



# Protecting undocumented children:

## Promising policies and practices from governments

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PLATFORM FOR INTERNATIONAL COOPERATION ON  
UNDOCUMENTED MIGRANTS

Sincere thanks to all the PICUM members that have contributed to this report, as well as Sarah Spencer and Vanessa Hughes for making their forthcoming research available for inclusion. Special thanks also to Verena Knaus, Daniel Pelletier, and Maëlle Lena.

This report was made possible with the generous support of:



This project has received funding from the European Community under the PROGRESS FUND. The information is the sole responsibility of the author, and the Commission is not responsible for any use that may be made of the information contained therein.



SIGRID RAUSING TRUST

PICUM would like to thank UNICEF and acknowledge the generous support provided to UNICEF by the Austrian Federal Ministry for Europe, Integration and Foreign Affairs. The statements in this publication are the views of the authors and do not necessarily reflect the policies or positions of UNICEF.

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February 2015  
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Cover photo: A child of an undocumented mother and Dutch father living in the Netherlands. Due to the mother's irregular status at the time, the child and another sibling risked homelessness or being separated from their mother. After years of uncertainty, the mother has finally been regularized. From "Undocumentary", a web-documentary by PICUM ©2011 Pokitin

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## Executive Summary

Across Europe there are laws, policies and practices that fail to protect – or even directly violate – the rights of migrant children. While there are important protection frameworks for some groups of migrant children – such as asylum-seeking, unaccompanied, or trafficked children – the rights of undocumented children, particularly those accompanied by their parents or other caregivers, are largely unprotected, resulting in systematic and daily human rights violations. There are no reliable estimates on the number of undocumented children in the EU, a situation that compounds the inadequate attention given to the protection of these children.

Child rights are enshrined in the Treaty of the European Union and Fundamental Rights Charter, and all European Union (EU) member states have ratified the United Nations Convention on the Rights of the Child (CRC). Despite this legal framework that establishes that all children must enjoy equal protection of rights, regardless of their or their parent's administrative status, undocumented children face restrictions on access to services, protection and justice as a result of restrictive laws, policies and practices. They are subjected to immigration enforcement, including detention and deportation, in violation of their rights.

Within this overall context, there are many governments implementing laws and practices aiming to protect the rights of undocumented children. Focusing on the areas of education, health care, protection from violence and non-detention, this report seeks to support and disseminate such policies, by presenting several promising examples from governments at all levels, alongside some available data and relevant policy documents at EU level.

### Education

All EU member states have laws on education that require children to attend schooling for at least eight years. In most countries, this is understood to implicitly include undocumented children. While this means that participation in compulsory education is often possible for undocumented children, the fact that the legislation is unclear commonly results in administrative barriers, limitations in taking official examinations and receiving certification, and exclusion from non-compulsory education. Denying undocumented children access to all levels of education is discriminatory and hampers their development.

In terms of promising practices, legislation is explicit about undocumented children's equal right to education in ten EU member states: Belgium, Croatia, Czech Republic, France, Greece, Italy, the Netherlands, Romania, Spain and Sweden. There are also examples of education legislation and policies that address practical barriers, for example enabling registration without identity documents (Italy) and providing access to financial subsidies (France, Spain). Further, some laws and practices aim to ensure access to non-compulsory education and training, including: facilitation of undocumented children's access to internships in France, the Netherlands and Spain; and laws enabling early childhood education and care in Belgium, France and some cities in Italy.

### Health care

Laws regarding undocumented children's entitlements to access health care services differ greatly across the EU. In many EU member states undocumented children are only entitled to access emergency care. While several offer additional services, nine EU member states grant undocumented children the same level of services as national children in their legal framework: Cyprus, Estonia, France, Greece, Italy, Portugal, Romania, Spain and Sweden.

Even when legislation specifically grants access to health services, practical barriers can significantly limit the accessibility of the services. Measures to minimise administrative and other practical obstacles to care are being developed and implemented, alongside initiatives to improve access at regional or local level, when national level provisions are insufficient. There is a growing number of policy documents at EU level that reaffirm the right and necessity for undocumented children to receive equal health care as all other children, which, alongside the promising examples of law, policy and practice, provide fertile ground for advancements in undocumented children's health.

## Protection and justice

Although undocumented children are not generally excluded from systems to protect children from violence and abuse, there are insurmountable barriers to undocumented migrants receiving protection from violence, as well as appropriate compensation and redress. In situations of domestic violence, undocumented parents, often mothers, are unable to report violence against themselves or their children without risking detention and deportation due to their irregular residence status. This situation can also place undocumented children at greater risk of experiencing violence or witnessing violence against their parents or other caregivers. Further, their limited access to victims' and homelessness services and shelters reduce their possibilities to exit violent situations.

There are a number of legislative and policy initiatives taking steps to separate immigration enforcement from police services so that all people can safely report crime, seek protection, and access support services and shelters regardless of status. The EU Victims' Directive is critical legislation, explicitly guaranteeing equal rights to all victims of crime, regardless of their residence status. Transposition and implementation of the directive will be key to effectively protecting undocumented children and families who are victims of crime and violence.

## Firewall

A key element of good practice to ensure access to services, protection and justice for undocumented children is a clear separation or 'firewall' between service provision and immigration enforcement. A prohibition of the sharing of personal information about undocumented service users with immigration authorities is essential for services to be accessible in practice – for undocumented migrants to be able to access services without fear or risk of immigration enforcement as a result.

## Ending the immigration detention of children and families

The Committee on the Rights of the Child has clarified that the detention of children for immigration purposes always constitutes a violation of children's rights and can never be justified as in their best interests. The EU Return Directive does not meet these standards, but does significantly limit the use of child detention – it must only be used as a last resort and for the shortest appropriate period of time. Nonetheless, 17 European countries detain unaccompanied children and 19 European countries detain families with children. Thus the practice is widespread. Further, some of the countries that do not detain children, separate families in order to detain a parent and not the child. This is also contrary to child rights and has been found to be harmful for children.

A case management approach is a critical alternative to resolve apprehended undocumented children and their families' residence statuses while respecting children's rights. There should be a presumption against restricting the child or family's mobility, so any requirements imposed should be legally necessary and minimal. For example, an agreement can be reached where a parent will report at appropriate and reasonable intervals to the relevant authorities and engage with their case worker. Some governments, such as Austria, Ireland and Sweden, are implementing promising alternatives to detention that go in this direction. Practical, effective, inexpensive measures that respect children's rights can be further developed and implemented in order to end the immigration detention of children in the EU.

While the overall context remains concerning, there are numerous examples of governments at all levels that are meeting their legal obligations and protecting all children, regardless of their residence status. By highlighting several promising laws, policies and practice, as well as tools at EU level, this report seeks to support governments, and stakeholders working with them, to achieve the policy recommendations presented, to ensure equal protection of all migrant children.

## Introduction

Children migrate for a variety of reasons and their migration, residence and citizenship statuses may vary during their experiences of migration and residence. While there are limited protection measures for certain groups of vulnerable children, such as recognised asylum-seeking, trafficked and unaccompanied children, many children are falling through the gaps, particularly undocumented children accompanied by their families. This is creating an urgent situation on the ground, where children's health, well-being and development is being harmed in the short and long term.

Migrant children are being made vulnerable by failings in laws and policies within the realms of both migration and social affairs. Children are discriminated against systematically throughout migration procedures, and are subject to most of the same enforcement practices as adults, in violation of their rights. Throughout Europe, children are being apprehended, detained and deported, and denied basic services, protection and justice. In the area of social policies, the extension of migration enforcement into the provision of public services, through laws, discourse and practices, limits children's access according to their residence status.

Within this general context, there are examples of governments, public service providers and non-governmental organisations striving to protect undocumented children and their families, and empower them to realise their rights through service provision and advocacy. Governments at all levels are meeting their legal obligations to children - as well as objectives relating to education, health, rule of law, justice, development, social inclusion, social cohesion - by implementing regulations and measures to ensure that children's rights are protected, regardless of their or their parent's residence status.

This report provides an overview of the key challenges and a snapshot of some available data alongside a selection of promising practices and tools. The introduction continues with consideration of the available data on the number of undocumented children in the European Union (EU) and an overview of the legal framework establishing that children cannot be discriminated against because of their residence status. The main body of the paper is divided into two sections. The first looks at initiatives to improve access to services, protection and justice, specifically focusing on education, health care, and protection from domestic violence. The second addresses immigration detention and measures to reduce, and cease, the detention of children and families for immigration purposes. Finally, a conclusion and a number of recommendations to governments and the EU are presented. Key elements of good practice and promising examples are provided for inspiration and practical guidance to support efforts to fulfil the recommendations presented. Our aim is to stimulate exchange of pragmatic, inclusive and rights-based policies, and increased cooperation at EU level to ensure the rights of all migrant children.



## How many undocumented children are there in the EU?

Of the estimated 232 million international migrants worldwide, 35 million (15%) are children and youth under the age of 20.<sup>1</sup>

There are no reliable estimates for the number of child migrants in the European Union, let alone the number of undocumented children. While data is available for some groups of regular migrants,<sup>2</sup> including asylum seekers, disaggregated data on *children* in asylum-seeking families and data on unaccompanied children *who do not* seek asylum is not systematically collected and available in all member states.

Further, data on undocumented migrants is very limited; reliable and systematic data collection mechanisms on irregular migration still have to be developed and implemented in the European Union. Undocumented migrants are for the most part not captured in socioeconomic and administrative statistics or are captured in a way that does not identify their residence status. Some academics and non-governmental organisations are carrying out essential analysis of government data, or collecting their own; at times efforts are hampered by lack of publicly available data.

Data is available on apprehensions, and in some cases arrivals. For example:

- Eurostat figures show that 10% of people apprehended for being irregularly present on the territory of the 28 EU member states in 2013 were aged 17 years old or younger (5% between 14 and 17 years and 5% younger than 14 years).<sup>3</sup>

However, data on apprehensions or arrivals of undocumented migrants is not representative of the whole irregularly resident population.

There are national-level data and estimates for the irregularly resident population in some countries. However, they are not often disaggregated for children. Extensive research of available data and estimates of the irregular migrant population in the EU estimated between 1.9 million and 3.8 million undocumented migrants in the 27 EU member states in 2008, between 0.39% and 0.77% of the total population at the time.<sup>4</sup>

- The research only found estimates of the number of undocumented children of medium quality<sup>5</sup> reliability for two EU member states: the United Kingdom (UK) and for Greece.
- UK: Since the Clandestino project analysis, COMPAS at the University of Oxford updated the estimate in 2011 to 120,000 undocumented children, of which 60,000-65,000 are thought to be UK-born.<sup>6</sup> By way of comparison there were 1,288 asylum applications from unaccompanied asylum seeking children in the year March 2013 to March 2014.<sup>7</sup>
- Greece: Clandestino project analysis of available data presents a reserved estimate of 26,314 undocumented children in Greece in 2007, when a reserved estimate of the total irregular migrant population was 280,446.<sup>8</sup>

1 United Nations *Youth and Migration*, United Nations World Youth Report 2013, p.19.

2 See the [Eurostat website](#) for more information on the statistical themes data is collected and available for, e.g. acquisition of citizenship statistics, asylum statistics, Dublin statistics on countries responsible for asylum application, migrant integration statistics, migration and migrant population statistics, residence permits statistics.

3 Eurostat, [Enforcement of immigration legislation: tables and figures](#), September 2014.

4 A. Triandafyllidou, "CLANDESTINO Project Final Report", November 2009, p.11, available online at:

5 Due to lack of empirical foundation for crucial assumptions.

6 For more information see Sigona, N. and V. Hughes, "[No way out, no way in. Irregular migrant children and families in the UK](#)". University of Oxford, COMPAS, May 2012: pp. 6-8.

7 This does not represent all unaccompanied children, not including unaccompanied children that do not claim asylum and undocumented unaccompanied children. Government statistics c.f. Connect, [Always migrants sometimes children. A mapping of the reception and protection of unaccompanied children in the United Kingdom](#). Connect country report: United Kingdom, 1 September 2014.

8 See T. Maroukis, "[Undocumented Migration: Counting the Uncountable. Data and Trends across Europe. Country report Greece](#)", Clandestino, December 2008 (revised, July 2009)

## All migrant children are entitled to equal protection of their rights as all other children in the EU, regardless of status

Child rights are enshrined within the **Treaty on the European Union**.<sup>9</sup> The **EU Charter on Fundamental Rights** also specifically states that children shall have the right to such protection and care as is necessary for their well-being and that the best interests of the child must be a primary consideration in all actions relating to children.<sup>10</sup>

Children's rights are defined in the **United Nations Convention on the Rights of the Child (CRC)**, which has been signed and ratified by all EU member states, and nearly all countries worldwide.<sup>11</sup> In September 2012, the Committee on the Rights of the Child – the governing body of the CRC – held a Day of General Discussion on the 'Rights of all children in the context of migration'. Following in-depth discussions on the particular challenges facing children affected by migration, the Committee issued a report<sup>12</sup> with **36 recommendations for States Parties to implement a systemic, comprehensive child-rights approach to migration**. With near universal ratification of the CRC, we have a global legislative framework for children's rights in which to implement these 36 recommendations.

