“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 to have a residence permit 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 and have limited access to basic social rights.

Children in an irregular migration situation 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 may also be 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.
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 are not under the direct care of the State. Only by guaranteeing basic access to education, health care, and housing, may children achieve sure and solid development.

Through a series of intensive national workshops in seven countries - Belgium, France, Italy, the Netherlands, Poland, Spain, and the UK, participants will build mutual understanding of the problems children in an irregular migration situation face when 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 its partner organisations.

THE PARTNERS

- PICUM (Coordinator)
- Belgium: Plate-forme Mineurs en Exil
- France: Groupe d’Information et de Soutien des Immigrés - 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
What now?

The workshops of the “Building Strategies to Improve the Protection of Undocumented Children in Europe” project 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.

TERMINOLOGY

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, the Council of Europe, the European Parliament, and the European Commission, as well as numerous non-governmental organisations, local authorities, professionals from diverse fields, and undocumented migrants themselves.

- 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.

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

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

- **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.

France 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.
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 protecting children.

- **French legislation protects the rights of all children.**
  
  Until the age of 18 years, there are no residence permit requirements in France. Therefore, there is no such thing as an “undocumented child” in France. **Legally, children are protected from irregular migration status.**

- Legally, they are included in the general systems for protecting children’s rights.

- For example, social assistance for children (l’aide sociale à l’enfance - ASE) or “home assistance”/ “aide à domicile”
  
  - Are provided to people with dependent children, when required for the child’s education, health, security and maintenance.
  
  - This can be in the form of financial assistance, when the parents do not have sufficient income, but also a social worker, teacher or household help.

- **Access to ASE is not dependent on regular residence or a minimum length of residence in France.** The only essential condition is the need of assistance. Although required in principle, when proof of identity, address and resources are not available, a sworn declaration should be sufficient.

- However, in practice, it is almost impossible for families in an irregular migration situation to receive this aid. ASE services departments usually refuse assistance, using a number of different arguments, such as the inability to verify income, questioning the legal relationship between the child and the applicant, and citing a lack of social integration.

- **Also, undocumented parents are excluded from receiving family welfare benefits**, which are provided to families to compensate for the costs of maintaining and education a child, and are dependent on the family’s circumstances.

- Further, children whose parents or primary caregivers have irregular migration status have **their access to basic social rights limited** (as will be discussed in the proceeding sections) and are **always at risk of detention and deportation with their parents.**

- There is an **Ombudsman for Children** - a spokesperson for the rights of the child, to defend rights such as those provided by the Constitution and the CRC. There is also a **National Consultative Commission of Human Rights** (Commission Nationale Consultative des Droits de l’Homme, CNCDH), which also monitors implementation of the rights of the child.

- However, there is **no national strategy** to promote and improve the rights and well-being of children in France. The Committee on the Rights of the Child has expressed concern that:

  “this may result in the lack of consideration of child rights when formulating the annual plans as well as for overall planning and budgeting by the Government.”
Do Undocumented Children Have a Right to Education in International and European Law?

Yes, their right to education can be found in several laws: 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) says:
“The States Parties to the present Covenant recognize the right of everyone to education” (Article 13, see also Article 14)

The European Convention on Human Rights (ECHR) says
“No person shall be denied the right to education” (Protocol 1 Article 2)

What Are the National Laws and Regulations?

The Constitution of France guarantees “equal access for children and adults to education, vocational training and culture. The organization of free and secular public education at all levels is a duty of the state.

It is a legal requirement for all children of compulsory school age to receive an education, implicitly including children in an irregular migration situation.

- The Code of National Education, which a consolidation of French legislation related to education, requires all children to have access to education from age 6 to 16:
  “Instruction is compulsory for both French and foreign children of both sexes between the ages of 6 and 16.”

- Further the Minister of national education made explicit that no discrimination can be made regarding the admission of foreign children to education:
  “Registration, in an educational institution, of a student of foreign nationality, whatever their age, can not be subordinated to the presentation of a residence permit.”

- The same Circular letter also:
  - Guarantees access to education from age 16 to 18, although it is not compulsory.
  - Entitles all children from the age of 15, regardless of residence status, to participate in internships and apprenticeships:
    “the company does not control the regularity of their situation as regards residence”.

