

## COUNTRY BRIEF POLAND

This brief has been prepared to support your participation in the workshop: **“Building Strategies to Protect Children in an Irregular Migration Situation in Poland”**.

It outlines the laws and policies relating to the rights of undocumented children to healthcare, education and housing in Poland, as well as the situation in practice: whether or not children in an irregular migration situation – the children of undocumented migrants and those who are themselves undocumented - can access these rights.



### Goals:

The workshop is part of a two-year project called “Building Strategies to Improve the Protection of Undocumented Children in Europe”. The project aims to spread understanding of the challenges that children in an irregular migration situation face in accessing their fundamental rights to education, healthcare and housing in Europe, and to develop strategies to overcome them.

### WHO ARE “CHILDREN IN AN IRREGULAR MIGRATION SITUATION”?

“Children in an irregular migration situation” refers to children whose lives are affected by an irregular migration status.

This is a diverse group. It includes children whose immigration status is irregular - “undocumented children”. The parent(s) or other caregiver(s) of these children may also be undocumented, for example, those who have entered irregularly or overstayed residence permits or visas as a family. The parent(s) or other caregiver(s) may also have regular migration status, for example, when children come to Europe to be reunited with their family but do not fall under the official family reunification schemes. Children who are born in Europe may also be undocumented, because their parents are undocumented.

Children in an irregular migration status may also be children whose own migration status is regular, but whose parent(s) or caregiver(s) are undocumented migrants. For example, some children gain citizenship through one parent or birthright citizenship laws. In some countries, such as France and Ireland, children are not required any documentation until the ages of 18 and 16 respectively. Therefore, in these countries there is no such thing as an “undocumented child”. However, they are still affected by the irregular migration status of their parents.

Undocumented children may also be sent by their families to Europe in search of better conditions, or have run away, and are therefore alone. Some children are trafficked to Europe, either alone or with their families, and so are also undocumented. This project focuses on children who are with their families or other caregivers, and their access to basic social rights. There is a concerning lack of visibility of these children and how they are affected by policies on irregular migration - they frequently live in extremely precarious situations with no access to basic social rights. Because most EU countries have specific systems in place, however flawed, to care for unaccompanied or separated children and victims of trafficking, this project does not address the particular issues these groups of children face. The issues regarding access to basic social rights are nonetheless relevant for those separated children who are outside of the reception circuits for unaccompanied children and are invisible to social services, and victims of trafficking before identification, in so far as they can access basic social rights.

## Methodology:

Over the past 10 years of daily monitoring and advocacy for the rights of undocumented migrants, PICUM has noted a dangerous trend towards the erosion of the rights of children in an irregular migration situation.

The project focuses on the rights to education, health care and housing because they are fundamental to a child's development. Nonetheless, despite legal entitlements, these basic social rights are often denied to children in an irregular migration situation living in Europe, particularly those who are accompanied by their families or other caregivers and so not under the direct care of the State. Only by guaranteeing basic access to education, health care, and housing, are these children allowed sure and solid development.

Through a series of intensive **national workshops in seven countries** - Belgium, France, Italy, the Netherlands, Poland, Spain, and the UK, project participants will build mutual understanding of the problems children in an irregular migration situation face in exercising their rights to education, health care and housing in each country, and devise concrete strategies to improve on some of the challenges identified.

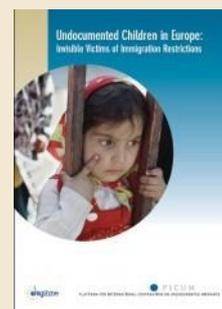
The seven countries have been selected as they represent the northern, southern and eastern European regions, a mix of old and new European Union (EU) member states and different social welfare models. As well as the specific national recommendations, the findings will be generalised for pan-European application where possible, and customised to fit regional characteristics as needed. An **instructional guide** will be produced to aid efforts to secure these rights for children in an irregular migration situation in all Member States, and at the European level. It will be presented at a **European conference** in January 2013, and will be used to shape and support the **ongoing advocacy work** of PICUM and partner organisations.

## What Now?

The "Building Strategies to Improve the Protection of Undocumented Children in Europe" project workshops provide an opportunity for stakeholders to come together to discuss the barriers children in an irregular migration situation face when exercising their rights to education, health care and housing, including those outlined in this brief.

The goal is to build common understanding and begin to develop strategies to overcome them. This is just the beginning. We invite you to pursue these goals outside of the workshops, raise awareness of the issues, and challenge the barriers through your work.

For more information on the project, or to continue your engagement as the project progresses, please contact Sangeetha Iengar, Project Officer, [sangeetha.iengar@picum.org](mailto:sangeetha.iengar@picum.org)



The "Building Strategies to Improve the Protection of Undocumented Children in Europe" project builds on the key findings of previous research, published in PICUM's 2009 report entitled "Undocumented Children in Europe: Invisible Victims of Immigration Restrictions". The report documents the barriers undocumented children face in accessing education, health care and housing in several EU member states.