The CRC obligates States Parties to protect the rights set out the convention to **'each child within their jurisdiction without discrimination of any kind'** (Article 2). This includes discrimination on the basis of migration or residence status.

This has equally been recognised by the **Council of the European Union**, which has noted that, "the EU Charter for Fundamental Rights and the United Nations Convention on the Rights of the Child establish that **children should be treated as such regardless of their migratory status, nationality or background**".<sup>13</sup>

Further Council Conclusions invite member states to "ensure in practice that all children, are protected from discrimination and enjoy equal opportunities in order to allow them to develop their full potential", and invites member states and the European Commission to "give full recognition to children as rights holders and to ensure respect for the principle of the best interests of the child in all policies affecting children".<sup>14</sup>

The **European Parliament** also adopted a resolution<sup>15</sup> which reiterates that every child is first and foremost a child whose rights should be fulfilled without discrimination, regardless of their or their parents' ethnic origin, nationality or social, migration or residence status; and that much more needs to be done to ensure that the rights of migrant children are fully respected across the EU.

9 Article 3, [Consolidated versions of the Treaty on the European Union and Treaty on the Functioning of the European Union](#), March 2010, European Union.

10 Article 24, Official Journal of the European Communities, [Charter of Fundamental Rights of the European Union](#) (2000/C 364/01).

11 The United States, South Sudan and Somalia are the only three countries in the world that have not ratified the CRC (see OHCHR website for [Status of Ratifications](#)).

12 Committee on the Rights of the Child's [Report of the 2012 Day of General Discussion](#).

13 [Council conclusions on unaccompanied minors](#), 3018th Justice and Home Affairs Council, Luxembourg, 3 June 2010, para c.

14 [Council Conclusions on the Promotion and Protection of the rights of the child](#) of 17 December 2014 (17016/14), para 5 and 12.

15 [European Parliament Resolution of 27 November 2014 on the occasion of the 25th anniversary of the CRC](#).

# 1. Promoting equal access to services, protection and justice

## The legal framework

The Committee on the Rights of the Child has reiterated that:

*“States should ensure that all children in the context of migration have **equal access as national children** to economic, social, and cultural rights and to basic services regardless of their or their parent’s migration status, **making their rights explicit in legislation**.*

*In doing so, States are strongly encouraged to **expeditiously reform legislation, policies and practices** that prevent or discriminate against children affected by migration and their families, in particular those in an irregular situation, from effectively accessing services and benefits such as health care, education, long-term social security and social assistance, among others...*

***Administrative and financial barriers** to accessing services should be removed, including through the acceptance of alternative means of proving identity and residence, such as testimonial evidence.*

***Training and guidance** for civil registries and public-service providers should be carried out to ensure effective access to them in practice.”<sup>16</sup>*

It is thus the duty of states to both:

- ensure that children do not face discrimination in access to services, protection and justice on paper and
- pro-actively tackle practical barriers to improve equity of access.

Further, the Committee on the Rights of the Child has also clarified the “firewall” principle of prohibiting service providers from reporting undocumented migrants to immigration authorities:

*“States should ensure **effective safeguards on information sharing** between civil registries, public-service providers and immigration authorities to ensure that this is not contrary to the best interests of the child and does not expose them or their families to potential harm or sanctions.*

*These safeguards must be implemented in law and in practice, including through issuing clear guidance for service providers and awareness-raising programmes on these safeguards amongst persons in irregular migration situations.”<sup>17</sup>*

In addition, the European Council has invited member states and the European Commission to “take effective measures to ensure **equal access of all children, including those in vulnerable situations who may also be at risk of multiple discrimination** based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, **to quality education, housing, health and protection services**”, and to “increase efforts to create child-friendly justice systems and child-sensitive procedures in order to enhance coordination between national bodies and facilitate children’s access to justice”.<sup>18</sup>

16 Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration*, Report of the 2012 Day of General Discussion, 2013, para 86.

17 Ibid, para 87.

18 Council Conclusions on the Promotion and Protection of the rights of the child of 17 December 2014 (17016/14), para 14 and 16.

## Restrictions on essential services, protection and justice

Children face direct restrictions on their access to services, protection and justice, in law and practice due to their migration or residence status. For example, access to services such as education and health care are often governed by discriminatory laws that make access conditional on residence or migration status. Numerous administrative, financial and other practical barriers also reduce access to services that are available.

When a child or their parent(s) have an irregular residence status,<sup>19</sup> their ability to access protection and justice is very limited because immigration enforcement is often prioritised over protection and justice. Undocumented children or parents reporting violence, exploitation or abuse to the police are more often subjected to – or threatened with – detention and deportation, rather than offered protection, assistance and redress mechanisms.

## Education

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.<sup>20</sup> However, this only implicit inclusion can result in undocumented children facing 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.<sup>21</sup>

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),<sup>22</sup> 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.

19 Migrants on dependent visas are in a similar situation, as their residence permit is linked to a personal relationship (partner or parent) and becomes invalidated if that relationship breaks down. Therefore, they often face becoming undocumented if they leave the relationship, even in situations of violence.

20 FRA, *Fundamental rights of migrants in an irregular situation in the European Union*, 2011.

21 See for example, situation in Poland (PICUM, “Building Strategies to Improve the Protection of Children in an Irregular Migration Situation. Country Brief: Poland”, 2011).

22 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.

## Non-compulsory education: supporting children's development

### Early childhood education and care (from birth to compulsory school age)

The importance of early childhood education and care (ECEC) for child development and well-being is well established at European level.<sup>23</sup> This has found to be particularly the case for children from socially and economically disadvantaged backgrounds, including migrants, to address inequality and challenges faced by disadvantaged children, through early intervention. The benefits for migrant children, in terms of language and pedagogical support, have also been recognised. While early years education is optional, it is discriminatory to exclude children due their or their parent's residence status.

### Internships

In line with the CRC, providing undocumented children equal to access to internships and vocational training is a legal obligation to fulfil their right to education. Enabling access to internships is also essential for young people to develop to their full potential and master skills to enable them to participate actively in the labour market, be it in the current country of residence or elsewhere.

Lack of access to vocational training alongside peers, as well as limited prospects for higher education and employment, can also lead young people to leave school early.<sup>24</sup>

### Wider development potential

As well as being key to individual development and human rights, the European Union and its member states recognise the links between education and overall development both inside and outside the EU. From the perspective of international development, the loss of human development potential through restricting young people's education in Europe due to their residence status is counterproductive, regardless of which country they may move to.<sup>25</sup>

Furthermore, many young migrants do remain in Europe. Therefore, it is detrimental to hamper their skill development, while having specific priority targets to reduce youth unemployment, early school leaving, and poverty and social exclusion as part of the Europe 2020 Strategy. Increasing participation in early childhood education and reducing early school leaving are also key objectives of the Strategic Framework for Education and Training 2020.

23 Council Conclusions of 26 November 2009 on the education of children with a migrant background (2009/C 301/07); European Commission COM(2011) 66 final, "Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow", 17 February 2011; Council of the European Union, "Conclusions on early childhood education and care", 6 May 2011; European Commission Recommendation "Investing in Children: Breaking the cycle of disadvantage", C(2013) 778 final, Brussels, 20.2.2013; European Commission, *Study on the effective use of early childhood education and care (ECEC) in preventing early school leaving (ESL). Final report*, 2014; J. Bennett et al. *Early childhood education and care (ECEC) for children from disadvantaged backgrounds: Findings from a European literature review and two case studies. Final report*, 29 October 2012.

24 See also Council conclusions on promoting young people's access to rights in order to foster their autonomy and participation in civil society, Brussels, 12 December 2014, which urge Member States to "Invest in prevention and intervention measures for reducing early school leaving, especially by framing policies aimed at providing equal access to quality education and offering targeted support to improve school environments. Attention should also be paid to removing obstacles to young people achieving their full potential in education".

25 For example, education has been identified as a key global development priority both in the Millennium Development Goals and their proposed successor, the Sustainable Development Goals.

## What are elements of good practice concerning access to education for undocumented children?

- **Explicit legislation:** right to equal access to all levels of education for all children – including early childhood education and care and vocational training – regardless of migration or residence status, explicit in law.
- **Firewall:** legal prohibition of the sharing of personal information between educational institutions and immigration authorities, and of immigration enforcement actions near schools or targeting families on their way to and from schools.
- **Practical barriers addressed in law:** e.g. legal requirement to justify refusal of registration; clarification that right to education includes receiving formal certification; equal access to financial assistance for low-income families; etc.
- **Adapted administration:** registration made possible in practice for children without identification documentation or proof of address, on the basis of declared information.
- **Internships:** educational internships made possible in practice, e.g. by organising contracts between employers and schools, rather than individual students.
- **Targeted measures:** additional support to assist integration of newly-arrived migrant children into mainstream schooling.
- **Awareness-raising:** Information and training about rights of migrant children and duties of educational institutions and staff for migrant children and families and educational institution staff.

## EXAMPLES OF PROMISING LAW, POLICY AND PRACTICE FROM ACROSS THE EUROPEAN UNION

### Making legislation explicit about equal rights and addressing practical barriers in law

Ten European countries make the right to access education for all children, regardless of migration or residence status, explicit in their legislation. These are **Belgium**,<sup>26</sup> **Croatia**,<sup>27</sup> **Czech Republic**,<sup>28</sup> **France**,<sup>29</sup> **Greece**,<sup>30</sup> **Italy**,<sup>31</sup> **the Netherlands**,<sup>32</sup> **Romania**,<sup>33</sup> **Spain**<sup>34</sup> and **Sweden**.<sup>35</sup>

26 French Speaking Community: Article 40 of the Decree of 30 June 1998 as amended under the Decree of 27 March 2002; Flemish-Speaking Community: Circular letter of 24/02/2003 from the Flemish Minister for Education on the right to education for children without legal residence status (replacing the circular of 24/06/1999). The legal bases of the circular are the Decree of the Flemish government regarding ethnic and cultural minorities (28/04/1998); the Law regarding school obligation (29/06/1983); Art. 26 of the Decree on basic education (25/02/1997); the Decree on equal opportunities in education (28/06/2002).

27 Act on Amendments to the Act on Upbringing and Education in Primary and Secondary Schools [c.f. 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)].

28 Amendment of the Act on School Education, Act No 343/2007 [Zákon č 343/2007 Sb, kterým se mění školský zákon] (c.f. S. Spencer and V. Hughes, *Ibid*).

29 National Education Code, Article L131-1 obliges all children both French and foreign children to attend school and a circular of the Ministry of National Education makes clear there can be no discrimination on the basis of residence status (Circulaire 2002-063 du 20 mars 2002 "Modalités d'Inscription et de Scolarisation des élèves de nationalité étrangers des premier et second degrés").

30 Article 21 Law No 4251 Immigration and Social Integration Code and other provisions, Government Gaz 80A, 1.April 2014 and Article 72 Codification of Legislation on the Entry, Residence and Social Integration of Third-country nationals on Greek territory, Law 3386/2005.

31 Article 45 D.P.R. 394/1999, *Decreto del Presidente della Repubblica 31 Agosto 1999, n. 394* and Article 38 National Immigration Law T.U. 286/98 *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* [No. 286/1998, 25 July 1998].

32 Article 3 and 4 Compulsory Education Act 1969 and Wet van 30 mei 1968, houdende vaststelling Leerplichtwet 1969 oblige all children to attend school. In 1998 the "Linking Law" amended the Dutch Immigration Act and other relevant laws, to exclude undocumented migrants from accessing most social services. Education was an exception (Article 10 Immigration Act 2000) - WET van 23 november 2000 tot algehele herziening van de Vreemdelingenwet.

33 Law on Foreigners, Article 132 [5 June 2008] (c.f. S. Spencer and V. Hughes, *op cit.*).

34 Point 3 of Article 10 of the Organic Law 1/1996 of 15 January on the Legal Protection of Minors, and partially amending the Civil Code and the Civil Procedure Law.

35 Bill 2012/13:58, Education Act (2010:800). (c.f. S. Spencer and V. Hughes, *op cit.*).

Some of the legislation in these countries also directly tackles limitations and barriers. For example, in **France**, the law stipulates that school bursaries for disadvantaged students attending secondary schools and colleges are available to all students, without discrimination on the basis of nationality or family residence status.<sup>36</sup> For school trips there is a “collective travel document” which facilitates the travel of all foreign school children, regardless of status, within the European Union<sup>37</sup> by guaranteeing them the right of re-entry into France when they return.

