

COUNTRY BRIEF THE NETHERLANDS

This brief outlines the laws and policies relating to the rights of undocumented children to healthcare, education and housing in the Netherlands, 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 brief has been prepared within the framework 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.

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 are 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

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 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.

In the Netherlands, it was decided that the most pressing issue for undocumented children is access to housing. Therefore, the workshop: “Building Strategies to Protect Children in an Irregular Migration Situation in the Netherlands: Workshop on the local reception of undocumented families” focuses on the strategies that Local Authorities can use to ensure the right to housing for undocumented families. We are pleased to have the partnership of the City of Utrecht in the organisation of the workshop, as well as the project partner Defence for Children International Netherlands

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.

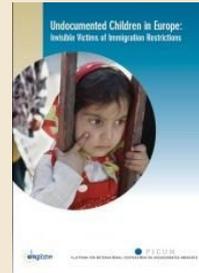
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Gemeente Utrecht



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.



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

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

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 Nations¹, the Council of Europe², the European Parliament³, 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”?

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)**⁵: The Netherlands ratified the CRC in 1995, making it directly part of national law⁶.
- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**⁷: The Netherlands ratified the ICESCR in 1978, making it directly part of national law.
- The **European Convention on Human Rights (ECHR)**⁸: The Netherlands ratified the ECHR in 1954, making it directly part of national law.

WHY DOES INTERNATIONAL AND EUROPEAN LAW MATTER?

The Netherlands 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.⁴

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 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 status⁹.
The principle of non-discrimination is also very clearly stated in the first article of the **Constitution of the Netherlands**.
- 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.¹⁰

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 children¹¹.

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.

- The main instrument for protecting children’s rights is the UN Convention on the Rights of the Child.
- However, the NGO Coalition for Children’s Rights has reported that:
 - ‘Many violations of the rights of the child derive from the **violation of the non-discrimination principle**. In some cases the courts rule that children without a residence permit can be discriminated against in the way they enjoy the CRC rights’.¹²
 - There is lack of separate consideration of the best interests of the child in cases relating to immigration law.¹³
- Otherwise, government policy states its strong commitment to supporting the well-being of every child. For example, the youth and family programme 2007-2011 was entitled: “Every opportunity for every child” and begins with the principle aim:
‘All children and young people, regardless of their cultural background or physical and mental capacity, have the right to develop to their full potential. That is our aim, and one that is formally enshrined in the International Convention on the Rights of the Child.’¹⁴
- There is an **Ombudsman for Children**: a spokesperson for the rights of the child, to defend rights such as those provided for by the UN Convention on the Rights of the Child.¹⁵

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:¹⁶

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'*¹⁷ (Article 13, see also Article 14)
- The **European Convention on Human Rights (ECHR)** and the 1998 Convention for the Protection of Human Rights and Fundamental Freedoms: *'No person shall be denied the right to education'*. (Protocol 1 Article 2)¹⁸

'The Committee is aware of the attention the State party pays to... the complicated access to school for children lacking documentation...' and recommends that the State party... **ensure the right to education of all children by facilitating enrolment of children with missing or incomplete documents'**.

Committee on the Rights of the Child (2009)²⁴

What Are the National Laws and Regulations?

- From age five, all children residing in the Netherlands are legally required to attend school¹⁹. This requirement extends to school-age children of irregular residents.²⁰
- **Undocumented children's right of access is explicitly stated** in both the legislation governing primary and secondary school. Schools have the same duty of care and responsibility towards all pupils (regardless of immigration status).
 - In the **Law of primary education**, it states: "The decision on admission and removal of pupils has to be taken by the competent authorities. The **admission to the school is not dependent on the holding of lawful residence** in the meaning of Article 8 of the Immigration Act 2000."²¹
 - A similar provision is also included in the **Law on the secondary education**.²²
- Schools and the IB-Groep (the Information Management Group) are **prohibited from sharing personal information** about students with others (e.g. the immigration authorities).²³
- The **Constitution** of the Netherlands provides that primary **education is funded by the government** (without distinction between special or public education) (Article 23). **All education is free for children age five to 18 years**. Schools receive funding from the government according to the number of students registered, and undocumented children are included (as long as they are properly registered and the information has been verified by the IB-Groep).²⁵
- Undocumented children, while still younger than 18, are able to **register to attend university**.
- Students already enrolled on a course when they turn 18, may complete their course (whether in secondary or university education).

What is the situation in practice?