## THE PARTNERS

- PICUM (Coordinator)
- Belgium: Plate-forme [Mineurs en Exil](#)
- France: [Groupe d'Information et de Soutien des Immigré](#) - GISTI (Information and Support Group of Immigrants)
- Italy: [Associazione per gli Studi Giuridici sull'Immigrazione](#) - A.S.G.I (The Association for Legal Studies on Immigration)
- the Netherlands: [Defence for Children International](#) - DCI
- Poland: [Polish Migration Forum](#)
- Spain: [Red Acoge](#)
- United Kingdom: [Praxis Community Projects](#) - Praxis

## Terminology

### WHY REFER TO “UNDOCUMENTED” AND NOT “ILLEGAL” MIGRANTS?

In referring to migrants without a valid residence permit, the term 'undocumented migrants' (or alternatively, 'irregular migrants') is more appropriate. The term 'illegal' can be criticised for two main reasons:

1. Its connotation with criminality: being in a country without the required papers is, in most countries, not a criminal offence but an administrative infringement.
2. Defining an individual or group as 'illegal' can be regarded as denying them their humanity and risks violating their innate right to recognition as a person before the law.

While referring to migrants as 'illegal' has political and/or societal consequences, it also fails to take into account the varying degrees of compliance which may apply to the situation of any one migrant. For example, a migrant may be legally resident but working in violation of some or all of the conditions of their visa.

This position on terminology is increasingly being taken by a multitude of actors, including the United Nations<sup>1</sup>, the Council of Europe<sup>2</sup>, the European Parliament<sup>3</sup>, and the European Commission, as well as numerous non-governmental organisations, local authorities, professionals from diverse fields, and undocumented migrants themselves.

### WHY REFER TO “CHILDREN” AND NOT “MINORS”?

- Following the UN Convention on the Rights of the Child (CRC), 'a child means every human being below the age of eighteen years.' However, the age when someone is no longer defined as a “minor” varies from country to country.
- Especially in a climate where undocumented migrants are de-humanised, referring to undocumented children as “minors” rather than “children” has potentially negative connotations and risks their exclusion from the child rights/child protection frameworks.

## PROTECTION OF CHILD RIGHTS IN GENERAL

### Are Undocumented Children's Rights Protected in International and European Law?

The fundamental rights of children, regardless of immigration status, are protected in several legally binding international and European laws (see box on next page), most notably:

- The **UN Convention on the Rights of the Child (CRC)**:<sup>5</sup> Poland ratified the CRC in 1991, making it directly part of national law.<sup>6</sup>
- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**:<sup>7</sup> Poland ratified the ICESCR in 1977 making it directly part of national law.
- The **European Convention on Human Rights (ECHR)**:<sup>8</sup> Poland ratified the ECHR in 1993, making it directly part of national law.<sup>9</sup>

WHY DOES  
INTERNATIONAL AND  
EUROPEAN LAW  
MATTER?

Poland has a legal obligation to follow the International and European laws which it has "ratified" (formally consented to and made valid).

**This means that any policy or practice which is contrary to these laws can be challenged as unlawful.**<sup>4</sup>

Two fundamental legal principles are crucial when protecting the rights of children: non-discrimination and the best interests of the child. They are clearly laid out in the Convention on the Rights of the Child (CRC) as follows:

- **Non-discrimination:** the CRC obligates all states to protect the rights set out in the convention to:

"each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

(Article 2)

The Committee on the Rights of the Child has explicitly stated that this means that the CRC applies regardless of immigration status.<sup>10</sup>

- The **best interests of the child:**

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

(Article 3)

The Committee on the Rights of the Child has made clear that interests in migration control cannot override considerations of the best interests of the child.<sup>11</sup>

## THE LEGALLY BINDING INTERNATIONAL AND EUROPEAN LAWS

The UN Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights ICESCR), the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the European Convention on Human Rights (ECHR).

There is also the Universal Declaration of Human Rights (UDHR), which though not technically legally binding, is considered customary international law, and so is intended to be binding; and the European Social Charter (ESC), which is usually limited in scope to nationals or regular workers of Contracting State Parties, but for which some of the rights have been established by the case law to apply to irregular migrants, particularly in the case of children.<sup>12</sup>

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## What Are the National Laws and Regulations?

The tension between immigration control and child protection results in children with an irregular migration status being treated separately and differently from “all” children.

**Children in an irregular migration situation are affected by repressive migration control policies and not adequately protected as children, first and foremost, under the systems for child protection.**

- The **Ustawa z 9 czerwca 2011 o wspieraniu rodziny i systemie pieczy zastępczej** (Act on Support for Families and Alternative Care of 9 June 2011) will be in force from 1 January 2012.<sup>13</sup>
- In the Act, all children, regardless of immigration status will have access to the rights and benefits set out in Chapter III Alternative Care, which provides for care in another family or institution.
- Therefore this provision will protect separated children, **but undocumented children who are with their families or other caregivers will be excluded** unless they separate from their families.
- There is an **Ombudsman for Children**: a spokesperson for the rights of the child, to defend rights such as those provided for by the Constitution and the UN Convention on the Rights of the Child.<sup>14</sup>
- One of the roles of the **Supreme Chamber of Control** is assessing and evaluating the Government’s policy with regard to children’s rights and the implementation of the Convention.<sup>15</sup>