In **Italy**, the law specifies that the right to education includes receiving formal recognition of education and the final school-leaving qualification, regardless of whether students have a residence permit or identity documents.<sup>38</sup> Diplomas should be issued with the personal data declared at the moment of registration.<sup>39</sup> School registration is also possible even if no identification documents are available, on the basis of declared data.<sup>40</sup>

In **Spain**, undocumented children can legally access subsidies and grants, which are vital for many undocumented children to meet the extracurricular expenses of attendance in school (such as uniforms, books, transport, and meals).<sup>41</sup>

### Facilitating access to internships

In **France**, a circular from the Minister for National Education entitles all children from the age of 15, regardless of residence status, to participate in internships and apprenticeships.<sup>42</sup> Internship/trainee contracts are considered as contracts of employment, so students must seek authorization to work to undertake an internship, but this is provided for by the law.<sup>43</sup> The same circular also guarantees access to education from age 16 to 18, although it is not compulsory.

Following a successful legal battle,<sup>44</sup> undocumented children are also able to carry out internships in **the Netherlands**, when it is a compulsory component of an educational course that the student started before their 18th birthday, is recognised middle-level vocational training, and is unpaid.<sup>45</sup>

In **Spain**, the legislation clearly allows undocumented children to carry out internships. The contract is made between the educational institution and the internship provider. As there is no internship or employment contract between the student and the internship provider, there is no requirement for the student to have a valid work permit.<sup>46</sup>

36 Decree n°73-1054 of 21 November 1973 relating to the provision of national study bursaries to foreign children residing in France and attending second degree level institutions. Applications are often refused because children cannot provide the required financial information about their family situation (e.g. tax declaration). The Minister for National Education has clarified that this should not prevent students from receiving bursaries. For more information, see Gisti, *Sans papiers, mais pas sans droits*, 2009.

37 Circulaire du 2 Janvier 1996 c.f. PICUM, “[Building Strategies to Improve the Protection of Children in an Irregular Migration Situation in Europe. Country Brief: France](#)”, May 2012.

38 Article 38 National Immigration Law T.U. 286/98, *op cit*.

39 Article 45 D.P.R. 394/1999, *op cit*.

40 Article 45 National Immigration Law T.U. 286/98, *op cit*.

41 Article 9 *Organic Law 4/2000 de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*.

42 Circulaire 2002-063 du 20 mars 2002, *op cit*.

43 Since the Law of 24 November 2009, this authorisation is sought under the right of foreign children in Law L 5221-5 of the Code of Work and Law no.2009-1437 of 24 November 2009 relating to the Orientation and Professional Training throughout their life c.f. PICUM, “[Building Strategies to Improve the Protection of Children in an Irregular Migration Situation in Europe. Country Brief: France](#)”, May 2012.

44 Until recently undocumented students could register for vocational courses, but were not allowed to carry out the compulsory internship components, limiting their access to training and preventing them from completing their courses. On 2 May 2012, the District Court of The Hague ruled that the policy preventing undocumented students from taking internships (*Aliens Employment Act (WAV)*) violated the right to education (ECHR) and must be discontinued (BW4736, Rechtbank’s-Gravenhage, 403618 / HA ZA 11-2443).

45 [Brief aan de Tweede Kamer van de minister van Sociale Zaken en Werkgelegenheid over stages door illegale jongeren](#), 8 December 2012.

46 *Real Decreto 1147/2011, de 29 de julio, por el que se establece la ordenación general de la formación profesional del sistema educativo*.

## Providing access to Early Childhood Education and Care

In **Belgium**, the Flemish Ministry of Education conducted an information campaign with the slogan “Look what I can do”.<sup>47</sup> The aim of this campaign is to improve participation in early- age education (years 3-6), especially amongst new migrants and children with foreign language mother tongues. Parents with an insecure residence status, including undocumented migrants, are a particular target group for this campaign. To achieve its aim they provide organizations, professionals and parents that come in contact with people who have an insecure status, with information and materials to encourage parents to send their children to non-compulsory kindergarten (*kleuterschool*). The aim in encouraging migrant children to attend this level is earlier integration into the education system at an early age and have less difficulties, for example with the language, once they enter the obligatory education from age six years onwards.

In **France**, the law states that all children can also be enrolled in a pre-school near their residence from the age of three if requested by the family and a circular of the Minister for National Education reiterates that there can be no discrimination regarding the admission of foreign children to pre-schools.<sup>48</sup>

In **Italy**, there are examples of inclusive practice by local governments. In March 2010, the municipality of Florence publicly acknowledged the right of undocumented children to attend nursery school.<sup>49</sup> Other major cities have followed suit: Turin and Genoa both announced, almost immediately after Florence, a declaration that their municipalities have no obligation to check the residence permits of parents.<sup>50</sup>

## Health care

Laws regarding access to health care for undocumented children at the national level vary enormously across Europe (see Annex 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 European Union member state. However, in some countries, even this care may be subject to charging (see Annex).<sup>51</sup> 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.<sup>52</sup> Aside from this, there is wide variation in the care that is provided to undocumented children and at what cost in the different EU member states.

47 See [www.kleuterparticipatie.be](http://www.kleuterparticipatie.be)

48 Article L-113-1 of the National Education Code, op cit.; Circular letter of 6 June 1991 concerning general guidelines for the establishment of regulations for departmental pre-schools and elementary schools (Circulaire 91-124 du 6 juin 1991 “Directives générales pour l’établissement du règlement type départemental des écoles maternelles et élémentaires”, available online [here](#))

49 La Repubblica, “*Maternecomunali per baby clandestini*”, 12 March 2010 [Cf. PICUM Newsletter, March-April 2010, p. 13].

50 La Stampa, *Padoin: “Siaifigliodeiclandestini al nido, lo dice la legge”*, 1 April 2010 and Elvio Pasca, “*Bologna. Asili nido vietati ai clandestine*”, 8 April 2010.

51 Children attending public schools may access medical and dental prophylactics, including mandatory vaccinations, medical check-ups and screening tests, free of charge.

52 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).



## Key results from the Médecins du monde-International Network Observatory on access to health care<sup>53</sup>

Médecins du monde-International Network is an aid organisation that provides freely accessible frontline medical and social services for people and communities who face barriers in the mainstream health care system, and aims to improve access to health care for people all over the world facing numerous vulnerability factors.

In 2013, of the 16,881 patients seen in Médecins du monde (MdM) clinics in 25 cities across eight European countries, almost half (48.6%) were undocumented migrants. In five of the countries examined in the survey, the majority of the patients were undocumented (Belgium 63.2%, Spain 53.5%, France 67.8%, the Netherlands 90.2% and the UK 61.5%), whereas undocumented migrants were in much smaller proportions in three countries (Switzerland 15.4%, Germany 8.5% and Greece 23.8%), thus reducing the overall average.

Among all pregnant women seen:

- 65.9% had no access to antenatal care
- 42.8% had received care too late
- 70% required urgent or semi-urgent care according to the doctors

50% of children (on average) had been vaccinated against tetanus. On average, 70% had not been vaccinated, or did not know whether they had been vaccinated against hepatitis B, measles or whooping cough.

60.7% of individuals without permission to reside said they restricted their movement or occupation due to fear of arrest.

34.8% felt their housing was affecting their health or their children's health.

76.3% reported having experienced violence at least once.

27.6% said their mental health was bad or very bad.

Further, numerous practical barriers can 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 children's entitlements depend 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 children being denied services that they are entitled to by law. 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.

<sup>53</sup> Médecins du Monde, *Access to healthcare for the most vulnerable: In a Europe in social crisis. Focus on pregnant women and children*, May 2014.

## Recognising the importance of equal access to health care at EU level

The **European Council** Conclusions on 'Common values and principles in European Union Health Systems' of 22 June 2006 endorsed a joint statement from the Ministers of Health of the EU MS, considering that universality, access to good quality of care, equity and solidarity are the overarching common values and principles underpinning Europe's health systems.

European Council Conclusions on 'Equity and Health in All Policies: Solidarity in Health' of 8 June 2010 urge all EU MS to consider policies to "ensure that citizens, and all children, young people and pregnant woman in particular, can make full use of their rights of universal access to health care, including health promotion and disease prevention services."

The **European Parliament** 'Resolution of 8 March 2011 on reducing health inequalities in the EU' calls on MS 'to ensure that the most vulnerable groups, including undocumented migrants, are entitled to and are provided equitable access to health care; to promote public policies aimed at ensuring healthy life conditions for all infants, children and adolescents, including pre-conception care, maternal care and measures to support parents and, more particularly, pregnant and breast-feeding women, in order to ensure a healthy start to life for all newborns and avoid further health inequalities; and to ensure all pregnant women and children, irrespective of their status, are entitled to and effectively benefit from social protection as defined in their national legislation'.

The European Parliament has also adopted two additional resolutions which call for improvements in the provision of health care for undocumented migrants: European Parliament 'Resolution of 4 July 2013, 'Impact of the crisis on access to care for vulnerable groups'' and European Parliament 'Resolution of 4 February 2014 on undocumented women migrants in the European Union'.

The **European Commission's** 2012 Recommendation "Investing in Children: breaking the cycle of disadvantage" sets out principles to guide the policy-making of member states to reduce child poverty and social exclusion. It recommends the development of integrated strategies based on three key pillars: Access to adequate resources, access to affordable quality services and children's right to participate. The second pillar calls for particular attention to the needs of undocumented children to access their right to health care.

The European Commission Communication 'On effective, accessible and resilient health systems' of 4 April 2014 sets out actions the EU can take to optimise the way that member states' health systems work and includes improving accessibility as one of the three areas for improvement through EU action. It does not mention migrants, but notes the obligation for MS to have an adequate health care system which does not exclude parts of the population from receiving health care services.

The European Commission Action Plan on HIV/AIDS in the EU and neighbouring countries: 2014-2016 lists migrants, including undocumented migrants, as a priority group for action.<sup>54</sup>

The **European Centre for Disease Prevention and Control (ECDC)** has stated that: "Countries in Europe and Central Asia need to provide equitable access to prevention and treatment services to all categories of migrants, including undocumented migrants."<sup>55</sup>

The **EU Fundamental Rights Agency (FRA)** has stated in an opinion that "In light of Article 24 of the CRC, every child present on the territory of an EU Member State is entitled to the same healthcare services as nationals. This should also include immunisations, which are a major preventative healthcare measure."<sup>56</sup> Concerning all migrants in an irregular migration situation, they should "at a minimum, be entitled by law to access necessary healthcare services... The same rules for payment of fees and exemption from payment should apply... as nationals".<sup>57</sup> Further the FRA recommends that immigration control practices should be de-linked from health care – there should be no requirement for information to be shared with immigration authorities and no apprehensions at or next to medical facilities.<sup>58</sup>

54 European Commission, *Action Plan on HIV/AIDS in the EU and neighbouring countries: 2014-2016*, Commission Staff Working Document, SWD(2014) 106 final Brussels 14.3.2014.

55 ECDC, *Monitoring implementation of the Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia: 2012 progress. Thematic report: Migrants*, September 2013, p.26.

56 FRA, *Migrants in an irregular situation: access to health care in 10 European Member States*, 2011, p28.

57 FRA, *Fundamental rights of migrants in an irregular situation in the European Union*, 2011, p83.

58 FRA, *Apprehension of migrants in an irregular situation—fundamental rights considerations*, 2013.

## What are elements of good practice concerning access to health care for undocumented children?

- **Explicit legislation:** right to equal access to health care – including financial subsidies - for all children regardless of migration or residence status, explicit in law.
- **Firewall:** legal prohibition of the sharing of personal information between health care institutions and immigration authorities, and of immigration enforcement actions near health care institutions.
- **Simple administration:** right to equal access realised through minimal administrative process, e.g. single registration in municipal register or with local social welfare/ health office.
- **Adapted administration:** registration made possible in practice for children without identification documentation or proof of address, on the basis of declared information.
- **Awareness-raising:** training and information about rights of migrant children and duties of health care institutions and staff for migrant children and families and health care institution staff.
- **Targeted measures to address practical barriers:** e.g. evening and weekend opening hours; issuing a medical file that the child can keep to improve continuity of care; promotion of school-based prevention programmes, etc.
- **Mental health:** training of medical staff (including school-based counsellors) on the challenges faced by migrant children to improve prevention, diagnoses and treatment of mental health issues.

## EXAMPLES OF PROMISING LAW, POLICY AND PRACTICE FROM ACROSS THE EUROPEAN UNION

### Making legislation explicit about equal rights

In five EU member states undocumented children are explicitly entitled to the same level of care as regularly residing and citizen children in their legal framework, though there is a separate administrative system to manage this access in some cases. These are **Cyprus, France, Italy, Spain** and **Sweden**.<sup>59</sup> In **Portugal**, the law explicitly provides equal access until the age of 16, and broad access after 90 days of residence.<sup>60</sup>

The law is also explicit about undocumented children's right to access health care regardless of status in **Greece**, but it is not explicit that the level of care should be equal.<sup>61</sup> In two further EU countries, **Estonia**<sup>62</sup> and **Romania**,<sup>63</sup> the legislation defines all children as insured. Therefore, undocumented children are implicitly entitled to the same level of care as nationals, as all children are included in the national insurance system by law.