- All children can also be enrolled in a pre-school near their residence from the age of three if requested by the family.

- 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.

- For school trips there is a “collective travel document” which facilitates the travel of all foreign school children, regardless of status, from within the European Union by guaranteeing them the right of re-entry into France when they return.
What is the Situation in Practice?

- Most children in an irregular migration situation are able to attend primary and secondary schools in France.
- However, there are **concrete barriers** to their attendance in practice:
  - Documents are sometimes required for registration. Even if not immigration-related, **identification documents and proof of residence**\(^\text{31}\) can be difficult to obtain and/or make people fearful.
  - Further, schools occasionally reject the enrolment of a child whose family cannot provide **proof of rent payments as proof of adequate housing**. Such documentation is very difficult for families in an irregular migration situation to obtain.
  - **Applications for school bursaries** are often refused because children cannot provide the required financial information about their family situation (e.g. tax declaration).\(^\text{32}\) Lack of a bank account can also pose an obstacle although cash payments are possible.
  - Parents face difficulties meeting **extra-curricular expenses**, such as books, transport, uniforms, etc.
  - **Fear** that the information provided to schools could lead to detection by the authorities and deportation prevents parents from registering their children in schools.\(^\text{33}\)
  - **Precarious living** conditions can affect performance and attendance in school.
  - A lack of sufficient space in the measures reserved for non-francophone students or those with little prior schooling.
  - Access to **16-18 education** is very difficult in practice and dependent on the number of places.
  - Children in an irregular migration situation are often **denied access to vocational courses**.
- For those who successfully complete their education and have their **baccalauréat**, have the right to enroll at university.
- The inclusion of children in an irregular migration situation in school, and their **de facto integration** allows for the family to be integrated into French society.

> “The most common justification that is used by employers to deny access to education to a child is housing, which is also mostly used by primary schools, who are responsible for school registration. They often act as a barrier for foreigners, especially for those who don’t possess a residence permit or who can’t present rent receipts”.

(Antoine Math, GISTI, 2009).
HEALTH CARE

Do Children in an Irregular Migration Situation Have a Right to Healthcare in International and European Law?

Yes, their right to healthcare can be found in several laws:

- 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 health care services.” (Article 24 (1); see also Articles 25 and 39)

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) says: “The States Parties... recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” (Article 12 (1))

- The European Convention on Human Rights (ECHR): “No person shall be subjected to torture or inhuman or degrading treatment or punishment” (Article 3)

What Are the National Laws and Regulations?

- Emergency care is available free of charge to everyone regardless of insurance or migration status.
  - As well as treatment of life-threatening and contagious diseases, maternity care and abortion for medical reasons, “emergency care” includes all types of health care for children and vaccinations.
  - 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.

- Separated children have access to the mainstream health insurance, children whose parents or other caregivers are undocumented are excluded, like their parents.

- They are instead eligible for “State Medical Assistance” (Aide Médicale État - AME) free of charge.
  - Unlike adult undocumented migrants, children have the right to AME immediately, without any administrative requirements, except to prove their identity.
  - Children are entitled to AME in their own right, from the day the application is filed. The application should be filed to the local Social Security centre (Centre de sécurité sociale – CSS) (organised by the Primary Health Insurance Fund (Caisse primaire d’assurance maladie – CPAM).
  - “State Medical Assistance” covers all kinds of health care – the same care that is covered by the mainstream health insurance (doctors’ consultations, treatment in medical facilities and medicines prescribed, as well as external consultations, pharmaceutical costs, laboratory tests, dental care and abortion).

- No co-payments are required from the beneficiary (and they are not required to pay for care and be reimbursed) — AME covers 100% of the costs.
  - Health care providers are reimbursed by the State for services provided to AME beneficiaries.

- However, there are limitations to the amounts covered, making it very expensive and nearly impossible to access medical devices for individual use, such as:
  - Hearing aids
  - Glasses
  - Prostheses, particularly dental prosthesis.

- The only costs that are excluded are those of accommodation in certain health and social care institutions providing lessons “adapted” for young or disabled people.

- Families do not have to wait until their child is sick to register them for AME – no medical certification is required. Once granted, access to AME is a right (for the period granted).

- Beneficiaries of AME receive a certificate which enables access to AME for the period stated. AME is initially granted for one year (from the date of the application) and must be renewed. Once renewed, some CPAM use the term “Aide Médicale d’État Renovée”.