## EDUCATION

### Do Undocumented Children Have a Right to Education in International and European Law?

Yes, their right to education can be found in several laws:<sup>16</sup>

In particular:

- The **Convention on the Rights of the Child (CRC)** says: *'States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.'* (Article 28, see also Article 29)
- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**: *'The States Parties to the present Covenant recognise the right of everyone to education.'*<sup>17</sup> (Article 13, see also Article 14)
- The **European Convention on Human Rights (ECHR)**: *'No person shall be denied the right to education.'* (Protocol 1 Article 2)<sup>18</sup>

### What Are the National Laws and Regulations?

- The **Polish Constitution** states that **'Everyone shall have the right to education.** Education to 18 years of age shall be compulsory.'<sup>19</sup>
- While education is compulsory until 18 years of age, **attendance in school is only compulsory until the age of 16,** or when lower secondary school or "gymnasia" has been completed (whichever is first). From age 16 to 18, it is the duty of the parent to ensure that children receive education, which, for example, may be at upper secondary schools (post-gymnasia schools) or an independent apprenticeship.
- **The Act on the School Education System** (including its amendments) governs the school system in Poland. Article 94 establishes that non-citizen children can **access compulsory education from public primary and lower secondary schools or "gymnasia"**(normally up to the age of 16)<sup>20</sup> **on the same terms as Polish citizens.**<sup>21</sup>
- They can also access the **obligatory year of pre-school education** (for six year olds, who do not start primary school until age seven).<sup>22</sup>
- Access to pre-school, primary and lower-secondary school is based on **being an inhabitant of the local district** so is territorial and regardless of the migration status of parents or other caregivers.<sup>23</sup>

#### Not allowed to graduate from primary school

An undocumented boy from Ukraine was prevented from taking the exam to graduate from primary school, because the school required documents. However, his mother requested help from the mayor of the town: "If they don't allow him to finish school, what's next? He can't go to secondary school." As a result, he was able to continue his studies in lower-secondary school.

## What is the situation in practice?

- All children in an irregular migration situation face a number of **concrete** barriers to attendance in practice:
  - Documents are sometimes required for registration. Even if not immigration-related, **identification documents and proof of residence** can be difficult to obtain and/or make people fearful.
  - **Precarious living conditions** can affect performance and attendance in school.
  - Parents face difficulties meeting **extra-curricular expenses**, such as books, transport, uniforms, etc. (which pose a significant expense even for Polish parents).
  - Poor knowledge of the **language**.
  - Lack of awareness on the part of families about the right to access education as well as how the education system functions.
  - **Fear** that the information provided to schools could lead to detection and deportation, or the authorities taking the child into care, prevents parents from registering their children in schools.
  - Parents and children may face **discrimination** by staff in schools.
- Undocumented children face further barriers, including:
  - Registration is subject to **discretion at the local level** — schools are sometimes reluctant to accept undocumented children due to issues over funding arrangements (schools receive financing from the local government according to the number of children enrolled, so don't receive any for children without valid identification documents), so may **reject their registration** or **charge fees**, which may be difficult to pay.
  - Undocumented children frequently **do not have a personal identity number (PESEL)**, which all children receive on registration of birth. Although the Act on the School Education System states that children do not need this number to register in school, many **computer systems for enrolment require this number to be inserted**.
  - It is possible for undocumented children to be issued a temporary PESEL number, or for the school to use another identification number (e.g. from the child's identity document or school card) in order to enroll the child in the school and for official exams. However, there is a **lack of awareness** and **practice in school varies**. Children are sometimes required to **have documentation in order to take official exams** and are **not issued diplomas** or formal certification on completing their studies.
- Schools may even ask for documents for the child to take the exam necessary to move from primary school to lower secondary school.
- There are cases where undocumented children are **not even given annual certificates** for completing a grade. This can be problematic if the family moves, and the child needs to change school, as they have no documentation about the child's previous education.
- Access to **non-compulsory pre-school education, upper secondary schools** (post-gymnasia schools), and tertiary education (universities), is possible, but:
  - Subject to **fees**
  - Reliant on the **discretion** of individual school directors
  - Due to a **lack of space** in pre-school facilities, undocumented children are often rejected, through the creation of administrative obstacles to registration, such as those mentioned above (e.g. requirement of local registration or PESEL number), especially in big cities.
  - Admission into post-gymnasia secondary schools is usually based on their exam results from the lower secondary school (gymnasia), so in practice, undocumented children are **prevented from continuing their studies**.<sup>24</sup>

Although this schooling is optional, to exclude undocumented children specifically from such public services is discriminatory.