However, in all countries, including the nine above mentioned member states where undocumented children should have equal access to health care according to their legal framework, unclear legislation, practical barriers to accessing health care and limited access to health care for their parents can significantly impact children's health and their access to services. It is essential to consider the way in which access to health care for undocumented children is organised administratively, and the environment around health care provision for parents.

For example, in Greece, the legislation is so unclear that implementation is very varied and relies on discretion on local level; it is often interpreted as only applying to urgent care. In addition, significant cuts to public health expenditure mean that access is increasingly difficult and costly for all residents in Greece. In Cyprus, the Circular of the Minister of Health that establishes that all children, regardless of status, should receive necessary medical care, has not been officially published although it has legal basis in the national law ratifying the Convention on the

59 See annex for details.

60 See annex for details.

61 See annex for details.

62 See annex for details.

63 See annex for details.

Rights of the Child, and is the official policy. Therefore awareness and implementation remain minimal, and both official publication and greater formalisation in the law are necessary. Lack of awareness among service providers of undocumented children's right to equal access to health care can also lead to inappropriate refusals of care in Romania, where adults only have access to emergency care.<sup>64</sup> In Spain, since 1 September 2013, a Royal Decree has limited adult undocumented migrants' access to health care to emergency care and care when pregnant. While the decree does not affect children's legal entitlement to health care, health care professionals and civil society organizations working with undocumented migrants are concerned about the impacts that the new restrictions are having on undocumented children's health care in practice. There are cases recorded of children being refused care.<sup>65</sup> Further, as the right to health care is severely curtailed for undocumented adults, they are more likely to delay seeking care for their children due to lack of engagement and familiarity with the health system and awareness of their children's rights, and fear of contact with local authorities as well as hospitals and clinics.

### Minimising administrative and financial barriers

In **France**, although children of undocumented migrants<sup>66</sup> are not eligible for the mainstream health insurance as unaccompanied children are, they are entitled to State Medical Assistance (Aide Médicale État - AME) free of charge, which covers all kinds of health care. Unlike adult undocumented migrants, children have the right to AME immediately, without any administrative requirements,<sup>67</sup> except to prove their identity.<sup>68</sup> They have access to AME in their own right, do not have to wait for their parents to prove that they are eligible, and can continue to have access even if the parents are found not to be eligible. AME is granted for a year and families do not have to wait until their child is sick to register them. All types of health care should also be available to children, regardless of status, in hospitals, ensuring health care for children outside the AME system.<sup>69</sup> While various practical barriers remain, many children of undocumented migrants receive health care through the AME system.

### Finding solutions on local level<sup>70</sup>

In **Germany**, while according to one law,<sup>71</sup> undocumented migrants should have the same access to health services as asylum seekers - in cases of acute illness and pain, and maternity care - there is another law<sup>72</sup> that requires social welfare offices to report undocumented migrants to the immigration authorities in all but emergency care situations. These contradictory laws mean that undocumented migrants, including children, are only able to access emergency treatment free of charge from public health facilities and would be at risk of denunciation and deportation if they were to try to access any other health services. Therefore, in effect, the legal framework only entitles undocumented migrants to emergency care, and there are at times difficulties in accessing even this care.<sup>73</sup>

64 HUMA Network *Access to health care and living conditions for asylum seekers and undocumented migrants in Cyprus, Malta, Poland and Romania*, 2011, p182

65 Médicos del Mundo España is monitoring cases of migrants being denied access to healthcare across the country as a consequence of the implementation of the Royal Decree 16/2012 on an ongoing basis. See: Médicos del Mundo España (2014) *Dos años de reforma sanitaria: más vidas humanas en riesgo*, April 2014.

66 In France, children are not required to have a residence permit (until the age of 18). Therefore, legally, there is no 'undocumented child' in France. However, the status of their parent(s) still affects them and their access to rights.

67 To claim AME, it is necessary for adult applicants to prove that they have been living in France continuously for more than three months (but not regularly so as to qualify for CMU) and that their income is below a certain economic threshold.

68 Article L.251-1 Code on Social Action and Families (*Code de l'action sociale et des familles* - CASF) provides access to State Medical Assistance (AME) to undocumented migrants. A Council of State ruling on 7 June 2006 exempted children of the three month residence requirement, with consideration of the best interests of the child (Article 3 CRC) (Arrêt du Conseil d'Etat du 7 juin 2006).

69 This care is provided directly in the emergency departments of hospitals or is organised through the office for access to medical care (permanences d'accès aux soins de santé - PASS), which all public hospitals should have. PICUM "[Building Strategies to Improve the Protection of Children in an Irregular Migration Situation. Country Brief: France](#)", 2013.

70 For more information and examples from Belgium, Germany, Italy, Spain and Sweden see: PICUM, *Access to Health Care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities*, October 2014.

71 Asylum Seekers Assistance Law Asylbewerberleistungsgesetz, § 1.5, § 4 and § 6

72 German Residence Act (Aufenthaltsgesetz), § 87. This requirement does not apply to health care providers, including administrative staff within health care institutions, due to extended medical confidentiality (German Residence Act (Aufenthaltsgesetz), as amended by the General Administrative Provision of the Federal Department for the Interior, § 88.2 amending the German Residence Act, 2009 [Allgemeine Verwaltungsvorschrift des Bundesinnenministeriums zum Aufenthaltsgesetz]).

73 For example, the Medibüro Kiel have had several cases where they have sent a patient for emergency treatment and the hospital has been reluctant to provide care due to complex administrative procedures for the reimbursement, lack of procedures, and lack of awareness.

In practice, many health care providers treat undocumented migrants using their own resources, or in cooperation with city and regional governments, to ensure that necessary health care is available on local level. For example, The Department of Health of the City of Frankfurt (*Gesundheitsamt der Stadt Frankfurt*) agreed to work with the organisation Maisha, an African women's NGO in the city, to provide medical consultations and treatment for undocumented migrants. This initiative has become a benchmark of good practice in Germany, and several other major city administrations have implemented similar drop-in centres that have 'Humanitarian Consultation Hours' (*Humanitäre Sprechstunde*) providing medical consultations and basic treatment for undocumented migrants.<sup>74</sup>

While recognising these promising practices throughout Germany, the legal and practical environment is problematic. The current situation means there is legal inconsistency, unregulated provision of public health services, strain on health professionals (in terms of professional ethics, stress, time and resource limitations), and serious challenges to individual and public health.

## Protection and Justice

Undocumented children face myriad risks of violence by different actors throughout their experiences of migration: in transit, in enforcement contexts and in the communities in which they reside. This section focuses specifically on exposure to domestic violence - by landlords, partners or employers for resident domestic workers - and access to protection and justice for child victims and witnesses.

Undocumented children may witness domestic violence, and in particular gender-based violence against their mothers or other female caregivers, or be subjected to domestic violence and abuse themselves. The key barriers described also raise significant questions regarding protection of children from other forms of violence, including child victims of trafficking in human beings.<sup>75</sup>

While undocumented children are generally not excluded from national child protection regulations, there are significant legal and practical barriers to protection. Lack of access to safe police reporting, protection and redress, as well as services for survivors of violence and homeless people make undocumented migrants, often mothers, vulnerable to violence and exploitation, and can trap them in situations of violence.<sup>76</sup>

### Police reporting

Policies which task police with enforcing migration regulations mean that undocumented migrants, including children, are unable to report violence to the police safely. They are unable to seek protection and redress without risk of detention and deportation, and regularly face immigration enforcement - or the threat of immigration enforcement - rather than protection and appropriate steps towards prosecution. This makes them 'zero risk' victims, and breeds a culture of impunity for violence.

This is particularly evident in the verbal abuse that is often integrated into violence against undocumented migrants; it is quite common for perpetrators to taunt victims about their inability to report violence and exploitation to the police. Threatening deportation is likewise a common feature of interpersonal violence against undocumented migrants. In this context, children may be at greater risk of experiencing violence or witnessing violence against a parent.

The French organisation **La Cimade** contacted 75 police stations in the Parisian region on 2 March 2010 to gauge their response to undocumented women reporting violence.

Asked whether an undocumented woman beaten by her spouse could lodge a complaint: 38% of police stations stated that she would be arrested. This included 5% of police stations that said she would not even be able to lodge a complaint. 12% of the stations contacted could not provide an answer.

Source: PICUM, *Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*, 2012.

74 Text taken from PICUM, *Access to Health Care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities*, October 2014

75 For example, a report from the Children's Society in the UK challenged the idea that child victims of trafficking are entirely hidden away from society, finding that in reality, many attend school, church or doctor's clinics, but feel too afraid to admit the abuse.

76 PICUM, *Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*, 2012.

## Access to shelters

Undocumented migrants are often denied access to shelters and services for victims and for women survivors of violence, as well as emergency shelters and homelessness services.<sup>77</sup> While there are possibilities for undocumented migrants to access emergency night shelters, access is difficult in practice, due for example to document requirements (often linked to shelters' funding regulations), lack of capacity, lack of awareness, and discrimination, as well as the fear or risk of data being shared with immigration authorities.

Access to state-run longer-term homelessness shelters often requires regular residence or social security registration. Private facilities are also often reluctant to accept undocumented homeless migrants for long-term shelter programmes.<sup>78</sup>

Despite child protection policies and safeguarding duties on public authorities in most EU countries, the situation differs little when undocumented migrants have children. Some European countries have possibilities to provide temporary shelter for undocumented families who have an on-going application with the immigration authorities, but these arrangements remain very restricted, and are often unsuitable for children.

Lack of access to shelters severely limits women and children's possibilities to exit violent situations, and can lead to situations where families are forced to choose between abusive living conditions and homelessness.

### What are elements of good practice concerning access to protection and justice for undocumented children?

- **Safe police reporting:** measures to ensure victims and witnesses of crime, including violence, can safely report to the police without risk of immigration enforcement e.g. legal prohibition of sharing of personal data of victims and witnesses to immigration authorities.
- **Justice:** appropriate follow up to allegations made, including prosecution and compensation as appropriate, regardless of the residence status of the victim.
- **Residence status:** facilitated access to secure independent residence permits for victims of violence and their children, including provision of temporary residence status in the interim.
- **Support services:** right to equal access to shelters and services for all people experiencing homelessness, victims, and women survivors of violence, regardless of status, explicit in law.
- **Adapted administration:** right to equal access realised through administrative processes e.g. redressing discrimination resulting from funding and reimbursement requirements on shelters.
- **Capacity:** allocation of funding to increase the number of shelter spaces, as well as specialised services and temporary accommodation for women and children victims of violence.

77 Across Europe, the severe lack of specialised shelters forces women who are escaping violent situations to find protection in homeless shelters. In their *2010 Country Report*, the WAVE network reports that only six countries in the EU provide an adequate number of women's shelter places, in four countries there is a severe lack of shelter places and extremely poor service provision and in three countries no specialized services at all c.f. PICUM, *Housing and homelessness of undocumented migrants in Europe: Developing strategies and good practices to ensure access to housing and shelter*, March 2014.

78 European Union Agency for Fundamental Rights, *Fundamental rights of migrants in an irregular situation in the European Union*, 2011, p.64.

## EXAMPLES OF PROMISING LAW, POLICY AND PRACTICE FROM ACROSS THE EUROPEAN UNION

### Providing an independent residence permit and support services for victims of domestic violence

In **France**, the Immigration law<sup>79</sup> provides that undocumented women who separate from a violent spouse can be issued a residence permit or have their residence card renewed. While implementation was previously at the discretion of the Police Prefect in Paris or the Prefect representative of the Ministry of Interior in each department,<sup>80</sup> the Law on Violence Against Women established in 2010 a judicial protection order; if the woman has a protection order, the Prefect is obliged to provide a temporary resident card to undocumented women experiencing violence as soon as possible.<sup>81</sup> It remains discretionary if the residence permit is issued/ renewed if the woman does not have a protection order. If the perpetrator is condemned, a permanent resident card should be issued. The protection order came into force on 1 October 2010, and by 24 November 2010 the National Collective for the Rights of Women (*Collectif national pour les droits des femmes*) was established to monitor the application of the law. The Collectif has identified significant barriers in practice, ranging from lack of training for justice personnel, to unawareness among migrant women, and varying implementation between regions. A new law in 2014<sup>82</sup> addresses some of the practical barriers. It removes any charges for applying for a temporary residence permit in cases of violence, including if it is the person's first residence permit (normally 600 euros, while a renewal costs 110 euros). Further, it clarifies that it does not matter if the relationship was ended by the accused perpetrator or victim of violence.