- The AME certificate must be shown every time care or treatment is requested.
In addition, all undocumented migrants (including under 18’s) have access to public centers providing free screening of sexually transmitted diseases and HIV/AIDS, family planning, vaccinations and screening and treatment of tuberculosis. None of these centers require any kind of identification to provide services. Abortion services should also be available.47

What is the Situation in Practice?

Many children in an irregular migration situation receive health care through the AME system.

However, there are a number of practical barriers which can prevent children for receiving the care they are entitled to:

- **Regarding PASS:**
  - There is divergence between hospitals in terms of the existence and organisation of “emergency care” services for socially excluded patients. In many public hospitals, it can be very difficult to find the PASS office or a member of staff to explain the system, in order to organise children’s health care outside the AME system.

- **Regarding AME:**
  - Although children are exempt from most administrative requirements, proof of identity is not always available.49
  - Lack of awareness about the entitlements of children in an irregular migration situation, on the part of health care providers, health administrators, social workers, which can lead to the imposition of improper requirements and demands for documentation.
  - This can delay children’s access to AME, or result in them not accessing AME, when parents do not or can not meet the demands.50

“Some public agents [working at the health insurance funds] refuse to deal with a file [of State Medical Aid] if an original copy of passport is not presented despite the fact that some persons, such as asylum seekers whose applications have been rejected, aren’t required to present it.”

Céline Gaborro, PhD at the Urmis, Université Paris 7-Diderot, beneficiary of the Cnamts grant

- **There are differences between the procedures at the different local CSS.** Some refuse to accept applications for AME and instead oblige the applicant to submit their application to the communal centre for social action (centre communale d’action sociale – CCAS), usually at the town hall, or in Paris, to the social security offices in the AP-HP hospitals or to the Information Service Points (Points accueil service).51

- **Discretion and discrimination on the local level - some health care providers discriminate and refuse to provide services to beneficiaries of AME.**

- **Costs for health care incurred before access to AME is granted can only be reimbursed for the month prior to the application. Bills for health care older than one month cannot be reimbursed.**52

- **Regarding PMI:**
  - Some PMI centres require a social security number to carry out medical examinations.

- **Regarding all services:**
  - Language can be a significant barrier to accessing and receiving appropriate health care.53
  - There is a fear of being detected and deported.
  - As a result of moving frequently, children in an irregular migration situation rarely have proper medical records and do not receive continuous care. This can be highly detrimental to children’s health.

- **Children in an irregular migration situation have great difficulty in accessing glasses, hearing aids and more expensive dental care (e.g. prosthesis).**

- **Despite their vulnerability to mental health needs, access to mental health care through the mainstream health care facilities can be difficult for children in an irregular migration situation after the age of 6 years (i.e. outside of PMI). There are some services run by NGOs, mostly in Paris.**53

Undocumented parents lack of knowledge of their children’s rights and the administrative structures.
Do Children in an Irregular Migration Situation Have a Right to Housing in International and European Law?

Yes, their right to housing can be found in several laws:\(^{54}\)

In particular:
- **The Convention on the Rights of the Child (CRC)** says:
  
  “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... recognise 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 realisation 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 general 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. \(^{55}\)

What Are the National Laws and Regulations?

Undocumented families have access to temporary accommodation in emergency situations.

- The Code on Social Assistance and Families states that:
  
  “Every person without a fixed home in a situation of medical, physical and social distress has access, at any time, to emergency shelter” \(^{56}\)

- Social workers and associations should not be penalised for assisting irregular migrants in obtaining emergency shelter. \(^{57}\)

- Otherwise, there is no national legislation which specifies the right to housing for children in an irregular migration status with their parent(s) or other caregivers.
What is the Situation in Practice?