## HEALTH CARE

### Do Undocumented Children Have a Right to Healthcare in International and European Law?

Yes, their right to healthcare can be found in several laws.<sup>25</sup>

In particular:

- The **Convention on the Rights of the Child (CRC)** says: *'States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.'*  
(Article 24(1); see also Articles 25 and 39)
- The **European Convention on Human Rights (ECHR)** says: *'No person shall be subjected to torture or inhuman or degrading treatment or punishment.'*  
(Article 3)<sup>26</sup>
- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**: *'The States Parties...recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'*  
(Article 12(1))

### What are the National Laws and Regulations?

- The **Polish Constitution** states that **'Everyone shall have the right to have his health protected'**.<sup>27</sup>
- However, the **Act on Health Care Benefits Financed by Public Funds of 27 August 2004**<sup>28</sup> clearly specifies who is eligible to access the national health care system, which is based on a statutory health insurance system.<sup>29</sup>

**Undocumented migrants are not included.** Therefore:

- 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 of health.'<sup>30</sup>
- 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.<sup>31</sup> Therefore, **undocumented migrants may be liable to pay the full costs for emergency care in hospitals (after treatment).**
- Similarly, **care during labour cannot be denied**, but undocumented migrants may have to **pay the full costs.**
- There are also specific rules regarding **HIV screening and treatment**, and the treatment of **certain infectious diseases**<sup>32</sup> which means undocumented migrants can access them on the same conditions as nationals (free of charge).<sup>33</sup>
- **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.**<sup>34</sup>

## What is the Situation in Practice?

- For the most part, undocumented migrants **avoid public health facilities and hospitals, unless it is an emergency.**
- This is largely due to fear of being detected, costs involved (when the type of treatment is not free of charge), and the high rate of refusal because valid identity documents are often required for registration.<sup>35</sup>
- Uninsured patients admitted for emergency hospital treatment are often released as soon as possible to minimize the financial costs to the hospital, without due consideration of their condition and the possible health risks.
- They largely rely on self- and unprofessional medical help,<sup>36</sup> or else access **private clinics**<sup>37</sup> where undocumented migrants can receive care without providing identification documents. Treatment and medication must still be **paid for in full.**<sup>38</sup>
- Undocumented children face **numerous difficulties** which prevent them from receiving the care they are entitled to:
  - There is no legal or medical **definition of “emergency”** treatment, so interpretations vary widely at the local level. There have been cases of emergency treatment being denied to uninsured patients (nationals and non-nationals alike).
  - The **system is complex** and lacks clarity.
  - This contributes to a **lack of awareness on the part of health professionals** and leaves wide room for their **discretion.**
  - Although **children attending public schools should be offered standard check-ups and screenings, in practice this is not regulated.** Schools cannot insure children without documents under the national insurance system, as they do other pupils.
  - Further, while the check-ups and screenings may be free of charge (when accessed), **the treatment is often too expensive** (especially specialist, dental or optometry care).
- Therefore, undocumented children **do not receive continuous care.** This is not only highly detrimental to children’s health but more expensive than continuous treatment.
- **Mental health care** is rarely available; despite undocumented children’s vulnerability to mental health needs.<sup>39</sup>
- All children in an irregular migration situation—both children of undocumented migrants and those who are undocumented themselves—may also be prevented from accessing health care by several other obstacles:
  - **Migrants lack awareness** of their entitlements and where they can go for treatment
  - There is a **fear** of being detected.
  - There are **language** barriers.

### Accessing health care without documents

An undocumented mother from Belarus reports: “in 2003 I gave birth to a baby girl. The child does not have any birth certificate—I was refused to register the child in Warsaw, because I didn’t have my own birth certificate and I had an expired Polish visa in my passport. I only have a certificate from the hospital, that I gave birth to a child, and the baby has a ‘health book’. My problem is my daughter cannot access any health care, and she is already in the first grade of school! From the legal point of view my child doesn’t exist. What can I do?”

## HOUSING

### Do Undocumented Children Have a Right to Housing in International and European Law?

Yes, their right to housing can be found in several laws.<sup>40</sup>

In particular:

- The **Convention on the Rights of the Child (CRC)**:  
*'States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'* and *'in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.'*  
(Article 27(1) and (3))
- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** says:  
*'The States Parties...recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...The States Parties will take appropriate steps to ensure the realization of this right...'*  
(Article 11(1))
- The **European Convention on Human Rights (ECHR)** has the prohibition of inhuman and degrading treatment (Article 3) and, in Article 8:  
*'Everyone has the right to respect for his private and family life, his home and his correspondence.'*

Whilst there is no duty to provide housing, European Court of Human Rights jurisprudence indicates that these rights can imply a positive obligation on States to avoid imposing "intolerable living conditions" that would breach these rights.<sup>41</sup>

### What Are the National Laws and Regulations?

There is no national legislation which specifies the right to housing for children in an irregular migration situation *with* their parent(s) or other caregivers. The only other legal protection of their right to housing is found through their **status as a child**, in which case the local authority is responsible for providing them accommodation.<sup>42</sup>

## What is the Situation in Practice?

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- There is a severe shortage of social housing.
- Children in an irregular migration situation **do not have access to social housing** unless one member of the family has a residence permit, or they separate from their families.<sup>43</sup>
- There are a limited number of **shelters** that provide temporary accommodation, but they are usually separated for men and women. If they are not refused access altogether, undocumented families are separated and accommodated separately. The shelters are usually inappropriate housing for children.
- Shortage of social housing makes **cheap, decent housing difficult to find** on the private market.
- When accessing the **private housing market**, undocumented families often:
  - Face racism and **discrimination**
  - Are forced to live in **poor conditions**
  - Have their precarious situation **exploited** by landlords
  - **Rarely report** such exploitation to the authorities for fear of being identified, or at best having to find alternative accommodation.

