50% for children seen in their clinics, where a majority of all patients are undocumented. Over half of the pregnant women surveyed had not had access to antenatal care when they came to MdM's centres; nearly 60% came after the 12th week of pregnancy. Of all the patients surveyed, 91.3% resided below the poverty line, 64.7% were living in unstable or temporary accommodation, 9.7% were homeless and 29.5% declared their accommodation to be harmful to their or their children's health.

Right to an adequate standard of living

Problems to secure decent housing and experiences of homelessness are also a major human rights challenges for undocumented families. Children in an irregular migration status usually do not have access to social housing with their family unless one member of the family has a residence permit, and undocumented families are not eligible for housing support. Where accommodation is made available it is in extreme situations, to avoid a breach of human rights. Under the general systems for protecting child rights, local authorities in most EU countries have a duty to protect all children in their areas (including providing them with adequate housing), and specifically separated children, but nothing is provided for undocumented children with their families. Further, undocumented families are often denied access to reception centres for asylum seekers and homeless shelters.

Families in an irregular migration situation usually access housing through the private market. In some counties, a residence permit is required to rent housing, while in others it is not, but families nonetheless face strong discrimination and difficulties of access. Undocumented families are vulnerable to having their precarious residence status exploited by unscrupulous landlords, who offer housing in poor conditions at exploitative prices. The conditions are often overcrowded, insalubrious and insecure.

Undocumented children and families often have to move frequently, rely on friends or family, and at times live in squats, or even sleep in parks or on the streets.

Decent housing is also pertinent example of the interdependence of rights, impacting directly children's education, health, and numerous other rights. Undocumented parents also struggle to meet essential living costs, such as for transport, lunch, uniforms and books, and children are usually excluded from support provided to low-income pupils to meet these needs. Children are also affected by the impacts of restricted access to rights for parents, in particular when this results in parent's having poor physical or mental health or in family destitution.

Undocumented families are usually denied access to any state benefits as well as access to employment. As a result, they have no financial resources and often live in poverty and social

exclusion. In some countries, they are also excluded from accessing support from charities or other local structures providing support to poor families.

Right to education and professional training

In all EU member states, it is compulsory for children to attend schooling for at least eight years. In many countries, the legislation and policy governing compulsory education refers to ‘all children’, and access is therefore possible for undocumented children.⁴³ However, this only implicit inclusion can result in undocumented children being barred in practice from enrolling due to documentary requirements that some undocumented children are unable to provide (e.g. proof of address, birth certificate, social security number). Others face limitations within the education system; they are often unable to take official exams, receive certification for studies completed, or undertake vocational training courses. In countries where official examinations are required to pass from primary to secondary education, this can prevent children even accessing compulsory education classes.⁴⁴

It can also contribute to a lack of awareness among educational staff and undocumented families on children’s right to education, and result in inappropriate refusals of registration and at times even denunciation of undocumented families to immigration authorities. This unclear legislative framework also lends itself to discriminatory refusals of registration – when schools may be reluctant to accept migrant children, for example, due to concerns around integration and educational attainment.

In addition, access to non-compulsory education - including early childhood education and care (ECEC),⁴⁵ vocational training, further (college/ adult learning) and higher education (university), and in many countries 16-18 education - remains highly problematic.

Although practical barriers, such as lack of awareness, fear of accessing services, administrative requirements, discrimination, and challenges relating to poverty may remain, if legislation is made explicit to include undocumented children’s right to education, it can lay the groundwork to ensuring access to all levels of education and facilitate practical barriers to be addressed.

ENDNOTES

¹ This submission has been compiled from the following PICUM reports: PICUM *Protecting undocumented children: Promising policies and practices from governments*, March 2015; PICUM Submission to OHCHR on “Human Rights and arbitrary deprivation of nationality”, 15 June 2015; PICUM Submission to OHCHR on access to justice to children, 10 September 2013; “Rights of Accompanied Children in an Irregular Situation”, Paper prepared by PICUM, Platform for International Cooperation on Undocumented Migrants for UNICEF Brussels Office, November 2011.

² Undocumented children are those without a valid residence permit, and living outside any system of state support (including the asylum system). Usually this is because they are residing with their parent(s) or other caregiver(s), but unaccompanied children may also be undocumented before they come into contact with state services, or if they disengage with them. Undocumented children are a diverse group, that often change between categories or statuses during the course of their childhood. For example, they may have submitted an application for international protection as a family, which was refused, or applied for an official family reunification scheme through a family member with regular status, but not qualified. Undocumented children may also have entered Europe irregularly with one or more relatives or independently, and later joined their families. Some children are born ‘undocumented migrants’ although they have never moved, because they are born to undocumented parents, and there is no country in the European Union where citizenship is granted based on birth in a country alone.

³ [IOM and UNICEF Data Brief: Migration of Children to Europe](#), 30 November 2015.

⁴ [IOM Press Release](#), 2 February 2016, [The Guardian](#), 3 February 2016.

⁵ The Migrants’ Files: <http://www.themigrantsfiles.com/>

⁶ Joint UNHCR, UNICEF, IOM Press Release, ‘With growing numbers of child deaths at sea, UN agencies call for enhancing safety for refugees and migrants’, Press Release, 19 February 2016.