- Children in an irregular migration status are not entitled to access social housing with their family unless one member of the family has a residence permit.
- Temporary shelter is sometimes available in centres for mothers and children, organised by children’s social services (ASE). Single mothers with one of more children (the youngest must be at least three years old) can be accommodated. A multidisciplinary team of staff is normally employed (offering educational, social, psychological and finance-related help).
- The following state-run centres are also open to families regardless of immigration status:
  - Emergency centres (CHU) where (for one night, renewable according to availability).
  - Social hotels and accommodation centres for social reinsertion (CHRS) (for 15 days to 6 months, renewable). However, these structures are designed for specific groups of the population, such as people recently released from prison or women victims of domestic violence. Further, they focus on programmes of social and professional reinsertion, towards independent housing. Therefore, they often refuse families with irregular migration status due to the lack of regular residence and employment possibilities. Any refusal can be contested as illegal.
- Due to lack of space in shelters, in extreme circumstances, regional councils sometimes pay to temporarily accommodate the family in a hotel.
- These types of accommodation are rarely available, always temporary, and not appropriate housing for children.
- Shortage of social housing makes cheap, decent housing difficult to find on the private market.
- A residence permit is sometimes required by landlords when renting on the private housing market.
- Housing arrangements are often insecure, with families having to move frequently and rely at times on friends and family.
- When accessing the private housing market, undocumented families often:
  - are forced to live in sub-standard conditions.
  - have their precarious situation exploited by landlords (“marchands de sommeil”).
  - rarely report such exploitation to the authorities for fear of being identified, or at best having to find alternative accommodation.
- Lack of a fixed address can pose significant barriers to accessing all other rights and services, including health care, and to maintaining regular communication with legal counsel and the immigration office (e.g. if a regularisation is in process).
- Some families become homeless. While there are some temporary solutions implemented by NGOs (for example, during winter) there are currently no structural solutions envisaged.

“The social child and youth care services are, in practice, reluctant to take in charge the reception of pregnant women or lone mothers who are in an irregular situation. Among others, they are being refused because they lack of an “insertion project”, which is one of the missions of these care services. Thus, these undocumented women and young people are being denied the opportunity to build an insertion project because they would risk to over stay in reception centres who prefer to not admit them at all”

Gisti 59
Barriers Common to Accessing All Social Rights

- National legislation that is below the standards set out in human rights law, inexplicit or contradicted by other rules and practices.
- National Lack of clarity in the rules and frequent changes in policy.
- Discretion and lack of training for 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.\(^\text{61}\)

- **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. There is also concern that, in this context, the power to separate children from their families could be used to be ‘tough’ on irregular migrants, rather than only in cases where it is clearly in the best interests of the child. 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 (centres de rétention administrative – CRA) 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.\(^\text{62}\)

The number of children being detained with their families in French CRA has been steadily increasing. In 2010, 178 families, including 356 children, were locked in detention centres, up from 318 children in 2009. In 2004, 165 children were detained; meaning the number of children in detention has doubled in six years, from 165 to 356. The opening, in August 2011, of 40 spaces for families in the new CRA at Mesnil-Amelot indicates an intention to detain more children.\(^\text{53}\) Further, many of those detained are very young. In 2010, 80% of those detained in CRA are less than 10 years old (57 children under one year, 153 of 2 to 6 years, 96 of 7 to 12 years, and 50 of 13 to 17 years).\(^\text{64}\)

On 19 January 2012, the European Court of Human Rights condemned France for its legislation, which allows the deprivation of liberty of families, without considering alternatives and without examining the individual situation of the children, and so can be considered inhuman and degrading treatment and an infringement on the right of every family to lead a normal life.\(^\text{65}\) Despite this decision, the French government continues to detain children. Between 19 January and 21 March 2012, twenty families, including 47 children, were detained in Toulouse, Oissel, Mesnil-Amelot, Lyon and Metz. In Mayotte, and the detention of children is systematic and on a large scale, in very poor conditions.\(^\text{66}\) Detention of children in “waiting zones” is likewise systematic and large scale.
There is also a pressing need for **durable solutions** for children in an irregular migration situation, and their families – 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 precarious living conditions associated with irregular migration status are highly detrimental to their wellbeing. Further, as children grow older and transition to adulthood, they must face the reality of living as an adult with undocumented status, which is particularly harsh for the many that have spent many years and grown up in France.

A renewable residence card for one year safeguarding the ‘**private and family life**’ of the child is given if:

- The young person can prove regular residence in France with at least one of their parents, since the age of 13;
- The young person has been under the care of a children’s social service (l’aide sociale a l’enfance – ASE), provided they undertake to follow a formal training plan. This method is therefore only for unaccompanied children in French territory;
- And generally, for all children who have woven personal and family ties in France. These ties usually have to be of a certain length, and significance. Sometimes consideration is also given to family ties from the country of origin, which have continued in France. This method of regularisation constitutes the transcription of Article 8 of the ECHR, protecting the right to private and family life, directly into French law.