### Moving from place to place

After the landlady heard that her tenants, an undocumented woman with two children, were involved in a regularisation campaign, she asked them to leave the apartment.

## Barriers Common to Accessing All Social Rights

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- National Legislation that is below the standards set out in human rights law, inexplicit or contradicted by other rules and practices
- Lack of clarity in the rules and frequent changes in policy
- Discretion and lack of awareness on the part of local authorities / service providers
- Fear
- Lack of awareness of undocumented families of their rights

## Cross-cutting Issues

- **Interdependence of rights**—children’s health, living conditions and access to education are all closely interlinked, and only by guaranteeing basic access to education, health care, and housing, are these children allowed sure and solid development. To deny access of one of these rights affects all the others.<sup>44</sup>
- **Access to birth registration**—is also an issue. Not only is it a fundamental right of the child,<sup>45</sup> a birth certificate can be very important in order to gain access to other basic social rights and services, such as education, health care and housing.

In Poland, undocumented women who give birth in hospital receive a document, with which they must go to the Civil Registry Office, to register the child and receive a birth certificate. However, the registry will not issue a birth certificate if the identity of the mother is not clear. It is not uncommon for the mother’s birth certificate and passport with valid immigration papers to be required.

- **The use of child poverty as a tool of immigration control**—migration control tends to take priority over child protection, so much so that repressive policies are often justified by the (flawed) logic that making life as intolerable as possible will motivate “voluntary” return. These policies are implemented without consideration of the impact on children.
- The practice of child **detention** is also a major concern. Children’s access to their rights to education and health care is severely limited in detention, and it is a de facto breach of their right to housing as detention centres (or ‘Immigration Removal Centres’) are completely unsuitable accommodation for children. Detention has been found to be highly detrimental to children’s physical and mental health, and in breach of international and European laws.<sup>46</sup>

In Poland, children are detained with their parent(s), usually in separate family units within the detention centres.<sup>47</sup> Educational staff are sometimes available to take care of the children, as well as teach e.g. language classes (for all detainees), but there is no access to formal education, and, in practice, classes are normally given by representatives of the Border Guard. Health care is also largely insufficient, and Caritas Poland has concluded, from its visits to detention centres, that the experience of detention ‘has very negative effects on children’s lives and development’ and causes physical and mental health problems (including e.g. appetite and sleeping problems, hyperactivity and aggression).<sup>48</sup>

- There is a pressing need for **durable solutions** for undocumented children—**pathways into a regular migration status** and documentation. As outlined in this brief, all children are entitled to various rights regardless of immigration status, but the problems remain that they will lose this protection when they turn 18 years old, and that the precarious living conditions associated with irregular migration status are detrimental to the wellbeing of children.

Poland is currently preparing for a regularization initiative, which will start on 1 January 2012 and will last for six months. The regularization (abolicja) opportunity is open to three groups of people with irregular migration status in Poland:

1. Persons who have been residing in Poland continuously from 20 December 2007
2. Persons who have received a final negative decision on their application for refugee status before 1 January 2010, together with an expulsion decision and who have been continuously residing in Poland since then
3. Persons who on 1 January 2010 were in an asylum procedure as a result of multiple applications

Regularisation is not allowed if the undocumented migrant’s data is in the Schengen Information System or Polish register of “unwanted foreigners”.

Specifically for children, it is also important to note the following:

It is sometimes possible for undocumented families to receive a 3 month residence permit which allows them to leave Poland regularly and avoid deportation. According to the Polish Act on Foreigners, people can be fined for failing to obtain a residence permit.<sup>49</sup> Therefore, if a child is undocumented, the administrative court can take action against the parent(s) (or they can take themselves before the court), for failure to comply with this duty for their child.<sup>50</sup> The letter from the administrative court can be the basis for obtaining a 3 month residence permit, in order to leave Poland regularly. They then have the possibility for applying to enter Poland again. Valid identity documents are required to receive the residence permit

An application to live in Poland, for work, study or marriage, cannot be refused to an 18 year old, for the sole reason that they are irregularly residing in Poland.<sup>51</sup>

## Footnotes

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\*Please see online version for active links to websites at: <http://picum.org/en/publications/conference-and-workshop-reports/>