**Spanish** legislation on gender-based violence applies to all women in Spain regardless of their residence status, and establishes the state's responsibility to guarantee women in special personal and social circumstances, such as migrant women, the use of the services provided by the law. The Spanish Immigration Act<sup>83</sup> grants specific protection to undocumented women survivors of violence. A reform in 2011 removed the obligation, established by previous legislation, for the police to automatically open an expulsion file for undocumented women who contact them. Any deportation file opened before the report will be temporarily suspended, and women victims of gender-based violence may apply for a residence permit both for herself and her children, as soon as a judicial protection order has been adopted or a public prosecutor's report stating evidence of gender-based violence has been issued. The law grants a temporary residence permit for women victims of violence and for their children until judicial proceedings are resolved. If the aggressor is found guilty and the judicial process finds evidence of gender-based violence, the woman will receive a regular residence and labour permit.<sup>84</sup> However, undocumented women and children may legitimately fear enforcement action if the perpetrator is not found guilty. Alongside other practical barriers, this limits the reach of the protection measures, as the burden of proof on victims of domestic violence can be disproportionate and insurmountable.

79 LOI n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité.

80 Articles 17 and 42, LOI n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité.

81 LOI 2010-769 du 9 juillet 2010 relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants.

82 LOI n° 2014-873 du 4 août 2014 pour l'égalité réelle entre les femmes et les hommes.

83 Article 31 bis, Instruction DGI/SGRJ/3/2011, of 20 April amending Regulation of Organic Law 4/2000, and Act 2/2009124, (*Instrucción DGI/SGRJ/3/2011, sobre aplicación del Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, en materia de informe de arraigo*).

84 Statistics gathered by the Spanish government prove that undocumented women do not take advantage of the benefits recognised by the law in order to gain a residence permit. Figures from October 2011 show that of the 2,667,662 residence and labour permits granted to migrants in Spain, only 3002 were awarded to migrant women on grounds on gender-based violence. Despite recent economic difficulties in Spain, the 2011 amendment received cross-party support.

There are similar provisions for a limited number of migrant women and children in the **UK** - persons given permission to enter or remain in the UK as the husband, wife, civil partner or unmarried/same-sex partner of a British citizen or a settled person (i.e. on a dependent visa). They may be able to apply for permanent settlement in the UK if the relationship has broken down as a result of domestic violence, at any time during the two-year probationary period or even after the permission is no longer valid.<sup>85</sup> Eligible applicants who are destitute and in need of financial help are able to apply to access public funds and support services (otherwise unavailable during the probationary period).<sup>86</sup> However evidence requirements and lack of access to legal assistance can make the procedure difficult to access.

### Making police reporting safe

Police in the **City of Amsterdam** have been operating a 'free in, free out' policy since 2007, making use of their discretionary power not to hold undocumented migrants for irregular residence when they report crimes, rather prioritizing the pursuit of crime and rule of law. The Amsterdam police actively reach out to migrant communities, sharing phone numbers so they can be contacted directly and distributing cards for undocumented migrants to carry, explaining their rights. These include the right to leave the police station freely at any time and to report crime as a victim or witness anonymously. The unit also visit a Ghanaian Church in Amsterdam – Zuid Oost every month to meet with a group of undocumented migrants, and answer queries on key thematic issues such as lodging a complaint, getting a protection order, and taking a case to court. Undocumented victims that have reported a crime can also access victims' services. The policy was formalized in 2011<sup>87</sup> and became a national pilot in 2013.

Although migrants have the right to report crime anonymously, a barrier to justice is the need to provide personal information if the report is used in court. At this point, they risk being detained. Therefore, the national government also agreed that victims can get a 3-month delay of departure, providing a short reprieve from risk of apprehension for those currently with a deportation order.

The Amsterdam safe police reporting pilot was evaluated in 2014 and other municipal governments are considering implementation.<sup>88</sup> Although the numbers of undocumented migrants that used the safe reporting scheme are limited, it proved to be important for them to feel less vulnerable when confronted with violence and other crime.

### Funding shelter spaces on local level

The **Municipality of Utrecht in the Netherlands** supported the Dutch non-profit organisation STIL to set up a shelter for undocumented women and children called Fanga Musow<sup>89</sup> ("Strong Women") in 2005. This initiative offers undocumented women and children safe and stable accommodation, financial help, legal assistance, education and medical services. Now run as a project of Stichting Seguro, the shelter is partly funded by the Municipality (staff costs) and partly funded by numerous independent donors (other running costs and financial assistance to the women). Stichting Seguro also manages three shelters for homeless undocumented men in Utrecht, entirely funded by the Municipality.<sup>90</sup> The Municipality also fully funds another shelter for undocumented women and children called Huize Agnes.<sup>91</sup> The majority of the undocumented women supported in this shelter

85 Paragraph 289 Immigration Rules.

86 UK Border Agency website, "Victims of domestic violence" (<http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/domesticviolence/header1>).

87 Text proposal 'free in – free out' to municipal council nr 945, [proposal accepted](#) on 22 December 2011.

88 A 'free in – free out' proposal was approved in the city of Utrecht, but a formal decision has been postponed until after the evaluation of the Amsterdam pilot by the national government. A contact person between the police and the support organisations has been appointed.

89 <http://www.fangamusow.nl/> and PICUM, *Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*, 2012, PICUM: Brussels.

90 <http://www.seguro-opvang.nl/>.

91 <http://www.agnesvanleeuwenberch.nl/>.



arrived in the Netherlands as unaccompanied children and are now undocumented young women, some with children.

The **Swedish city of Gothenburg** implemented a local initiative to facilitate undocumented women's access to emergency shelters. After almost a year of campaigning by "*Ain't I A Woman*", an initiative of Sweden's "No One Is Illegal" network, local politicians agreed to address the administrative barriers preventing undocumented women from accessing state-funded shelters. On 19 February 2011, the municipality of Gothenburg voted in favour of a motion to reimburse shelters offering undocumented women protection against violence. Non-profit shelters financially supported by the city are now compensated for activities with undocumented women, while the Municipal Emergency Centre for Women is also commissioned to provide support and protection to this group. The "*Ain't I A Woman*" network have affirmed that cooperation with shelters has improved since they have the right to provide protection for undocumented migrants and can receive reimbursement.<sup>92</sup>

### **Establishing minimum standards on the rights, support and protection of victims of crime, regardless of status, across the European Union**

The European Union adopted a Directive establishing minimum standards on the rights, support and protection of victims of crime.<sup>93</sup> The Directive strengthens the rights of victims and their family members to information, support and protection, as well as their procedural rights when participating in criminal proceedings. It also includes provisions that will ensure that professionals are trained on victims' needs and encourages awareness-raising on victims' rights. There are a number of specific provisions relating to child victims. All EU member states (except Denmark) must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 November 2015.

The Directive is clear that it applies to all victims, regardless of their residence status,<sup>94</sup> and recognises the particular vulnerability of migrant women on spouse-dependent visas<sup>95</sup> and the need for individual assessments to identify specific protection needs to consider the residence status of the victim and avoid secondary and repeat victimisation.<sup>96</sup> Transposition and implementation of the directive, to effectively protect undocumented children and families who are victims of crime, including violence, exploitation and abuse, will be key.

92 PICUM, *Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice*, 2012, p.88-89.

93 [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.](#)

94 Article 1 and paragraphs 9 and 10 of the preamble.

95 Paragraph 18 of the preamble.

96 Paragraph 56 of the preamble, Article 22 and 23.

## 2. Ending the immigration detention of children and families

### The legal framework

The Committee on the Rights of the Child has clearly reiterated that “the detention of a child because of their or their parent’s migration status **constitutes a child rights violation and always contravenes the principle of the best interests of the child.**”<sup>97</sup>

As well as the fact of their detention being a breach of their rights, the process, length and conditions of detention violate numerous rights, with significant impacts on their well-being and development in the short and long term.

When some form of deprivation of liberty has been found necessary, the Committee has stated that “to the greatest extent possible, and **always using the least restrictive means necessary**, States should adopt **alternatives to detention that fulfil the best interests of the child, along with their rights to liberty and family life** through legislation, policy and practices that allow children to remain with family members and/or guardians... in **non-custodial, community-based contexts** while their immigration status is being resolved.”<sup>98</sup>

European Union law (the ‘Return Directive’)<sup>99</sup> governing the detention of irregular migrants does not currently meet child rights standards as it does not prohibit the detention of children and families. However, 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 further establishes that the best interests of the child shall be a primary consideration in the context of the detention of children pending removal.

### A widespread practice

Despite the strict limitations on the use of detention for children and families in the EU Return Directive, and although the laws in many European Union 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 Return Directive<sup>100</sup>:

- 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.

97 Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration*, Report of the 2012 Day of General Discussion, 2013, para 78.

98 Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration*, Report of the 2012 Day of General Discussion, 2013, para 79.

99 [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.

100 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.

A comparative study<sup>101</sup> 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.<sup>102</sup>

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,<sup>103</sup> and is a violation of children's rights.

## 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.<sup>104</sup>

The Committee on the Rights of the Child has made clear that **alternatives to detention must be implemented for the whole family**. Separating families by detaining a parent is not in compliance with children's rights, including their right not to be separated from their parents against their will,<sup>105</sup> right to family life, and their right to have their best interests given primary consideration (and paramount consideration in questions of family separation).

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.

### Separation through parental detention harms children in the UK

A study 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.

Source: BID "Fractured Childhoods: the separation of families by immigration detention", April 2013.

101 A. Bloomfield, E. Tsourdi, J. Pétin, P. de Bruycker (ed.), 'Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation', January 2015.

102 Austria opened its first specialized immigration detention facility in early 2014 (Global Detention Project, [Austria Detention Profile](#), last updated December 2014).

103 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.

104 E.g. in the UK, see BID "Fractured Childhoods: the separation of families by immigration detention", April 2013.

105 Except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence (Article 9). The Committee has made clear that the best interests of the child cannot be superseded by migration control interests.

## How many migrant children are detained in the EU?

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 doing country-level studies that have requested the information specifically or gathered it directly.

- A recent study<sup>106</sup> has gathered statistics on immigration detention in the European Union and Norway. For 2013, a **total of 92,575 people were detained for migration-related reasons in 22 EU member states and Norway**.<sup>107</sup> Disaggregated figures on the number of children detained are not available.
- In **Austria**, figures on detention of children and provision of alternatives to detention show comparatively a distinct discrimination against children aged 16-18, who are much more likely to be detained. In 2010, 18 children under the age of 16 were detained, while 365 were granted alternative measures. At the same time, 154 children between the ages of 16 and 18 were detained, while only 84 were offered non-custodial alternatives.<sup>108</sup>
- In **Bulgaria**, 806 vulnerable people were detained in 2013. The figure is not disaggregated; 'vulnerable people' include children and people with special needs.<sup>109</sup> A law adopted in March 2013 stipulates that no unaccompanied children should be detained, even for short periods of time.
- In **Finland**, 44 children were detained in 2013, of which 10 were unaccompanied.<sup>110</sup> According to police statistics, between 2008 and 2012, the number of children detained each year varied, between 10 and 24. Statistics provided by the Metsälä detention centre for the same period indicate that between 17 and 30 children were detained annually.<sup>111</sup>
- In **Hungary**, when asked for the number of children (both accompanied and unaccompanied) detained in recent years, the Office of Immigration and Nationality stated that one family had been detained in 'foreigners policing detention' during 2011, and two in 2012. The agency neglected to include families in asylum procedures. In 2012 UNHCR reported that "according to Hungarian officials, at least 77 families have been detained under the new legal provision [on asylum seekers]."<sup>112</sup>
- In **Poland**, 516 children were reportedly detained in 2012, 10 of whom were unaccompanied. Families with children are systematically detained, usually in separate family units within the detention centres.<sup>113</sup>
- In **Sweden**, 99 children were detained in 2013, of which 14 were unaccompanied. The average length of detention in 2013 for all detainees was 5 days.<sup>114</sup>

106 European Migration Network (EMN), "The use of detention and alternatives to detention in the context of immigration policies: Synthesis Report for the EMN Focussed Study 2014"

107 Cyprus, Denmark, Greece, Italy, Portugal, and Romania were not included.

108 Austria EMN National Contact Point, "The use of detention and alternatives to detention in the context of immigration policies in Austria: Synthesis Report for the EMN Focussed Study 2014", citing data from the Human Rights Advisory Board, 2011.

109 Bulgaria EMN National Contact Point, "The use of detention and alternatives to detention in the context of immigration policies: Synthesis Report for the EMN Focussed Study 2014".

110 Finland EMN National Contact Point, "The use of detention and alternatives to detention in the context of immigration policies: Synthesis Report for the EMN Focussed Study 2014".