⁷ For example, immigration detention of children has in some cases been ‘justified’ as in the best interests of the child, to be with their detained parents, rather than find a suitable alternative for the whole family. OHCHR, “The Rights of All Children in the Context of International Migration”, Committee on the Rights of the Child 2012 Day of General Discussion Background Paper, August 2012, p. 20.

⁸ For example, see UNHCR (2008) *UNHCR Guidelines on Determining the best interests of the child*, May 2008.

⁹ Jyothi Kanics, “Realizing the rights of undocumented children in Europe” in: Jacqueline Bhabha (ed.) *Children without a State: a global human rights challenge*, MIT Press, Cambridge, Massachusetts, 2011, p. 139; UNHCR, *Considering the Best Interests of a Child Within a Family Seeking Asylum*, December 2013, http://www.unhcr.org.uk/fileadmin/user_upload/docs/UNHCR-Best_Interest-screen.pdf.

¹⁰ Karin Johansson Blight, “Children without a voice- Report on children with symptoms of severe depressive devitalisation who have been refused asylum and protection in Sweden”, January 2012, available at: http://www.academia.edu/1498485/Children_without_a_voice-Report_on_children_with_symptoms_of_severe_depressive_devitalisation_who_have_been_refused_asylum_and_protection_in_Sweden

; Praxis, “The Cost of Waiting: How waiting in limbo for immigration resolution affects the lives of young asylum seekers and young migrants in the UK”, Brighter Futures Report, London, 10 July 2013, p. 6, 15-16.

¹¹ Coram Children’s Legal Centre, *Growing Up In A Hostile Environment: The rights of undocumented migrant children in the UK*, November 2013, http://www.childrenlegalcentre.com/userfiles/Hostile_Environment_Full_Report_Final.pdf.

¹² Praxis, “The Cost of Waiting, 10 July 2013, *op cit.*; UNICEF, Special Rapporteur on the Human Rights of Migrants François Crépeau, PICUM, National University of Lanús, OHCHR, “Human Rights of Undocumented Adolescents and Youth”, July 2013. An abridged version of this paper has been published as part of a Global Migration Group book entitled *Migration and Youth: Challenges and Opportunities*, as Chapter 2 ‘Human Rights of Adolescents and Young Migrants Particularly those in Irregular Situations’. Edited by Jeronimo Cortina, Patrick Taran, Jérôme Elie and Alison Raphael on behalf of the Global Migration Group © 2014 UNICEF.

¹³ For example see ECRE “Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children”, December 2015; RESF *Déclaré majeur !: Les tests d’âge osseux, alibi « scientifique » de la chasse aux jeunes isolés étrangers*, September 2015.

¹⁴ OHCHR, “The Rights of All Children in the Context of International Migration”, August 2012, *op cit.* p. 25.

¹⁵ See for example, John Vine, Independent Chief Inspector of the UK Border Agency (2010), “*Family Removals: A Thematic Inspection*”, January – April 2010, pp.19-20, documenting family removal practices before the new family returns process began on 28 February 2011, which finds families were given on average 43 minutes to pack their belonging before being transported to detention facilities. Under the new process, there should be various stages of the deportation proceedings, affording families more notice; at least 2 weeks notice of the need to leave the country, followed by a further 72 hours before enforcement action is taken.

¹⁶ See for example, Applied Research Center, “Shattered Families. The Perilous Intersection of Immigration. Enforcement and the Child Welfare System”, November 2011.

¹⁷ See generally Birnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns (2008) *Outsourcing Abuse*, July 2008; ACLU (2012) “ACLU Demands Federal Investigation Into Charges of Abuse by Border Agents” American Civil Liberties Union Press release, 10 May 2012; Human Rights Watch (2012) “*If You Come Back We Will Kill You*”: Sexual Violence and other Abuses against Congolese Migrants during Expulsions from Angola, May 2012 [hereafter *Human Rights Watch, 2012*].

¹⁸ Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, 2 April 2012 (A/HRC/20/24), para.30.

¹⁹ See for example: United Nations General Assembly Resolution 63/241 on “*Rights of the Child*”, 63rd Session, 13 March 2009, Elimination of violence against children, para. 27.

²⁰ UNICEF, *Silent Harm. A report assessing the situation of repatriated children’s psycho-social health*, UNICEF Kosovo, in cooperation with the Kosovo Health Foundation, March 2012, available: http://www.unicef.org/kosovo/SILENT_HARM_Eng_Web.pdf.

²¹ ARC and Colorlines, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, 2011, available at: http://www.annarbor.com/ARC_Report_Shattered_Families_FULL_REPORT.pdf. See also: “Michigan State will soon advertise three children of an undocumented Guatemalan father, for adoption”, PICUM Bulletin 18 June 2011, available at: <http://picum.org/en/news/bulletins/35144/>.