## TERMINOLOGY

- 1 In 1975, the UN General Assembly requested “The United Nations organs and the specialised agencies concerned to utilise in all official documents the term ‘non-documented or irregular migrant workers’ to define those workers that illegally and/or surreptitiously enter another country to obtain work (General Assembly, Measures to ensure the human rights of all migrant workers, 3449, 2433rd plenary meeting, 9 December 1975, para 2).
- 2 The Council of Europe adopted a resolution in June 2006 on the human rights of irregular migrants, in which it states that it “prefers to use the term ‘irregular’ migrants.” (Council of Europe, Parliamentary Assembly, Resolution 1509 (2006), Human rights of irregular migrants, at point 7).
- 3 The European Parliament “Calls on the European institutions and Member States to stop using the term ‘illegal immigrants’, which has very negative connotations, and instead to refer to ‘irregular/undocumented workers/migrants’” (European Parliament, Report on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI), Recommendation 158); and “stresses that the EU institutions should endeavour to use appropriate and neutral terminology in legislative texts when addressing the issue of third country nationals whose presence on the territory of the Member States has not been authorised by the Member States authorities or is not longer authorised. In such cases, EU institutions should not refer to “illegal immigration” or “illegal migrants” but rather to “irregular immigration” or “irregular migrants” (European Parliament legislative resolution of 13 September 2011 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) (COM(2010)0061 – C7-0045/2010 – 2010/0039(COD), page 41).

## PROTECTION OF THE CHILD RIGHTS IN GENERAL

- 4 Policies can be challenged internally, both informally and through official complaints procedures. Complaints can be taken to the Centre for Equal Opportunities and Opposition to Racism (see CEOOR [website](#) ; The CEOOR is not a National Human Rights Institution, with certain changes necessary for it to gain the accreditation. For more details, see ICC, Re-accreditation of the Centre for Equal Opportunities and Opposition to Racism of Belgium to the International Coordinating Committee of National Human Rights Institutions, March 2010). Breaches of international and regional human rights laws that have been ratified can also be taken to court (and to the European Court of Human Rights for violations of the ECHR if all options in the domestic courts have been exhausted). The regional and international legal instruments also have monitoring bodies to which State Parties must report periodically. Alternative reports can be submitted to complement information provided in the government self-assessments, and some bodies accept communication from individuals or collective complaints. Details of the UN monitoring bodies can be found [here](#), of the European Court of Human Rights [here](#), and of the European Committee on Social Rights (European Social Charter) [here](#).
- 5 The full text of the CRC is available [here](#)
- 6 The constitution of the Republic of Poland 1997, Article 91, available online [here](#)
- 7 The full text of the ICESCR is available [here](#)
- 8 The full text of the ECHR is available [here](#)
- 9 Policies can be challenged internally, both informally and through official complaints procedures. Complaints can also be taken to the National Human Rights Institution, in Poland, *Rzecznik Praw Obywatelskich* or Human Rights Defender (see Ombudsman [website](#)). Breaches of international and regional human rights laws that have been ratified can also be taken to court (and to the European Court of Human Rights for violations of the ECHR if all options in the domestic courts have been exhausted). The regional and international legal instruments also have monitoring bodies to which State Parties must report periodically. Alternative reports can be submitted to complement information provided in the government self-assessments, and some bodies accept communication from individuals or collective complaints. Details of the UN monitoring bodies can be found [here](#), of the European Court of Human Rights [here](#), and of the European Committee on Social Rights (European Social Charter) [here](#).

- 10 “State obligations under the Convention apply to each child within the State’s territory and to all children subject to its jurisdiction (art. 2). [...] Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.” Paragraph 12, General Comment No. 6 (2005), Committee on the Rights of the Child, available online [here](#). Also, in the Committee of the Rights of the Child’s Concluding Observations from the 2002 Reporting Session, it noted “with concern that the principle of non-discrimination is not adequately implemented with respect to certain vulnerable groups of children... In particular, the Committee is concerned about their limited access to adequate health, education and other social services and about reports of racially motivated violence in which police have failed to protect the victims.” It recommended that Poland increase its efforts to ensure the implementation of existing laws guaranteeing the principle of non-discrimination. OHCHR Committee on the Rights of the Child (2002) “Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Thirty first session, Concluding observations: Poland” (Second Periodic Report), available online [here](#).
- 11 “Exceptionally, a return to the home country may be arranged, after careful balancing of the child’s best interests and other considerations, if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations.” (Paragraph 86, General Comment No. 6, Committee on the Rights of the Child.) Although this paragraph refers specifically to return, the general principle may apply to every right.
- 12 Two other relevant legal instruments are the Charter of Fundamental Rights of the European Union (the Charter of Fundamental Rights) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). Although Poland has opted out of the Charter of Fundamental Rights, and no EU Member State has ratified the ICRMW, they reiterate international standards. Other relevant EU policies include the EU Strategy on the Rights of the Child and the EU 2020 Strategy; regarding education, the 2000 Lisbon Agenda and Proposed Directive on equal treatment (COM (2008) 426) extending protection against discrimination to education; regarding adequate standard of living/ child poverty, Articles 13, 136 and 137 EC, the Lisbon Strategy and Social Inclusion Process, the On-going Work of the Social Protection Committee EU Indicators Sub-group.
- 13 Full text available online here. Currently, general care issues are regulated by Kodeks Rodzinny i Opiekuńczy (Family and Care Code of 25 February 1964). There is no mention of non-citizen children in the Code. Full text available online [here](#).
- 14 Established with the Act of 6 January 2000 on the spokesperson for the rights for the child (Text No. 69), available online [here](#).
- 15 OHCHR Committee on the Rights of the Child (2002) “Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Thirty first session, Concluding observations: Poland” (Second Periodic Report), available online [here](#).