111 The authorities have set up a working group to evaluate and improve the collection of detention statistics, in recognition of their poor quality, in particular that the numbers provided by different detaining actors do not match. Possible reasons for discrepancies include: unstandardized methods of accounting, overlap between different registers, cases of children whose age is disputed not being included, changes in age assessments, and people being removed from the country before transfer to a detention centre (so showing in police statistics but not detention centre statistics). A. Seilonen & M. Kmak "Administrative detention of migrants in the District Court of Helsinki", Law and the Other in Post-Multicultural Europe, University of Helsinki 2015.

112 Global Detention Project, Hungary Profile, February 2014.

113 Caritas Poland, "National Report: Poland" for JRS-Europe (2010) Becoming Vulnerable in Detention c.f. PICUM (2011) "Building Strategies to Improve the Protection of Children in an Irregular Migration Situation: Poland Country Brief".

114 EMN Sweden "The use of detention and alternatives to detention in the context of immigration policies in Sweden" Migrationsverket (Swedish Migration Board), 2014, p.14.

## What are elements of good practice concerning non-detention of undocumented children and families?

**Legal prohibition:** law prohibits the detention of any child for immigration purposes, as well as separation of children from parents in order to detain parents.

**Liberty:** legal requirement to consider necessity of any restriction of liberty of a child or family, and use of least restrictive alternative measure to detention possible.

**Non-custodial alternatives:** development and implementation of alternatives to detention for children and their families, focusing on case management and resolution,<sup>115</sup> and when necessary, duty for a parent to report to relevant authorities on a regular basis (proportionate and practical frequency, with transport costs provided).

## EXAMPLES OF PROMISING LAW, POLICY AND PRACTICE FROM ACROSS THE EUROPEAN UNION

Examples of positive child and family alternatives to detention from around the globe, are being researched, explored and implemented by states together with child and migrant rights advocates, lawyers, social workers, health and educational specialists.

### Clearly prohibiting immigration detention of all children in law

In **Ireland**, the Immigration Act 1999 stipulates that no person under 18 may be detained for immigration purposes, whether accompanied or unaccompanied.<sup>116</sup> There remain concerns that children are inappropriately detained due to poor age assessments. If the Garda has reasonable grounds to believe that the person is not under 18, they may proceed with detention.<sup>117</sup> If the caregiver of a child has been detained, the relevant authorities (the health board) are to be immediately informed. If foreign nationals appealing deportation orders comply with certain conditions—including remaining in a specified district or location, reporting to a Garda Síochána station, handing over travel documents, and/or providing a bond or guarantee from a third party—authorities can opt not to detain them.<sup>118</sup> In practice, immigration detention is not systematically used in Ireland.<sup>119</sup>

115 For more information see [The Child-Sensitive Community Assessment & Placement Model](#) developed by the International Detention Coalition.

116 Immigration Act 1999, Section 5. 4 (a)

117 Section 5(4)(b) of the Immigration Act 1999

118 Immigration Act 1999, Section 5. 5

119 Global Detention Project, [Ireland Profile](#), January 2014.

## Not detaining unaccompanied children

Several EU member states do not detain unaccompanied children. In some of these member states, it is possible to detain unaccompanied children under law but it is not, or only rarely, done in practice. In others, detention of unaccompanied children is prohibited by law.

For example, **Hungary, Ireland, Italy and Spain** have legislative provisions specifically prohibiting detention of unaccompanied children. In addition, unaccompanied children are not detained in practice in, for example, **Belgium, Slovakia and the UK**.<sup>120</sup> In the UK, it is policy that unaccompanied children are only detained in the most exceptional circumstances, and then only normally overnight, with appropriate care, whilst alternative arrangements for their care and safety are made. In other circumstances unaccompanied children must never be detained.<sup>121</sup> However, it is important to always consider the situation of unaccompanied children in the context of age disputes and assessments, when they may be detained as adults.

### Positive developments and remaining challenges in France

There have been some positive developments regarding the detention of families with children in mainland France. From a peak when 356 children were detained in 2010 and 351 in 2011, 99 children were detained in 2012 and 96 in 2013. Following condemnation from the ECHR,<sup>120</sup> a circular was issued on 6 July 2012 requiring that undocumented families are placed under house arrest, rather than in detention centres. However, house arrest still limits (at times completely) the right to liberty, and organisations have reported family separation due to parental detention and at times deportation, and continued detention in administrative holding facilities. Of the 96 children detained on the mainland in 2013, 41 were in detention centres (CRAs) and 55 in holding facilities (LRAs). Further, the overseas territory of Mayotte is excluded from the Circular; 3,512 children were detained there in 2013.<sup>121</sup>

In addition, 122 young people who declared themselves to be children were registered as adults and detained in 2013. Serious concerns around age assessments procedures and placement of young people in detention while their age is being assessed have been raised. Children - both accompanied and unaccompanied - are also being detained in transit zones at borders.<sup>122</sup>

## Specifying very limited circumstances for detention

In **Sweden**, the law stipulates children can only be detained if (i) it is probable that the child will be refused entry with immediate effect or to implement a deportation order, (ii) there is an obvious risk that the child will otherwise abscond and thereby jeopardise a deportation that should not be delayed and (iii) it would not be sufficient to place the child under supervision.<sup>125</sup> A child may also be detained if in a previous attempt to carry out a deportation order, it has proved to be insufficient to place the child under supervision.

120 See European Migration Network, "Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study", May 2010; Fundamental Rights Agency *Detention of third-country nationals in return procedures*, December 2010; ECRE & Save the Children "Comparative Study on Practices in the Field of Return of Minors", Final Report December 2011; 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.

121 UK Border Agency Enforcement Instructions and Guidance, Chapter 55 - Detention and temporary release, 55.9.3 'Young Persons'.

122 ECHR *Popov v. France*, n°39472/07 and n°39474/07.

123 ASSFAM, La Cimade, France Terre d'Asile, Forum Réfugiés-Cosi, Ordre de Malte France *Centres et Locaux de Rétention Administrative : Rapport 2013*.

124 Human Rights Watch, "France: Unaccompanied Children Detained at Borders: 500 a Year Held in Transit Zones", 8 April 2014. Human Rights Watch, *Lost in Transit: Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport*, 2009.

125 Supervision is defined as reporting regularly to the police or immigration authorities. This may also require the child surrendering their passport or other identity document (Chapter 10, Article 8 Foreigners Act [2005:716]).

Unaccompanied children (children without a legal guardian in Sweden) can only be detained in very exceptional circumstances, and children may only be detained with their families if the detention fulfils the above criteria. A child may be detained for a maximum of 72 hours, which can be extended for a further 72 hours in exceptional circumstances. A child may not be separated from both its legal guardians (either through the detention of the child or guardians).<sup>126</sup> Thus, reporting procedures must be implemented as an alternative to detention for families with children, unless there is a significant reason to expect the child will abscond and such supervision would not be sufficient to prevent this.

However, despite the limitations specified in the law, 99 children were detained in 2013, of which 14 were unaccompanied. There were therefore, fourteen 'very exceptional circumstances' in that year. At the same time, supervision was only used for 21 children, of which one was unaccompanied.<sup>127</sup> Further, in practice, when the child has two legal guardians, it is common for one to be detained (usually the father), while the other parent resides with the child in an open accommodation centre.

### **Codifying general rule against child detention, allowing family detention only on request**

In **Italy and Spain**, detention of unaccompanied children is prohibited. By these provisions no child should be detained. However, it is not prohibited for a child to be detained with their family.

In Italy, children can be detained with their parents in an "Identification and Expulsion Centre" (or CIE) only for protecting their right to family unity, and only if this is requested by the parents or is decided by the Juvenile Judge. The family must be detained together, separately from other detainees. Where this arrangement is not possible in a short amount of time, the family should be relocated to another centre.<sup>128</sup>

In Spain, it is considered a right for parents to be accompanied by their children, provided that the Public Prosecutor favours such an action and that the centre includes units that ensure family unity and privacy.<sup>129</sup> There are two centres with such 'family units'.

In practice, few children are detained with their families in either country. However, it is common for the family to be separated, and for one parent to be detained. No alternatives to detaining the parents are considered on the basis of the best interests of the child.<sup>130</sup>

126 Chapter 10, Articles 2, 3 and 5 Foreigners Act (2005:716).

127 EMN Sweden, *op cit*.

128 Article 2(f-g) Ministry of the Interior, Ministerial Circular of 30 August 2000, Prot. n. 3435/50.

129 Article 62 Organic Law 4/2000 of 11 January on the Rights and Freedoms of Foreigners in Spain and their Social Integration.

130 E. Rozzi, "Undocumented migrant and Roma children in Italy: between rights protection and control" in: Jacqueline Bhabha (ed.) *Children without a State: a global human rights challenge*, MIT Press, Cambridge, Massachusetts, 2011, p.186; ECRE & Save the Children, *Comparative Study on Practices in the Field of Return of Minors*, HOME/2009/RFXX/PR/1002, Final report December 2011, p.65.

## Developing alternatives to detention in the community

In **Belgium**, apprehended families with children are placed in designated family homes in the community ('return houses'). Family members are allowed to exit the house, providing that one adult member of the family remains present in the unit at all times. Children are allowed to attend school and families have access to health care. The duration of stay is 2 months, which can be extended to a maximum of 5 months total.<sup>131</sup> During this time, families are given counselling from a 'return coach' to encourage cooperation with return. Though the focus is on return, the return coach should also consider possibilities for regularisation, to provide a case resolution approach.

While Belgium has been lauded for its promising practice in developing alternatives to detention, there remain serious concerns around 'open return houses'. It is common for the family to be separated and one parent or other family members detained while the children and their mother are kept in the open return house. Further, placement in an open return house is not the least restrictive alternative to detention necessary in some cases. Families are displaced from their homes, which also impacts on children's access to education, which is difficult in practice due to lack of available space in schools, short windows of time prior to the return, etc.

A new law<sup>132</sup> introducing the possibility for some undocumented families to reside in their own homes during the accompaniment procedure addresses some of these concerns. The conditions include that they are a home owner or have an official rental contract or an agreement with the owner, that the family meets regularly and cooperates with their case officer, and that they can meet their subsistence needs.

However, a prohibition of the detention of families with children has not been formalised in law. On the contrary, the law<sup>133</sup> allows pre-deportation detention of families in closed centres if the centre is adapted to the needs of families with children and for as short a duration as possible.<sup>134</sup> Families that are considered not to be cooperating with return as well as some border cases risk being detained in family units in detention centres. Further, the law introducing the possibility for some undocumented families to reside in their own homes during the accompaniment procedures establishes three sanctions for families that do not comply with the conditions of the agreement: transfer to an open return house, transfer of one adult family member to a closed detention centre, and transfer of the whole family to a family unit in a detention centre. This law raises serious concerns, as it both reiterates the policy of detaining children in family units in closed detention centres and formalises the policy of family separation by detaining one adult.

131 The 2 month stay can be extended once, and then the stay can be extended for an additional month. See also: PICUM "[Building Strategies to Improve the Protection of Children in an Irregular Migration Situation. Country Brief: Belgium](#)", 2012.

132 Royal Decree of 17 September 2014.

133 Article 74/9 Law of 15 December 1980 concerning the access to the territory, the stay, the settlement and eviction of foreigners, in force since 27 February 2012.

134 Projet de loi insérant un article 74/9 dans la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en ce qui concerne l'interdiction de détention d'enfants en centres fermés.



## Conclusion

Despite a legal framework establishing that all children must enjoy equal protection, regardless of their or their parent's administrative status, undocumented children are subject to daily and systematic rights violations. Throughout Europe, children are being apprehended, detained and deported, and denied basic services, protection and justice in the name of migration control.

Within this general context, the situation is more complex; there are numerous examples of local, regional and national governments developing legislation and implementing measures to meet their legal obligations to children, and policy objectives in relation to education, health, rule of law, justice, development, social inclusion and social cohesion.

This report presented some examples of promising practices by various levels of governments in the areas of education, health care, protection from violence, and non-detention, alongside some available data and relevant policy documents at EU level. With these tools, it seeks to support governments, and stakeholders working with them, to achieve the policy recommendations presented, to ensure equal protection of all migrant children.

## Recommendations

These recommendations echo and elaborate on those made by 38 leading organisations in the fields of human rights, health, education and social inclusion, including the UN Committee on the Rights of the Child, UNICEF, OHCHR and the European Network for Ombudspersons for Children, in a [letter addressed to the European Council on 22 May 2014](#).

### To governments at all levels:

- Treat all children as individual rights holders – as children, first and foremost – in immigration and asylum procedures, including if they are accompanied by their parents or other caregivers. This should not jeopardise their right to family life.
- Reform regulations and practices regarding access to key services, protection and justice to ensure that all migrant children’s rights are explicit in law and accessible in practice. This includes pursuing proactive measures to address practical barriers.
  - In line with the above, ensure all children have equal access to all levels of education, health services, and shelters regardless of residence status, in law and practice.
  - In line with the above, ensure that all people can report violence to the police as victims or witnesses, and access victims support services and redress mechanisms, without facing any negative consequences as a result of the residence status.
- Operationalise existing legal safeguards and procedural guarantees, such as, the best interests of the child principle.
- Improve data collection methods, with full respect of data protection standards, establishing a firewall between population data and immigration enforcement. Ensure data is publicly available.