²² *Ibid.*

- ²³ For example, in the UK 25% of decisions initially refused are granted at appeal. See: Amnesty International and Still Human Still Here Coalition, “A question of credibility: Why so many initial asylum decisions are overturned on appeal in the UK”, 2013, available at: http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf.
- ²⁴ The Bill ‘to provide for comprehensive immigration reform and for other purposes’ before the Senate includes provisions for state-funded legal assistance for migrants with mental disabilities and unaccompanied children in deportation proceedings (A Bill, To provide for comprehensive immigration reform and for other purposes, 113th Congress 1st Session, EAS13500, available at: <http://www.schumer.senate.gov/forms/immigration.pdf>).
- ²⁵ For more information, see: Joint Committee on Human Rights, Legal aid: children and the residence test, First Report of Session 2014–15, at <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/14/14.pdf>
- ²⁶ A typical example of a young person who would be at risk from the proposed changes described by The Children’s Society and cited in the Guardian newspaper, is “Peter”, a Kurd who came to the UK alone from Iran to seek protection and had his asylum claim rejected before his 18th birthday. Six months later social services stopped his support and told him to return to his country. However, as he was an Iranian national there was no lawful way for him to obtain documentation, since Iran has no embassy in the UK. Left homeless for nine months, he experienced violence on the streets and tried to take his life. Only after he was given access to a legal aid lawyer was Peter able to challenge his local authority and be rehoused”. Jamie Doward, “Legal aid residency tests ‘will leave migrant children destitute’”, *The Guardian*, 2 June 2013, available at: <http://m.guardian.co.uk/law/2013/jun/02/residency-tests-migrant-children>.
- ²⁷ See Rights of Women, *Silent Voices Speak: strategies for protecting migrant women from abuse*, 2011, p14
- ²⁸ Interview with PICUM, 2011.
- ²⁹ The Children’s Society, *Hidden Children – separated children at risk*, 2009, p.33, available at: http://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/Hidden_children_full_report.pdf.
- ³⁰ [Directive 2008/115/EC](#) on “common standards and procedures in Member States for returning illegally staying third-country nationals”. See Article 17 regarding the detention of children and families with children.
- ³¹ Matrix & ICMPD, [Evaluation on the application of the Return Directive \(2008/115/EC\)](#), Final Report, European Commission – DG Home Affairs, 22 October 2013, Luxembourg: Publications Office of the European Union, 2013.
- ³² A. Bloomfield, E. Tsourdi, J. Pétin, P. de Bruycker (ed.), [‘Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation’](#), January 2015.
- ³³ Austria opened its first specialized immigration detention facility in early 2014 (Global Detention Project, [Austria Detention Profile](#), last updated December 2014).
- ³⁴ E.g. Lorek et al, [“The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study”](#), *Child Abuse and Neglect*, 2009 pp572-585; International Detention Coalition, *Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention*, Melbourne, 2012; see also: J. Cleveland, [“Psychological harm and the case for alternatives”](#), *FMR* 44, September 2013.
- ³⁵ Please see Global Detention Project “The Uncounted: The Detention of Migrants and Asylum Seekers in Europe”, December 2015; PICUM *Protecting undocumented children: Promising policies and practices from governments*, March 2015.
- ³⁶ E.g. in the UK, see BID “Fractured Childhoods: the separation of families by immigration detention”, April 2013.
- ³⁷ BID “*Fractured Childhoods: the separation of families by immigration detention*”, April 2013.
- ³⁸ See: OHCHR, “The Rights of All Children in the Context of International Migration”, August 2012, *op cit.* p. 22; ARC and Colorlines, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, 2011, *op.cit.*; Elena Rozzi, “Undocumented migrant and Roma children in Italy: between rights protection and control” in: J. Bhabha (ed.), *Children without a State: a global human rights challenge*, MIT Press, Cambridge, Massachusetts, p.192.0
- ³⁹ OHCHR, “The Rights of All Children in the Context of International Migration”, August 2012, *op cit.* p. 21-22.
- ⁴⁰ See for example: PICUM, *Children First and Foremost: A guide to realising the rights of children and families in an irregular migration situation*, 2013, PICUM, Brussels, p.48; PICUM, *Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*, 2012, PICUM, Brussels, pp. 27-28.
- ⁴¹ S. Spencer and V. Hughes *Outside and In: Legal entitlements to health care and education for migrants with irregular status in Europe*. Oxford: COMPAS, 2015 (forthcoming).
- ⁴² Médecins du Monde (Mdm), [Access to healthcare for people facing multiple health vulnerabilities](#) [Obstacles in access to care for children and pregnant women in Europe](#), May 2015.
- ⁴³ FRA, [Fundamental rights of migrants in an irregular situation in the European Union](#), 2011.
- ⁴⁴ See for example, situation in Poland (PICUM, [“Building Strategies to Improve the Protection of Children in an Irregular Migration Situation. Country Brief: Poland”](#), 2011).
- ⁴⁵ This report considers ECEC to include any regulated arrangement that provides education and care for children from birth to compulsory primary school age – regardless of the setting, funding, opening hours or programme content – and includes centre and family day care; privately and publicly funded provision; preschool and pre-primary provision. This definition is in line with that used by the European Commission, for example in European Commission, [Study on the effective use of early childhood education and care \(ECEC\) in preventing early school leaving \(ESL\). Final report](#), 2014, p.14.