## EDUCATION

- 16 Article 28, 29 CRC, Article 26 (1) UDHR, Article 13 (1) (2), 14 ICESCR, Article 5 (e)(v) ICERD, Protocol 1 Article 2 ECHR, and also Article 3 (1)(e) UNESCO Convention Against Discrimination in Education (ratified by Poland in 1964). It is also in Article 17(2) ESC - the Committee on Social Rights has not stated explicitly that undocumented children must have equal access to education, but it has found that, notwithstanding the general exclusion of undocumented migrants from the scope of the ESC, other basic social rights, such as health care and housing, must be provided to children in an irregular migration situation in certain conditions (see footnotes 31 and 42). Further, it has said that “Particular attention must be paid to ensure that vulnerable groups benefit from the right to education and have equal access” (e.g. Secretariat for ESC, “Children’s Rights under the European Social Charter”, available online [here](#)). Therefore, it is likely that the Committee would find that Article 17 ESC applies to undocumented children. Though not legally binding, it can also be found in Article 30 ICRMW, Article 14 of the Charter.
- 17 “The Committee takes note of Article 2 of the Convention on the Rights of the Child and Article 3(e) of the UNESCO Convention against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.” Paragraph 34, General Comment No. 13, Committee on Economic, Social and Cultural Rights, available online [here](#).
- 18 Protocol 1 was signed in 1992 and ratified in 1994 (entered into force 1994). In the case *Timishev v. Russia*, the European Court of Human Rights ruled that the exclusion of two children (aged seven and nine) from school as a result of their Chechen father no longer having a migrant’s card was a violation of the ECHR. (European Court of Human Rights, *Timishev v. Russia*, judgment of 13 December 2005, Application Nos. 55762/00 and 55974/00, para. 66, available online [here](#)).

- 20 Until they either turn 18 years old or complete lower secondary school, whichever happens first.
- 21 Act on the School Education System of the 7th of September 1991, amended with the Act of the 8th of January 1999 including Provisions for the Reform of the School System and the Act of 21 November 2001 amending the Act on the School Education System (see also Jung-Miklaszewska (2003) *The System of Education in the Republic of Poland*, Bureau for Academic Recognition and International Exchange: Warsaw, available online [here](#)).
- 22 Previously, the first year of primary school began at seven years of age and pre-school education from age six was compulsory. The system is currently being changed so that the first year of primary school will instead start at age six. For the next year, parents have the choice of whether to enroll their children in the first year of primary school at age six, or to enroll them in pre-school from age six to seven.
- 23 Undocumented migrants can register as inhabitants of the local district, usually at the town hall. However, this registration is not officially required for school enrollment – it should be sufficient to provide an address on the registration form
- 24 Lack of certification can also prevent access to university, although universities have more room for discretion on their admissions criteria and admitting students based on exceptional circumstances.

## HEALTHCARE

- 25 Article 24 (1), 25, 39 CRC, Article 25 UDHR, Article 12 (1) ICESCR, Article 5 (e)(iv) ICERD, Article 14 (2b) CEDAW, Article 3 ECHR. It is also in Article 13 ESC, which the European Committee of Social Rights has extended to apply to irregular migrants. Further, the Committee found that limiting care of children to emergency situations was a violation of Article 17 (International Federation of Human Rights Leagues (FIDH) v. France, complaint n° 14/2003, decision on the merits of 8 September 2004, §§ 26-32; Council of Europe (2008) *Digest of the Case Law of the European Committee of Social Rights*, page 183-184, available online [here](#). Though not legally binding, it can also be found in Article 28 ICRMW, Article 35 of the Charter. As a WHO Member State, Poland also “has a duty to ensure that national and regional healthcare systems and, in particular, hospitals and health services, address migrant children’s right to healthcare; and hospitals and health services have a duty to empower migrant children and their families, by promoting knowledge and awareness on migrant children’s rights” (IOM (2009) *Ensuring the Right of Migrant Children to Health Care: The Response of Hospitals and Health Services*, page 9-10).
- 26 In the case *Pretty v. United Kingdom*, the ECtHR ruled that treatment which risks exacerbating suffering from illness can fall under Article 3, where the authorities can be held responsible (e.g. detention, expulsion). (European Court of Human Rights, *Pretty v. United Kingdom*, judgment of 29 April 2002 (Application No.2346/02), para. 52, full text available [here](#).)
- 27 The constitution of the Republic of Poland 1997, Article 68(1), full text available [here](#).
- 28 Full text available [here](#).
- 29 Insurance is compulsory for most of the population, who pay income-based contributions (9% of salary or benefits). Others may take out insurance voluntarily. Anyone who is not insured may be refused health care unless there is an ‘immediate threat to life or health’. Children and pregnant women who are citizens are also entitled to additional care regardless of insurance status. Certain care is always free of charge. [Refugees](#) and people with subsidiary protection status are entitled to statutory health insurance on the same basis as nationals, and asylum seekers and unaccompanied minors have access to free “health services” with costs covered by public funding by specific providers (see also Act of 13 June 2003 on Granting Protection to Foreigners, full text available [here](#). For more information, see HUMA Network (2011) *Access to Health Care and Living Conditions of Asylum Seekers and Undocumented Migrants in Cyprus, Malta, Poland and Romania*, page 99-106.
- 30 *Ibid*, page 101 citing various laws relating to the provision of health care.
- 31 *Ibid*, page 101.
- 32 *Ibid*, page 104-105 citing the Law on contagious diseases.
- 33 HIV treatment is unconditional, but only Postexposure Prophylaxis (PEP) is free of charge.
- 34 *Ibid*, page 101 citing Articles 92 (1)(2) of the Law on education system of 7 September 1991 and Regulation of the Minister of Health on the organization of the prophylactic healthcare for children and youths of 28 August 2009.
- 35 *Ibid*, page 126-127.
- 36 *Ibid*, page 125.