- Most children in an irregular migration situation are able to attend primary and secondary schools in the Netherlands. No ID documents are required for an undocumented child to register in school.²⁶
- However, they do face some exclusion - although undocumented children are able to enrol in vocational courses, many courses have a compulsory internship component, which requires a work permit.²⁷ On completing their studies, these children are sometimes **not issued diplomas** or formal certification accordingly. This is a violation of their right to education as it excludes them from part of the compulsory education curriculum.
- There are also still **some practical barriers** to their attendance in school:
 - Although **funding** for migrant children (including undocumented children) is available, which could cover their costs, in many cases school administrators are **not aware of these funds** or do not want to take advantage of them due to the **long bureaucratic processes**.
 - Parents²⁸ face difficulties meeting extra-curricular expenses, such as for school trips. While these are not compulsory, it results in undocumented children being excluded from these activities. Some support is available from some municipalities, schools and charities. Text books are provided free by schools.
 - **Precarious living conditions** can affect performance and attendance in school.
 - **Reception classes** (primary schools) or **international transition classes** (secondary education) for children who have recently arrived in the Netherlands (regardless of status) are common. Participation in such classes can be successful, and represent an opportunity for teachers to help undocumented children **integrate into mainstream schooling** (though there are no targeted programs). However, **poor knowledge of the language** can still be a barrier to education.
 - **Fear** that the information provided to schools could lead to detection and deportation, or the authorities taking the child into care, can prevent parents from registering their children in schools.
- Undocumented children are often denied access to non-compulsory education:
 - **pre-school or nursery.**
 - after turning 18 years, undocumented young people **may apply to attend university or other further education.** However, **their application may be refused.**Although this schooling is optional, to exclude undocumented children specifically from such public services is discriminatory.
- The inclusion of undocumented children in school, and their **de facto integration**, can also cause imbalance within families in an irregular migration situation, where parents have much more restricted access to rights and society as a whole. Children with better knowledge of the language and country's culture and systems, often assume the role of translator to assist parents. This **change in intergenerational relations and responsibilities** can put a strain on families and children. :

'School doesn't want to buy books for me because they don't know how much longer I will be here. They say it would be a waste of money to order books if I would only stay for a short period of time.'

16 year old girl

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:²⁹

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 **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)** and the 1998 Convention for the Protection of Human Rights and Fundamental Freedoms:
'No person shall be subjected to torture or inhuman or degrading treatment or punishment.'
(Article 3)³⁰

The Committee is concerned about the access to health care for migrant children without a residence permit.

The Committee recommends that the State party **take appropriate measures to make sure that all children in its territory have access to basic health care.'**

Committee on the Rights of the Child (2009)³¹

What are the National Laws and Regulations?

Undocumented children who are accompanied by their families or other caregivers have access under the same conditions as adult undocumented migrants.

- Undocumented migrants are only entitled to access "**medically necessary care**" and care needed for public health from the Municipal Health Service (GGD)³².
- An official report in 2007 laid down the standards of care and clarified that this means "**responsible and appropriate medical care**". It also determined that in cases where the stay in the Netherlands is expected to be long, this medical care must be equal to the minimum standard of care provided under the basic health insurance.
- Therefore:
 - **General Practitioners (GPs) and hospitals can provide "medically necessary care" to anyone**, regardless of their insurance or residence status.
 - It is **illegal** for a GP or hospital **to refuse such treatment**, if it will result in serious injury.³³
- Access to state health insurance is linked to authorised residence. Therefore undocumented migrants **cannot insure themselves for health care costs**³⁴. In principal, undocumented migrants are **expected to pay for all costs of medical treatment**.
- However, if the patient (or child's parent) **cannot afford to pay** the costs, the GP or hospital can usually have between 80% and 100% of the **costs reimbursed** by the Health Care Insurance Board (CVZ)³⁵. Costs relating to pregnancy and childbirth are reimbursed 100%.
- Pharmacies with a contract with the CVZ can also obtain 80-100% reimbursement for providing some prescribed medicines if the patient (or child's parent) is unable to pay.³⁶
- Medical professionals have no duty to report undocumented migrants.³⁷

What is the Situation in Practice?