Some young people who study in France obtain a student residence card, which lasts one year, even when they have entered France without the necessary visa. This regulation gives the prefect wide power of whether to regularise these children. Otherwise, the student residence card is only renewable during the course of one’s education. It is still very difficult to obtain a change of status on the residence permit, notably, the right to work.
**ENDNOTES**


**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).


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).

**CHILD PROTECTION IN GENERAL**

4 In this brief, the term “parent” is used for the sake of brevity, but is meant to also refer to other primary caregivers.

5 Policies can be challenged internally, both informally and through official complaints procedures. Complaints can be taken to the National Human Rights Institution, the National Consultative Commission of Human Rights (La Commission nationale consultative des droits de l’homme [http://www.cncdh.fr/](http://www.cncdh.fr/)). The regional and international legal instruments 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](http://www.cncdh.fr/), of the Committee on the Rights of the Child [here](http://www.cncdh.fr/), and of the European Committee on Social Rights (European Social Charter) [here](http://www.cncdh.fr/). Breaches of international and regional human rights laws that have been ratified can also be taken to court. Violations of the ECHR can also be taken to the European Court of Human Rights if all options in the domestic courts have been exhausted and violations of EU law can be taken directly to the European Court of Justice. Find details of the European Court of Human Rights [here](http://www.cncdh.fr/) and of the European Court of Justice [here](http://www.cncdh.fr/).

6 The full text of the CRC is available [here](http://www.cncdh.fr/).
refusal can be also be contested (For more information see, Gisti (2009), op cit note 16, page 35). the official schemes for family reunification, it is quite common for them to be refused family welfare benefits. This residence cannot be considered irregular, if they have been born outside of France and not entered France under (Gisti (2009), op cit note 16, page 35). Regarding the residence status of the child, although the child’s parent to receive family welfare benefits to take care of their child, if their spouse or legal cohabitant applies on recipient of benefits and primary caregiver for the child, meaning that it may be possible for an undocumented (For more information see, Gisti (2009), op cit note 16, page 34 512 available online unlawful, and refusal of assistance results in serious consequences for the children in question (Gisti (2009), op cit.). Such refusals can be contested in court, particularly when an urgent resolution is needed, the refusal is clearly here. Article L. 222 étranger et du droit d’asile), available online Article L. 311 etudes Protection Committee EU Indicators Sub group. 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. Article L. 311-1 Code on the Entry and Stay of Foreigners and the Right of Asylum (Code de l’entrée et du séjour des étrangers et du droit d’asile), available online here. Article L. 222-3 Code on Social Action and Families (Code de l’action sociale et des familles – CASF), available online here. Article L. 111-2 Code on Social Action and Families, op cit note 13. Gisti (2009) “Sans papiers, mais pas sans droits”, page 22 (available online here). Such refusals can be contested in court, particularly when an urgent resolution is needed, the refusal is clearly unlawful, and refusal of assistance results in serious consequences for the children in question (Gisti (2009), op cit note 15, page 22). There is a condition of regular residence for the applicant, as well as conditions regarding the residence status of the child (Articles R. 513-1, L. 512-1, L. 512-2, D. 511-1 Social Security Code (Code de sécurité sociale – CSS, available online here). There is a limited list of residence permits which qualify as “regular residence” (Article D. 512-1). However, there are some residence permits not included therein, for which the exclusion can be contested (For more information see, Gisti (2009), op cit note 16, page 34-35). The non-national must produce an authorisation for residence for at least three months. Note that there is no regular residence requirement for the recipient of benefits and primary caregiver for the child, meaning that it may be possible for an undocumented parent to receive family welfare benefits to take care of their child, if their spouse or legal cohabitant applies on their behalf (Gisti (2009), op cit note 16, page 35). Regarding the residence status of the child, although the child’s residence cannot be considered irregular, if they have been born outside of France and not entered France under the official schemes for family reunification, it is quite common for them to be refused family welfare benefits. This refusal can be also be contested (For more information see, Gisti (2009), op cit note 16, page 35).
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 Article 14 of the Charter of Fundamental Rights. 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”). 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 and Article 3 (1)(e) UNESCO Convention Against Discrimination in Education.