- 37 There are also some outpatient clinics contracted by the National Health Fund to provide medical services on payment, without requiring identification documents (*ibid*, page 131).
- 38 *Ibid*, page 126-127.
- 39 There is a lack of specific information about undocumented children's mental health needs, as with data about their needs in general, but it is particularly necessary for undocumented children to have access to mental health care because the experiences related to being undocumented may cause strain on mental health. For example, children may have experienced trauma over events in their countries of origin, on route, and in Poland itself, such as in detention or due to the uncertainties of living with an irregular status, the threat of deportation (themselves with their families, and of one of their caregivers), and reaching the age of majority/ uncertainty about the future in general.

## HOUSING

- 40 Article 27 (1) (3) CRC, Article 25 (1) UDHR, Article 11 (1) ICESCR, Article 5 (e)(iii) ICERD, Article 14 (2h) CEDAW, Article 3, 8 ECHR. It is also in Article 31 ESC, which the case law of the European Committee of Social Rights establishes applies to irregular migrant children (the usual scope of the ESC is limited to nationals or regular workers of Contracting State Parties). (Complaint No. 47/2008, Defence for Children International (DCI) v the Netherlands; Carrera & Merlino (2010), Assessing EU Policy on Irregular Immigration under the Stockholm Programme: page 28-30, available online [here](#)) Though not legally binding, it can also be found in Article 43.1 ICRMW, Article 34 (3) of the Charter.
- 41 Cholewinski (2005) Study on obstacles to effective access of irregular migrants to minimum social rights, page 32-33; See also e.g. Gillow v. UK, judgement of 24 November 1986 (Application no. 9063/80), Buckley v. UK, 15 September 1996 (20348/92), Connors v. UK, 27 May 2004 (66746/01).
- 42 Kodeks Rodzinny i Opiekuńczy (Family and Care Code of 25 February 1964), to be replaced from 1 January 2012 with Ustawa z 9 czerwca 2011 o wspieraniu rodziny i systemie pieczy zastępczej (Act on Support for Families and Alternative Care of 9 June 2011).
- 43 The decision in such cases would be made by the courts, and normally, the solution would be to detain and deport the entire family rather than separate them, or indeed protect the child's right to basic social rights within his or her family.

## CROSS-CUTTING ISSUES

- 44 For example, a report by Shelter warns that children in poor housing conditions have up to 25% higher risk of severe ill-health and disability during childhood and early adulthood. Both unstable and unsuitable housing and poor health affect children's ability to attend school and academic achievement. (Harker (2006) Chance of a lifetime: The impact of bad housing on children's lives).
- 45 Article 7 (1) Convention on the Rights of the Child.
- 46 For more information, see e.g. the [website](#) of the Jesuit Refugee Service – Europe; see also e.g. Hammarberg, T (2009) "It is wrong to criminalise immigration" - Viewpoints by T. Hammarberg, Commissioner for Human Rights, Council of Europe; PICUM (2009) PICUM's Main Concerns about the Fundamental Rights of Undocumented Migrants in Europe.
- 47 Act of 13 June 2003 on Granting Protection to Foreigners, full text available [here](#).
- 48 Caritas Poland "observed that detention, irrespective of the conditions, does affect children. The psychologists looked into the cases and confirmed that their development and mental health is highly affected by detention. They become hyperactive, and experience appetite and sleeping problems. The situation is even worse for children who lived in Poland before being put into detention as they miss their friends, schools, and relatives." Caritas Poland, "National Report: Poland" for JRS-Europe (2010) Becoming Vulnerable in Detention, available online [here](#).
- 49 Article 148 Act of 13 June 2003 on Foreigners (available online [here](#)).
- 50 Code of Misconduct Act of 20 May 1971 (available online [here](#)).
- 51 "Outstanding stays of foreigners in Poland: attempts to solve the problem" available online [here](#).

## NOTES

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