- There is no legal or medical definition of “medically necessary care”, so **interpretations vary** at the local level.
- This can allow for inclusive interpretations, covering **most secondary care**, including some physiotherapy, dental, optometry and psychiatric treatment.
- However, this is **subject to discretion** by doctors.
- **Complex and bureaucratic systems for reimbursement** can make doctors and hospitals reluctant to treat undocumented children. GPs may also be reluctant because they **only receive 80% reimbursement of costs**.
- Some health care professionals and hospital staff **lack awareness** about the rights of undocumented children and their duties towards them.
- Therefore, undocumented children are **sometimes refused care that they are entitled to**, both by GPs and at hospital reception desks due to lack of ID or payment. Prior notification or a referral from a GP specifying that the care is ‘medically necessary’ can help gain access in hospitals.
- **Hospitals must show that efforts have been made to secure the costs of treatment** before they can get reimbursement.
 - Therefore, they will try to arrange a payment schedule or have an agreement to pay signed.
 - After treatment they will probably send formal requests for payment (to the address provided). Families must reply stating clearly that they cannot afford to pay.
 - This can result in undocumented families **paying too much for treatment** (more than they can afford).
 - **Receiving high bills** for treatment may also cause fear of debt and discourage further access to health care and treatment.
- Access to **specialist** care is very limited.
- 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 may lack awareness** of their entitlements.
 - There is a **fear** of being detected.
 - There are **language** barriers.
 - 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.

‘I’ve been sent away from the hospital desk because I couldn’t show them an insurance pass’

Kamil, 17 years old (in 2008)

‘Many people have difficulties to get health care. It makes them depressed. They no longer want to go to a doctor. They’ve stopped asking for help.’

Safarova, 17 years old (in 2008)

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:³⁸

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... 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)) Article 31 can be included here.
- The **European Convention on Human Rights (ECHR)** and the **1998 Convention for the Protection of Human Rights and Fundamental Freedoms** determine that nobody can be subject of inhuman or humiliating acts (Article 3), whereby Article 8 states :
'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.³⁹

What Are the National Laws and Regulations?

There is **no explicit legal right to housing** for undocumented children with their families.

Undocumented children are **excluded from receiving social assistance**, including social housing and housing allowance.⁴⁰

A complaint was taken against the government in 2008, to the European Committee of Social Rights for violation of the European Social Charter, for not providing undocumented children with housing. The Committee found that states **are bound by the ESC "to provide adequate shelter to children** unlawfully present in their territory for as long as they are in their jurisdiction",⁴¹ to prevent homelessness.

What is the Situation in Practice?

- Children in an irregular migration status do not have access to social housing if they are with their families.
- There have been cases of families being separated and children placed in youth institutions in order to provide the children accommodation without housing the family. This is a violation of the right to family life (Article 8 ECHR).⁴²
- As a result of the European Committee of Social Right's judgment.
 - Families whose application for asylum is refused are not evicted from the centres where they are accommodated to prepare for their return.
 - However, many families have been living in these shelters, designed as temporary accommodation, for the last 2 years since the decision.
 - This accommodation is not appropriate housing for children.
 - Families that were evicted prior to the decision were not readmitted or provided any alternative support.
- A **residence permit** is required to rent from housing associations.
- Housing arrangements are often insecure, with families having to **move frequently** and rely at times on friends and family.
- 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**.
 - need to **sub-let rooms** from others illegally, making their situation as tenants more precarious.
 - are forced to live in **sub-standard conditions** (overcrowded, unsanitary etc).
 - 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.

Kamil slept in 29 different places because he was undocumented.

'I find it very strange that people can just put someone on the streets without knowing where this person should go. I understand it's their job but I couldn't do it, I think you can only do this if you don't have a heart.'

Kamil, 17 years old (in 2008)

Common Barriers 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
- Lack of clarity in the rules and frequent changes in policy
- Discretion and lack of training for local authorities/ service providers
- Fear of being detected

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.⁴³
- **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 concern. In the Netherlands, families with children can be detained for a maximum of two weeks before deportation. The deportation must be scheduled within these two weeks. Detention before deportation is used systematically and not as a last resort – **no alternatives to detention are considered** in these fourteen days.
- **Regularisation** - there is also 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 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 the Netherlands.

In the Netherlands, a few political parties are working on a draft law that would provide for undocumented children who have lived in the Netherlands for more than eight years to get a residence permit, because they are rooted in society.

Footnotes

*Please see online version for active links to websites at: <http://picum.org/en/publications/conference-and-workshop-reports/32203>

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).

CHILD PROTECTION IN GENERAL

- 4 Policies can be challenged internally, both informally and through official complaints procedures. Complaints regarding discrimination can be taken to the Equal Treatment Commission (<http://www.cgb.nl/home>). The Equality Treatment Commission is a National Human Rights Institution, but only accredited with B status, which means that certain changes are necessary for it to gain full accreditation (for more details, see International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva, 29 March -1 April 2010). 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](#), and of the European Committee on Social Rights (European Social Charter) [here](#). 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](#) and of the European Court of Justice [here](#).
- 5 The full text of the CRC is available [here](#)
- 6 Article 93 of the Constitution of the Netherlands states that “Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published
- 7 The full text of the ICESCR is available [here](#)
- 8 The full text of the ECHR is available [here](#)