### To national governments:

- Evaluate enforcement regulations and practices – apprehension, detention and deportation – in order to assess the impacts on child rights and redress systematic and individual rights violations.
- Expeditiously cease the immigration detention of children and families with children, as well as family separation through detention.

## To the European Union:

- Ensure the inclusion of all migrant children in EU initiatives to ensure child rights are protected and promoted across all policy areas and EU action, including the successor to the EU Agenda on the Rights of the Child, as well as specific efforts to strengthen integrated child protection systems across the European Union.
- Adopt a comprehensive approach to protecting migrant children within Migration and Home Affairs policy, through policies and measures addressing all migrant children's rights, regardless of their application or residence status, whether they are accompanied or not by adults, and any additional protection needs.
- Ensure the effective transposition and implementation of the Victims Directive in EU member states for all victims, regardless of their residence status, including through special protection measures, using available mechanisms at EU level.
- Make the ending of immigration detention of children in the EU an explicit and concrete goal of the European Union, including through affirmation that the legal guidance from international and regional bodies on the best interests of the child impacts the interpretation and implementation of the Return Directive.
- Support member states in improving and attaining high standards in protection of migrant children across the EU, including by setting funding priorities, developing the evidence-base and facilitating rights and evidence-based dialogue and exchange of promising practices. In particular, support to improve and align data collection methods, in full respect of data protection standards, is necessary.

## Annex

Legal entitlements for undocumented children to access health care services in the 28 EU member states<sup>135</sup>

COUNTRY	EMERGENCY CARE <sup>136</sup>	PRIMARY CARE	SECONDARY CARE	LEVEL OF CARE COMPARED TO UNDOCUMENTED ADULTS, REGULAR MIGRANT CHILDREN AND CITIZEN CHILDREN
<i>Austria</i> <sup>137</sup>	Entitled: Full cost	No entitlement	No entitlement	Same as undocumented adults
<i>Belgium</i> <sup>138</sup>	Entitled: Free of charge	Entitled: Equally subsidised	Entitled: Equally subsidised	Same as undocumented adults
<i>Bulgaria</i> <sup>139</sup>	Entitled: Full cost	No entitlement	No entitlement	Same as undocumented adults
<i>Croatia</i> <sup>140</sup>	Entitled: Full cost	No entitlement	No entitlement	Same as undocumented adults
<i>Cyprus</i> <sup>141</sup>	Entitled: Free of charge	Free if cannot pay	Free if cannot pay	Same as citizen children
<i>Czech Republic</i> <sup>142</sup>	Entitled: Full cost	No entitlement	No entitlement	Same as undocumented adults
<i>Denmark</i> <sup>143</sup>	Entitled: Full cost	Unclear	Unclear	Unclear
<i>Estonia</i> <sup>144</sup>	Entitled: Free of charge	Entitled: Equally subsidised	Entitled: Equally subsidised	Same as citizen children
<i>Finland</i> <sup>145</sup>	Entitled: Full cost	No entitlement	No entitlement	Same as undocumented adults
<i>France</i> <sup>146</sup>	Entitled: Free of charge	Entitled: Free of charge	Entitled: Free of charge	Same as citizen children
<i>Germany</i> <sup>147</sup>	Entitled: Free of charge	Entitled: Full cost	Entitled: Full cost	Same as undocumented adults
<i>Greece</i> <sup>148</sup>	Entitled: Free of charge	Entitled: Unclear	Entitled: Unclear	Same as citizen children
<i>Hungary</i> <sup>149</sup>	Entitled: Free if unable to pay	No entitlement	No entitlement	Same as undocumented adults
<i>Ireland</i> <sup>150</sup>	Entitled: Free of charge (exc. administration fee if no GP referral)	Entitled: Full cost	Entitled: Free of charge	More services for undocumented children (than for undocumented adults)
<i>Italy</i> <sup>151</sup>	Entitled: Free of charge	Entitled: Free of charge	Entitled: Free of charge	Same as citizen children
<i>Latvia</i> <sup>152</sup>	Entitled: Full cost	No entitlement <sup>152</sup>	No entitlement	Same as undocumented adults

COUNTRY	EMERGENCY CARE <sup>136</sup>	PRIMARY CARE	SECONDARY CARE	LEVEL OF CARE COMPARED TO UNDOCUMENTED ADULTS, REGULAR MIGRANT CHILDREN AND CITIZEN CHILDREN
<i>Lithuania</i> <sup>153</sup>	Entitled: Free of charge	No entitlement	No entitlement	Same as undocumented adults
<i>Luxembourg</i> <sup>154</sup>	Entitled: Equally subsidised if unable to pay	No entitlement	No entitlement	Same as undocumented adults
<i>Malta</i> <sup>155</sup>	Entitled: Unclear	No entitlement	No entitlement	Same as undocumented adults
<i>Netherlands</i> <sup>156</sup>	Entitled: Free if unable to pay	Entitled: Free or equally subsidised if unable to pay	Entitled: Free or equally subsidised if unable to pay	Same as undocumented adults
<i>Poland</i> <sup>157</sup>	Entitled: Some free/unclear	Entitled to school-based services	No entitlement	Some more services for undocumented children (than for undocumented adults)
<i>Portugal</i> <sup>158</sup>	Entitled: Free of charge until 16 then some free; rest free if cannot pay & resident for 90 days	Entitled: Free if cannot pay & resident for 90 days	Entitled: Free if cannot pay & resident for 90 days	Same as citizen children until 16
<i>Romania</i> <sup>159</sup>	Entitled: Free of charge	Entitled: Free of charge	Entitled: Free of charge	Same as citizen children
<i>Slovakia</i> <sup>160</sup>	Entitled: Free of charge	Entitled: Full cost	Entitled: Full cost	Same as adults with irregular status
<i>Slovenia</i> <sup>161</sup>	Entitled: Free of charge	No entitlement	No entitlement	Same as adults with irregular status
<i>Spain</i> <sup>162</sup>	Entitled: Free of charge	Entitled: Free of charge	Entitled: Free of charge	Same as citizen children
<i>Sweden</i> <sup>163</sup>	Entitled: Free of charge	Entitled: Equally subsidised	Entitled: Equally subsidised	Same as citizen children
<i>UK</i> <sup>164</sup>	Entitled: Free of charge	Entitled: Free of charge	Entitled: Full cost	Same as adults with irregular status

- 135 The information provided in this table is based largely on the data gathered by 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) adapted by PICUM. Both authors strive to verify the accuracy of information provided, but recognise that due to complex, intertwining and changing national laws governing health systems and entitlements to access, there may be different or misinterpretations, or information that is out of date. We will update this table at intervals on the online version of this report so additional information and updates are welcome (last updated 23 February 2015). Some countries have wider entitlements to health services for unaccompanied children or children whose deportation has been postponed by the authorities; these are not covered in the present table, which presents entitlements for children that are undocumented and living in the community. This table does not discuss the situation in practice at all, only considering the legal framework.
- 136 Provided by a hospital emergency services department or paramedic team.
- 137 **Austria:** People without insurance have access to emergency treatment but are then expected to pay. Hospitals are obliged to pay costs if patients are unable to meet these. *Article 2(6) §§2,4 of the Basic Care Agreement, BGBl. I Nr. 80/2004. Austrian Federal Hospitals Act.*
- 138 **Belgium:** Under the Belgian national system, emergency care is theoretically provided free of charge to everyone, including undocumented migrants, without any administrative requirements. The hospital will generally start the DMH/AMU procedure either with the local welfare centres (CPAS/OCMW) with which the hospital has an agreement or the CPAS/OCMW where the patient habitual resides. Up to the age of six, all children have free access to preventative care (consultations and vaccinations) from the Office of Birth and Childhood (ONE) and Kind en Gezin centres, which are specific facilities with free and open consultations for every parent with young children (until the age of six), with or without health insurance coverage. Undocumented migrants – both adults and children – are not allowed to access the health insurance system (Universal Medical Coverage – CMU) but are eligible for ‘Urgent Medical Assistance’ (AMU/DMH) free of charge. Despite its name, the legal framework concerning AMU/DMH explicitly provides access to both preventative and curative care: all medical treatments covered by the basic national health insurance are covered. As part of the AMU/DMH procedure, CPAS/ OCMW require medical certification of the need of the care; while some reimburse the costs of this first consultation, undocumented migrants may be liable to pay. *Art. 57 § 2, 1° Loi organique des CPAS (8 July 1976); Arrêté royal relatif à l’aide médicale urgente octroyée par les centres publics d’aide sociale aux étrangers qui séjournent illégalement dans le Royaume (Royal Decree, 12 December 1996) ; Loi relative à l’assurance obligatoire soins de santé et indemnités (14 juillet 1994), Article 32 1st alinea No. 22. Royal Decree, 12 December 1996.*
- 139 **Bulgaria:** Emergency medical aid is provided when related to (a) life endangering health conditions; (b) examination of pregnant women or medical assistance during delivery; (c) psychiatric aid; (d) transplantation of organs, tissues or isolation; (e) mandatory medical treatment or isolation; (f) medical establishment of temporary or permanent working disability. *Health Act (2004), Articles 82 (1), 99 (1) and 100 (1); enforced on 1 January 2005.*
- 140 **Croatia:** *Regulation on Accommodation in Detention Center, Official Gazette Nr. 66/13; Law on the Obligatory Health Insurance and Healthcare of Foreigners in the Republic of Croatia and Law on the Protection of the Population of Infectious Diseases (Official Gazette Nr. 79/07, 113/08, 43/09).*
- 141 **Cyprus:** According to the *Revision of Healthcare Scheme in Public Hospitals from 1/8/2013*, emergency health care and specific services (such as for infectious diseases) are free for all patients, including undocumented migrants, aside from a registration fee (10 euros, foreseen for all apart from welfare beneficiaries). In addition, undocumented children attending school may have access to vaccinations. There is a *Circular [Y.Y. 11.11.09[4]] by the Minister of Health dated 2 December 2011*, based on article 24 of the Convention for the Rights of Children, which regulates the access of undocumented children and pregnant women (during prenatal and postnatal care). It is included in our analysis of the legal framework as it has legal basis in the national law ratifying the CRC and it is official policy. According to the circular, both groups should be given any necessary treatment, and in case they cannot cover the expenses on their own, they should be issued by the hospital an invoice for the expenses and be informed they can request the write off of the debt by the Ministry of Health. However, this decision has not been officially published, and awareness and implementation remain minimal. An official copy is publicly available here: <http://kisa.org.cy/wp-content/uploads/2015/02/Medical-Care-undocumented-children.pdf>.
- 142 **Czech Republic:** Regular migrants also rely on private health insurance to access health services. Those holding a Czech Republic toleration visa are entitled to primary healthcare services: *Act No.325/1999 Coll. on Asylum, Article 88. Act No.326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic, Article 48. Act No. 372/2011 Collection of Laws on health services and the conditions of their provision.*
- 143 **Denmark:** *Health Act, Section 80 (2008).* The Health Act also provides the possibility for undocumented migrants to obtain non-emergency health care if it is not reasonable to refer them for treatment in their country of origin. However, depending on the circumstances, the Regional Council may request payment for the services [*Consolidated Health Act no. 913, 13 July 2010, Section 80.1-2 and 81.2* according to D. Biswas et al. “*Access to Healthcare and Alternative Health-Seeking Strategies Among Undocumented Migrants in Denmark*”, *BMC Public Health* 11 (2011): 560]. *Law on Preventive Examinations for Children and Youth (Law no. 546 of the National Health Law)* entitles children to certain preventative treatments, examinations and dental check-ups (according to C. Cuadra, *Policies on Health Care for Undocumented Migrants in EU27, Country report, Denmark*, p.10) but entitlements for undocumented children are unclear.
- 144 **Estonia:** The legislation (*Article 5(4), Health Insurance Act (Ravikindlustuse seadus), RT I 2002, 62, 377*) defines all children as insured. Therefore, undocumented children are implicitly entitled to the same level of care as nationals, as all children are included in the national insurance system by law.