“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).

Protocol 1 was signed and ratified 1952 (Entered into force 1954). 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.

The Constitution of France, Preamble to the Constitution of 27 October 1946, integrated into the Constitution of 4 October 1958 (available online here).


Circular letter of 20 March 2002 concerning the registration and schooling of students with foreign nationality for the first and second degrees (Circulaire 2002-063 du 20 mars 2002 “Modalités d’Inscription et de Scolarisation des élèves de nationalité étrangers des premier et second degrés” (available online here).


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 (available online here) and Law no.2009-1437 of 24 November 2009 relating to the Orientation and Professional Training throughout their life (available online here).

Article L-113-1 of the Code of National Education, op cit note 23. The Minister of national education has reiterated that no discrimination regarding the admission of foreign children to pre-schools in the 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 generales pour l’établissement du reglement type departmental des ecoles maternelles et elementaires”, available online here)

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 (Décret n°73-1054 du 21 novembre 1973 relatif à l’octroi de bourses nationales d’études aux enfants étrangers résidant en France et fréquentant des établissements du niveau du second degré), available online here. For more information, see Gisti (2009), op cit note 15, page 31.

Circulaire du 2 Janvier 1996


Although citizenship cannot legally be a criterion for enrolment, several mayors nonetheless demand the residence permit of the child’s parents as necessary documentation for school enrolment. This is because in France the school provides a territorial service for the people in its area, and so require proof of residency within the catchment area to enrol the child. If a child is refused enrolment to nursery or primary school on this basis, an appeal can be lodged at the town council and/or prefecture, and further to the tribunal dealing with internal disputes in the French civil service. If a child is refused enrolment to middle or high school on this basis, an appeal can be lodged at the education authority and/or the school inspectors, and further to the tribunal dealing with internal disputes in the French civil service.
HEALTH CARE

32 The Minister for national education has clarified that this should not prevent students from receiving bursaries. For more information and details about how to contest a refusal, see Gisti (2009), op cit note 16, page 32.

33 In 2006 former Minister of the Interior, Nicolas Sarkozy, sent police to French schools to detect undocumented parents who went to collect their children from school. These raids and mass arrests occurred most notably in the 13th district of Paris, France.

34 Article 24 (1), 25, 39 CRC, Article 25 UDHR, Article 12 (1) ICESCR, Article 5 (e)(iv) IERCD, Article 14 (2b) CEDAW, Article 3 ECHR, and Article 24 and Article 35 of the Charter of Fundamental Rights. It is also in Article 11 and 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. Though not legally binding, it can also be found in Article 28 ICRMW. As a WHO Member State, France 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).

35 In the case Pretty v. United Kingdom, the European Court of Human Rights 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.

36 The costs are reimbursed to hospitals on a case by case basis by the “fund for emergency care” (fonds de soins d’urgence) organized by the National Health Insurance Fund (caisse nationale d’assurance maladie) and the departmental Primary Health Insurance Funds (caisses primaires d’assurance maladie). Hospitals have to prove that the patients do not have any other coverage and inform about the emergency character of the care provided (Circular DHOS/DSS/DGAS n°141 of 16 March 2005 (Circulaire DHOS/DSS/DGAS n°141 du 16 mars 2005), available online here.

37 They are provided with access to “complementary Universal Health Insurance” (Couverture Maladie Universelle complémentaire – complementary CMU) under the Universal Health Coverage Act on the condition of having a legal representative. The child social services (Aide Sociale à l’Enfance - ASE) usually act as this legal representative. The complementary CMU covers 100% of health costs, for those with very low income, as opposed to the “basic” CMU which only covers 65% of health costs with private health insurance required to cover the remaining 35%.

38 Article 3 of the Universal Health Coverage Act (Loi portant la création d’une couverture maladie universelle, Loi n°99-641 du 27 juillet 1999) available online here. However, migrants who were affiliated to social security under the CMU while regularly residing, but have lost their status, have the right to keep their health insurance for one year commencing from the date of the end of the validity of their residence permit. Technically, undocumented migrants can access private health insurance, but the premiums for such health insurance are very expensive.