- 9 “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).
- 10 “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.
- 11 Another relevant legal instrument is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). Although no EU Member State has ratified the ICRMW, it reiterates 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).
- 12 The Administrative Law Division of the Council of State, the highest court of justice in administrative law, has ruled in cases in which children without a residence permit invoked Article 2 of the CRC that the distinction between children with and without a residence permit is a real legal distinction that does not fall under the scope of Article 2 of the CRC, or in other words, the exclusion of children without a residence permit does not constitute discrimination. The Dutch NGO Coalition for Children’s Rights is of the opinion that the Dutch courts’ interpretation of the scope of the CRC is at loggerheads with the guidelines issued by the UN Committee on the Rights of the Child, which repeatedly emphasise that all rights set forth in the Convention are applicable to all children within the Netherlands’ jurisdiction, and consequently also to children without a residence permit and to children whose parents are not cooperating in their return to their country of origin.” (NGO Coalition for Children’s Rights (2008) “Children’s Rights in the Netherlands: The third report of the Dutch NGO Coalition for Children’s Rights on the implementation of the Convention on the Rights of the Child”, July 2008, page 22-23; available online [here](#)).
- 13 The Netherlands courts give insufficient weight to the interests of the migrant child in proceedings of relevance to them. The Courts are of the opinion that the principle is insufficiently specific for direct application (without further detailing in national legislation), and the government is of the opinion that primary consideration to the interests of the child was already given on the formulation of the policy, so a separate test is superfluous. However the interests of the child are applied, for example, in family law, health law, the child protection regulations and criminal law. Consequently the interests of the child are worked out in further regulations in numerous fields of law. This could also be achieved in aliens law.’ (NGO Coalition for Children’s Rights (2008), *ibid*: 23-24).
- 14 “Every opportunity for every child”, Youth and Family Programme 2007-2011 (available online [here](#)).
- 15 Established on 1 April 2011. Visit the Children’s Ombudsman’s website [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, Article 14 of the Charter of Fundamental Rights, and also Article 3 (1)(e) UNESCO Convention Against Discrimination in Education (ratified by the Netherlands in 1966). 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.
- 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).

- 18 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.
- 19 Article 3 and 4 Compulsory Education Act 1969 – children are obliged to attend the full educational programme for 12 years of schooling or until the age of 16. When the child turns 16, they are still obliged to attend school until they are 18 years old, but it is not necessary to follow the official school programme. Instead they can also choose to follow a programme to obtain an initial qualification or “startkwalificatie” (Wet van 30 mei 1968, houdende vaststelling Leerplichtwet 1969; full text available [here](#)).
- 20 In 1998 the “Linking Law” was introduced, amending the Immigration Act and other relevant laws, to exclude undocumented migrants from accessing most social services. Education was an exception (Article 10 Immigration Act 2000; full text available [here](#)).
- 21 Article 40.1 of the Law of 2 July 1981 concerning the Law of primary education (WPO) (Wet van 2 juli 1981, houdende Wet op het basisonderwijs; full text available [here](#)).
- 22 Article 27.1a of the Law of 14 February 1963 concerning the Law of secondary education (WVO) (Wet van 14 februari 1963 tot regeling van het voortgezet onderwijs; full text available [here](#)).
- 23 Article 178a, sub 9 of the Law on primary education (op cit note 17) and Article 103b, sub 10 on the Law on secondary education (*ibid*).
- 24 OHCHR Committee on the Rights of the Child (2009) “Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Fiftieth session, Concluding observations: The Kingdom of the Netherlands”, 2009, available online [here](#).
- 25 Articles 10, 18 of the Decree on Funding WPO (Besluit van 21 oktober 1985, houdende regelen betreffende de bekostiging van basisscholen; full text available [here](#)) and Articles 14a, 3 of the Decree on Funding WVO (Besluit van 30 september 1992, houdende voorschriften betreffende de uitkering van de vergoeding aan scholen, de bevoorschotting, de boekhouding, het financieel beheer en de financiële controle alsmede voorschriften betreffende de Adviesgroep, bedoeld in artikel 80 van de W.V.O.; full text available [here](#)).
- 26 Schools only require: the student number (which they provide), date of birth, gender, and place of birth.
- 27 For more information on which kinds of internships require a work permit and possible solutions, please see [Ilegaalkind.nl](#). Schools and employers who provide a traineeship to a student without proper authorisation to work can be fined up to 8,000 euros. Despite previous statements indicating that the government would resolve this issue and allow children to do internships without having a work permit, in April 2011, the Minister of Social Affairs and Employment stated, on the contrary, that the government did not consider it necessary to allow undocumented children to complete internships. More information is available [here](#).
- 28 In this brief, the term “parent” is used for the sake of brevity, but is meant to also refer to other caregivers.