- 145 **Finland:** The reason they can only access emergency care is that they are not registered as citizens in any city or commune. A draft law extending undocumented migrants' entitlements to access services has been proposed. *Health Care Act (1326/2010) Section 50, Health Care Professionals Act (559/1994) Section 15, Act on Specialized Medical Care (1062/1989) Sections 3 and 30; and Act on the Implementation of Social Security Legislation (1573/1993) Sections 3, 3a and 3c.*
- 146 **France:** Irregular migrants who have resided in France for more than three months are entitled to all basic services through the State Medical Aid (Aide médicale d'État, AME; regulated by *Code on Social Action and Families, Article L.251-1: Loi No. 99-641 of 27 July 1999*) if they have resources under €720/month (threshold last raised 1 July 2014) and is valid for one year. Irregular migrants who cannot prove that they have been resident in France for more than three months are only entitled to hospital services for care that is deemed urgent. Children of undocumented families are automatically covered by the AME and do not have to comply with the three-month residence requirement. *Decree of the Council of State of 7 June 2006 (Arrêt du Conseil d'Etat du 7 juin 2006).* Therefore, children of undocumented migrants are entitled to the same level of health services as national children. However, they are not entitled to access health care through the Universal Health Coverage Act (CMU), as unaccompanied children are.
- 147 **Germany:** According to the German Asylum Seekers Assistance Law, entitlements to health services for irregular migrants are the same as for asylum seekers and go beyond emergency care. However, the German Residence Act contradicts, by requiring all civil servants, except educational institutions (including social welfare offices) to notify the immigration or competent police authorities when they obtain information about someone without a valid residence permit. An instruction by the Federal Assembly (2009) states that hospital administrative and medical personnel are bound by medical confidentiality (*Allgemeine Verwaltungsvorschrift (AVV) zum Aufenthaltsgesetz Nr. 88.2.3. vom 26 Oktober 2009*). However, any care that is not provided by emergency hospital departments, must be first approved by the social welfare office (Sozialämter). For treatment for acute illness and pain or maternity services from a doctor free of charge, the undocumented patient would have to obtain a health insurance certificate from the social welfare office. Hospitals are obliged to inform the welfare office of planned surgeries. In such cases, the welfare office has a duty to share undocumented patients' data with the relevant authorities. Due to this legal contradiction undocumented migrants' are in effect only entitled to emergency health care services. *Asylbewerberlesitungsgesetz, BGBl. I S. 2022 (1997), Sections 1, 4; Aufenthaltsgesetz (German Residence Act), BGBl. I S. 162, Sections 87(2) and 88(2); Sections 7, 19 Infektionsschutzgesetz.*
- 148 **Greece:** The law is explicit about undocumented children's right to access health care regardless of status, but it is not explicit that the level of care should be equal – it states that health care should be provided to 'minors' whether unaccompanied or not, in an emergency or not, regardless of status. *Codification of Legislation on the Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory, Law 3386/2005 (Government Gazette-GG A 212), Article 84 (1), amended by Directive of 2 May 2012.* Public services are not to be provided to irregular migrants except "hospitals, treatment centres and clinics in the case of third-country minors and nationals who are urgently admitted for hospitalisation and childbirth, and the social security structures which operate under local authorities". *Law 4251/2014 Immigration and Social Integration Code and other provisions (Government Gaz 80A, 1 April 2014), Article 26 (2a).* Therefore, adult undocumented migrants are only entitled to access care in emergency situations. Undocumented children also have free access to vaccination in the Centers of Protection Mother and Child.
- 149 **Hungary:** Undocumented migrants are expected to pay the full costs for emergency services, but if a patient cannot pay then the treatment is qualified as non-returnable and the healthcare provider can be reimbursed by the state. ESZCSM lists categories of persons entitled to compulsory insurance, which is needed to receive healthcare free of charge, undocumented migrants are excluded. They may access primary care with private practitioners at patient's full cost, and have to pay for the full cost of medicines. *Decree 87/2004 (X.4.), Act on Health, Act CLIV of 1997, Articles 94(1) and 142(2) and Regulation 52/2006.*
- 150 **Ireland:** Emergency care is provided free of charge for all, regardless of residence status, aside from a 100 euro administration fee that is foreseen for all patients if they do not have a referral from a GP, except in specific circumstances. Children up to 6 weeks of age receive emergency care are always exempt from this fee. All people in Ireland are expected to pay for primary health services, including for children, unless their parent's income is below a certain level. Irregular migrants are not able to apply for the medical card which entitles the holder to these services free of charge, meaning primary care services must always be paid at full cost. An Act adopted in July 2014 will grant children five years and younger free access to GP services. *Health (General Practitioner Service) Act 2014*, but it is yet to be implemented with a commencement order. Children are not charged the fees for in-patient hospital care that adults are required to pay unless they have a medical card, meaning all secondary care services are free of charge for children. It is not necessary to be regularly residing to satisfy the 'ordinary resident' requirement. *Health (Amendment) Act 2005 amending Health Act 1970 (as amended 1991 and 1996).* For more information see: [http://www.citizensinformation.ie/en/health/entitlement\\_to\\_health\\_services/entitlement\\_to\\_public\\_health\\_services.html](http://www.citizensinformation.ie/en/health/entitlement_to_health_services/entitlement_to_public_health_services.html)
- 151 **Italy:** All care is provided free of charge to children under the age of 6, on equal terms as nationals. After this age, children have access on the same terms as undocumented adults, to urgent and essential care. However, this is defined as including health care for children in accordance with the Convention on the Rights of the Child. *Article 35, National Immigration Law T.U. Legislative Decree No. 286/98 as amended, Article 35(3).* This has been applied differently in the different regions and an agreement adopted by the Italian State-Regions Permanent Conference on 20 December 2012 (*Italian State-Regions Permanent Conference, Agreement No.255/CSR of 20 December 2012*) aims to ensure that the legislation is applied equally throughout the country, and reiterates that undocumented children should have full access to health care will be assigned a paediatrician (necessary for continuity of care and access to secondary health services), and should have access through the NHS (mainstream administrative procedure) as unaccompanied children do.
- 152 **Latvia:** Irregular migrants have to cover access to emergency care at full cost, except for detained persons, including children. *Medical Treatment Act, Sections 16, 17 and 18 (1998, as amended).*

- 153 **Lithuania:** Persons who are not covered by the obligatory health insurance are exempted from payment for emergency care. Non-removed persons are entitled to healthcare beyond emergency services if they are accommodated in detention or asylum centres: *Order of the Minister of Interior No. IV-340, 4 October 2007; Law on Health Insurance (2008, as amended in 2012), Article 8.*
- 154 **Luxembourg:** Undocumented migrants are expected to pay for emergency services but may apply for post-treatment cost reimbursement of 80% from a fund dedicated to covering treatment costs for uninsured patients, which explicitly includes migrants in an irregular situation [Commission Nationale d'Éthique, "Les limites de l'accès aux soins au Grand-Duché de Luxembourg", 2007, p. 61]. Otherwise there is no specific legal provision covering undocumented migrants' access to health care.
- 155 **Malta:** No legal provisions cover healthcare rights for irregular migrants released from detention, living in the community. There is an official policy document that states that "the Ministry for the Family and Social Solidarity is responsible for the social welfare of all irregular immigrants" and "shall liaise with other Ministries and as much as possible (to): provide shelter and welfare support services to irregular immigrants released from closed centres". In practice, undocumented children are usually provided necessary health services and not charged, but no legal entitlement or official policy regarding irregular migrants access to public health services (in the community) exist. Unaccompanied children are provided humanitarian protection until 18, so have access to the same level of services as nationals. Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Irregular Immigrants, Refugees and Integration – Policy Document*, 2005, p.19.
- 156 **Netherlands:** Access to state health insurance is linked to authorised residence. Therefore undocumented migrants cannot insure themselves for health care costs. General Practitioners (GPs), pharmacies and hospitals can provide "medically necessary care" (not only emergency care) to anyone, regardless of their insurance or residence status, and it is illegal to refuse such treatment because someone is undocumented. An official policy document established that in cases where the length of stay in the Netherlands is undetermined, this medical care must be equal to the standard of care provided under the basic health insurance. In principle, undocumented migrants are expected to pay for all costs of medical treatment. However, if the patient (or child's parent) cannot afford to pay the costs, the GP or hospital can usually have between 80% and 100% of the costs reimbursed by the National Health Care Institute (ZIN). Costs relating to pregnancy and childbirth are reimbursed 100%. *Art 10, S2 Foreigners Act 2000; Amendment to the Health Insurance Act 31249 (2008) Article 122.*
- 157 **Poland:** Undocumented migrants only have a clear legal entitlement to emergency care, as 'care cannot be denied to any person in the event of immediate danger to life or health'. While it is clear that emergency care provided by rescue teams is free of charge to everyone, it is not clear whether such care would be free of charge in hospital emergency departments, as there is no legislation establishing who would bear the costs. Therefore, undocumented migrants may be liable to pay the full costs for emergency care in hospitals (after treatment). Undocumented children have access to health care under the same conditions as adult undocumented migrants, except for medical and dental prophylactics – including mandatory vaccinations, medical check-ups, screening tests – which are free of charge whilst they are attending public school. *Law on Healthcare Services Financed by Public Funds, 2004; Law on education system (7 September 1991), Articles 92 (1) and (2) and Regulation of the Minister of Health on the organisation of the prophylactic health care for children and youths of 28 August 2009.*
- 158 **Portugal:** The law provides that undocumented migrants may be charged the full costs for health services except those within the basket of public health services or if they are in a situation of poverty, in which case all services are provided free of charge. The basket of services for 'public health' include some emergency and vital care, contagious diseases that represent a threat to public health (see list of diseases of compulsory declaration), maternal and child care and reproductive health, namely access to family planning, termination of pregnancy, caring and follow-up of the mother during the pregnancy, delivery and post-partum care and healthcare for the new-born (Also see *Decreto-Lei nº70/2000 on protection of maternity and paternity*), healthcare for children less than 16 years old living in Portugal, vaccination, in accordance with the National Programme of Vaccination in force. Undocumented migrants need to be resident for 90 days to register with local health centre (necessary to access most services). *Despacho do Ministério da Saúde No. 25/360/2001; Decreto Lei No. 135/99 (1999). Decreto-Lei nº 67/2004 de 25-03-2004 reiterates the equal right to health care for children until working age [which is 16], and establishes a specific register for them. See also Circular Informativa no. 65/DSPCS. After age 16, undocumented children receive care on the same terms as undocumented adults.*
- 159 **Romania:** *Article 43 Romanian Law on the protection and promotion of the rights of the child/ 272/2004; Article 213 Law 95/2006 on healthcare reform as amended* states that all children are covered by the national health insurance, without paying contributions or co-payments. Therefore undocumented children are implicitly entitled to the same level of care as nationals. Undocumented adults have access to emergency care only.
- 160 **Slovakia:** Emergency care is to be provided free of charge to every patient by law. There are no specific regulations for non-removed persons or for children in an irregular situation. If a migrant does not have commercial insurance, then direct payments are necessary, only foreigners with permanent residence and employed migrants with temporary residence can (must) have a public insurance. *Act No. 576/2004 Coll. on Healthcare, Healthcare Related Services and on amendments and supplementation of certain Acts.*
- 161 **Slovenia:** *Care and Health Insurance Act, Article 7 (1992, as amended), Aliens Act (ZTuj-2).*
- 162 **Spain:** *Article 1(3) Ley General de Sanidad 14/1986 of 25 April 1986, Ley 33/2011, de 4 Octubre, General de Salud Pública, and Article 12 Organic Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.* From 1 September 2013, a Royal Decree has limited undocumented migrants' access to health care to emergency care. Undocumented children and pregnant women continue to have equal access to services (*Real Decreto-ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones (introducing Art 3ter.al.4 of Law 16/2003)*).



- 163 **Sweden:** *Article 6 Health and Medical Care for certain foreigners residing in Sweden without Proper Documentation Act (2013:407)*. Undocumented adults only have access to care that cannot be deferred, maternity care, abortion, and contraceptive advice.
- 164 **UK:** *National Health Service (Charges to Overseas Visitors) Regulations Updated 2013. Guidance on Implementing the Overseas Visitors Hospital Charging Regulations, Department of Health, 2013*. Services that are free to everyone are accident and emergency services, compulsory psychiatric treatment, family planning, treatment for communicable diseases such as influenza, measles, mumps, tuberculosis, HIV/AIDS and viral hepatitis. Irregular migrants can also register with a general practitioner (GP) or local health centre, and receive primary health services free of charge. Vaccination is available for all children and adults residents through their GP and baby clinics. Secondary care can be accessed, but only against payment 'for the full cost of treatment (which may include an element to cover reasonable costs of administration (Guidance para 6.4)). Treatment deemed 'immediately necessary' or 'urgent' cannot be withheld pending payment. The Regulations covering access to hospital care provide for treatment which is 'immediately necessary', defined as treatment which a patient needs to save their life, to prevent a condition from becoming immediately life threatening or to prevent permanent serious damage from occurring (Guidance Para 4.5). This includes child birth unless this service was provided by midwives in community health centres. Clinicians must also provide 'urgent treatment' which, although not immediately necessary, cannot wait until the person can reasonably be expected to return home. Criteria for that decision are in the Guidance (para 4.8). Payment is required but treatment should not be delayed or withheld for the purposes of securing payment.



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