40 To claim AME, it is necessary for the applicant 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 (7 771.20 € a year (= 647.60 € a month) for a one-person household from 1 July 2011 to 30 June 2012) (Article D861-1 Social Security Code (Code de la sécurité sociale), available online here). 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) (Decree of the Council of State of 7 June 2006 (Arrêt du Conseil d’Etat du 7 juin 2006), available online at: http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CEATEXT000008257562&fastReqId=58431227&fastPos=1. So the children of undocumented migrants can access AME immediately, and they do not have to wait for their parents to prove that they are eligible (and continue to have access even if the parents are found not to be eligible.

41 Point 69 of CPAM medical regulations dated 15 November 2006 (c.f. HUMA Network (2009), op cit note 54, page 57) and the Circular DSS/2A/2011/351 of 8 September 2011 relating to particular points in the regulation of state medical aid, notably to the family situation and the composition of the household.
The French Parliament has tried to reform the AME coverage from 100% to 75%. The AME reform requires its beneficiaries to pay the ‘forfait hospitalier’ in case of hospitalisation and the ‘ticket modérateur’ for out-patient consultation. The reform is however not in place yet since the implementing regulation (décret) has not yet been published, due largely to great opposition by NGOs, health care providers, trade unions and academics.


The limits are those of the social security rate.

For full details, see Article L. 2112 Public Health Code (Code de la santé publique – CSP), available online here.

The following documents are accepted as proof of identity: passport, national identity card, birth certificate, family record book, previously acquired residence permit, or any other document which proves the identity of the applicant (Article 4 Decree no. 2005-860 of 28 July 2005 (Décret n° 2005-860 du 28 juillet 2005, available online here). It is very rare that a sworn declaration will be accepted as proof of identity, and the declaration must be made by an organization, such as Médecins sans Frontières (PICUM (2007) Access to Health for Undocumented Migrants in Europe, page 31 (available online here)).

Céline Gaborro “CPAM : le soupçon érigé en pratique”, (Plein Droit n° 92, MARCH 2012 available here.


For full details, see Article L. 2112 Public Health Code (Code de la santé publique – CSP), available online here.

For full details, see Article L. 2112 Public Health Code (Code de la santé publique – CSP), available online here.

For more information, see Gisti (2009), op cit note 16, page 12-15.

For full details, see Article L. 2112 Public Health Code (Code de la santé publique – CSP), available online here.

E.g. Le Centre de santé, de l’Espace Santé Droit et du Centre-ressources du COMEDE; L’association Parcours d’exil; Le centre de soins de l’Association Primo Levi

Housing which is subsidized by the state for people with low-income

Temporary accommodation in shelters or hotels can not be considered an appropriate housing solution for children. Families are often accommodated together in one room, not providing for individual space and adequate privacy. Shelters are often mixed, with both families and single adults accommodated. Children have no “home” or stability. Such factors can have significant negative impacts on family relations and child development, their education and health.
CROSS-CUTTING ISSUES


62 For more information, see http://endchilddetention.org (website of the global campaign to end immigration detention of children); http://detention-in-europe.org/ (website from 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.

63 This information has been prepared by the Réseau Éducation Sans Frontière (RESF) Observatoire de l’enfermement des étrangers (OEE) for a petition to end the detention of children, which was launched on 6 February 2012 in Paris. For more information please see: http://www.educationsansfrontieres.org/article40865.html.


65 Judgment of the European Court of Human Rights, Popov v. France (Query numbers 39472/07 and 39474/07), 19 January 2012 (full judgment available online here).

REGULARISATION

66 On 20 February 2012, the administration was condemned for the inhuman and degrading confinement of a family in the Pamandzi CRA in Mayotte. For more information see La Cimade, “Centre de rétention de Mayotte : la justice condamne l’administration pour enfermement inhumain et dégradant d’une famille”, Press release 23 February 2012 (available online here). Read the judgment of the administrative tribunal of Mayotte here.

67 Article L-313-11 of Ceseda

68 For young people supported by ASE after the age of 16, the adjustment is not law, but it is subject to the discretion of the prefect

69 Unfortunately the administration interprets this right very restrictively. It is often necessary to apply to court for recognition of the right.
This project has received financial support from:

---

Initial Design: www.beelzepub.com