HEALTH CARE

- 29 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, and Article 35 of the Charter of Fundamental Rights. 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. Though not legally binding, it can also be found in Article 28 ICRMW. As a WHO Member State, the Netherlands 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).

- 30 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).
- 31 OHCHR Committee on the Rights of the Child (2008), *op cit note 22*.
- 32 Article 10 Immigration Act 2000 (full text available [here](#)). Care provided by GGD clinics and in schools includes vaccinations, screening and treatment of infectious diseases, and monitoring developments in children's health (Public Health Act; available online [here](#)) See also HUMA Network (2009) *Access to Health Care for Undocumented Migrants and Asylum Seekers in 10 EU countries: Law and Practice*, page 111-114.
- 33 Article 308, 309 Criminal Code (full text available [here](#)) and Article 47 Individual Health Care Professionals Act (full text available [here](#)). More information about what can be done if a doctor refuses care is available [here](#).
- 34 Article 5 paragraph 2 Exceptional Medical Expenses Act excludes people not lawfully resident from the AWBZ insurance (full text available [here](#)) and only those insured under AWBZ are able to access basic health insurance under the Health Insurance Act (full text available [here](#)). Note undocumented children are still legally able to access care normally regulated by the AWBZ Act (for example, if they require nursing in a specialist institution) when an assessment indicates that the care is needed. Reimbursement from the CVZ is possible. More information is available [here](#).
- OHCHR Comité voor de Rechten van het Kind (2008), *op cit note 22*.
- 35 See the Health Care Insurance Board website [here](#). Reimbursement to hospitals depends on whether the patient approaches the hospital directly (without referral) or is referred by a doctor, and the kind of contract (if any) the hospital has with the CVZ. Reimbursement up to 100% may be possible depending on the contract. More information is available [here](#).
- 36 Medications must be included on the 'list of insured medications'. When medications are needed urgently, the prescription can be taken to any pharmacy, and the costs can still be reimbursed even if the pharmacy does not have a contract with the CVZ (Article 2.8 Health Insurance Act'). More information is available [here](#).
- 37 Under Section 107 of the Immigration Act 2000 administrative bodies are required to provide information on foreigners to the IND if requested for the implementation of the Immigration Act. However, the Minister of Health, Welfare and Sport has clarified that health care providers and healthcare institutions have no role in the tracking and reporting of undocumented migrants (Answer, Parliamentary Question (*Kamervraag*) 840, 7.12.07; available online [here](#)).

HOUSING

- 38 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, and Article 34 (3) of the Charter of Fundamental Rights. 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. Though not legally binding, it can also be found in Article 43.1 ICRMW.
- 39 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).
- 40 'Linking Law' 1998 and Article 10 Immigration Act 2000. The Dutch courts also exclude undocumented children from Article 27 CRC: 'In a ruling from the Central Court of Appeal of 24 January 2006 the Court does recognize a right for assistance for children of parents who are legally domiciled in the Netherlands but have not yet been admitted, but not for the children of parents without an entitlement to temporary residence. It should be noted that the Central Court of Appeal denies the direct effect of Article 27 of the CRC. The Dutch NGO Coalition for Children's Rights is extremely concerned about the fact that children in the Netherlands without an entitlement to temporary residence are excluded from the most basic provisions such as housing, but also from money for clothing and food, and finds it incomprehensible that the direct effect of Article 27 of the CRC is denied, since the 'nutrition, clothing and housing' requirements (Article 27, paragraph 3 of the CRC) are highly specific. These relate to basic provisions that must be available for all children.'" (NGO Coalition for Children's Rights (2008), *op cit note 10*: 29). Case law has been developing on the issue of exclusion from all social assistance. For example, there has been a case regarding access to family social support payments, in which the courts ruled that under certain circumstances, it is necessary to provide undocumented families child benefits to protect the right to private and family life and duty to protect children (BR1905, Central Board of Appeal, 08/6595 AKW etc (judgment available online at: http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BR1905&u_ljn=BR1905).

- 41 Defence for Children International (DCI) v the Netherlands, complaint No. 47/2008, decision on the merits of 20 October 2009, available online at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47SummaryMerits_en.pdf.
- 42 It is also a violation of Article 9 CRC. NGO Coalition for Children's Rights (2008), *op cit note 10: 23, 29*.

CROSS-CUTTING ISSUES

- 43 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*).

This project has received financial support from:



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