



Key aspects of child protection systems that help protect all children from harm

PICUM submission on integration child protection systems to the European Commission consultation

This brief accompanies PICUM's submission to the European Commission's consultation and call for evidence on integrated child protection systems (June – October 2023). It can also be read on its own, as the brief contains key elements that must be met to ensure child protection systems work for undocumented children and children at risk of becoming undocumented.

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Background and context

As the EU Fundamental Rights Agency rightly points out, “fragmented child protection responses may deal with a single problem but fail to provide a comprehensive solution for the diverse needs of children.” However, “**an integrated child protection system places the child at the system’s centre** (...). It ensures that all essential actors and systems – education, health, welfare, justice, civil society, community, and family – work in concert to prevent abuse, exploitation, neglect and other forms of violence against children and to protect and assist children in these situations.”¹ Even so, **few child protection systems adequately prevent or assist migrant children, especially**

undocumented children and children at risk of becoming undocumented. One important cause is the fact that few child protection actors have the child's residence status on their radar, while the child's status may be a driver behind the harm they experience.

This publication lists seven basic elements that need to be in place for integrated child protection systems to adequately protect undocumented children and children at risk of becoming undocumented in line with their needs and fundamental rights.

Who are we talking about?

Undocumented children are children who do not currently have a residence permit for the country they live in. They may be undocumented for many different reasons: they may have been born to undocumented parents who were already living in the country, they may have migrated with their parents or joined their parents who had already settled in the country regularly, but later lost their residence status/permit. Children can be undocumented and unaccompanied, meaning that they live in the country without their parents or caregiver.² Other children do have a residence

permit, but an insecure one. They are at risk of becoming undocumented when, for example, their or their parents' residence permit cannot be renewed or transposed into another one.³

There is **no reliable estimate of the number of undocumented children in Europe.** Some national-level attempts exist, for instance in the UK⁴ and Spain. Save the Children and Por Causa estimated that 146,773 undocumented zero-to-nineteen-year-olds lived in Spain in 2019.⁵ And, according to Eurostat, about 7% of the undocumented people

1 Both quotes sourced from FRA, n.d., [Child protection systems](#) [checked on 11 October 2023]

2 See for instance, PICUM, 2022, [Turning 18 and undocumented: Supporting children in their transition into adulthood](#)

3 Not all residence permits can be renewed or extended or changed into a durable permit on the same or other grounds.

4 Greater London Authority, 2020, [London's children and young people who are not British citizens: A profile](#)

5 Save the Children Spain & Por Causa, 2021, [Crecer sin papeles en España](#)

apprehended in 2022 were underage, meaning that at least 75,060 undocumented children interacted with police or border guards that year.⁶

All children with an irregular or insecure residence status risk harm, including violence and abuse, because of their residence status. They are also **exposed to complex forms of violence**, including psychological, physical violence, sexual violence⁷, forced removal, detention, psychological violence, racism and discrimination, neglect and deprivation from basic needs.⁸ Quite simply, ill-meaning adults know they can get away with taking advantage

of undocumented children and/or their parents, because reaching out to the police for help usually means violence and harm in the form of arrests and detention.⁹

Undocumented migrants, including children, may experience and witness mental, physical and sexual violence from border guards, institutional actors, and others in and at external and internal¹⁰ borders, camps, reception centres and shelters.¹¹ What is more, children can feel like they have no other choice than to bear the harm in order to stay in the country.

Elements adding additional challenges and complexity

We identify four additional, contextual elements that impact the protection from harm and access to support and justice experienced by migrant children, including undocumented children.

Some children in migration are **highly mobile**. This is especially the case for unaccompanied children, who can undertake highly complex trajectories after their arrival in Europe.¹² This is a huge challenge for actors wanting to support and protect them, especially when cross-border collaboration does not exist. One of the drivers behind this mobility

is Member States' legal frameworks on residence permits. Complex, lengthy procedures, (asylum) permit refusals and the inability to regularise one's stay push unaccompanied children to seek solutions elsewhere.¹³

Children's rights, child protection and children's wellbeing continue to play second fiddle to governments' priorities on migration management, especially immigration enforcement. The current negotiations around the various files of the EU Pact on Migration and Asylum illustrate this very

6 Eurostat, [Enforcement of immigration legislation statistics](#) [checked on 3 October 2023]

7 Both outside, at border crossings and in Europe. For example, 18 out of 31 identified Nigerian victims of trafficking interviewed in Italy reported sexual and physical violence after arriving in the country. And, although the perpetrators were mostly traffickers and local men, two of the women described experiences of attempted rape and one experienced physical brutality by male staff of the organizations whose care they were under. Source: Adeyinka S, Lietaert I, Derluyn I., 2023, [It Happened in the Desert, in Libya and in Italy: Physical and Sexual Violence Experienced by Female Nigerian Victims of Trafficking in Italy](#). International Journal of Environment Research and Public Health. 28;20(5):4309, p. 9

8 List adapted from Derluyn, I, Orsini, G., Adeyinka, S., Berhrendt, M., Rota, M., Uzureau, O., Verhaeghe, F., & Lietart, I., 2022, [Impact of flight experiences on the mental health of unaccompanied minors on the move. The ChildMove Project](#). Ghent University

9 PICUM, 2015, [Guide to the EU Victims' Directive: Advancing access to protection, services and justice for undocumented migrants](#); PICUM, 2021, [Preventing harm, promoting rights: Achieving safety, protection and justice for people with insecure residence status in the EU](#)

10 Uzureau O, Lietaert I, Senovilla Hernandez D, Derluyn I, 2022, [Unaccompanied Adolescent Minors' Experiences of Exception and Abandonment in the Ventimiglia Border Space](#), Politics and Governance, Volume 10, Issue 2

11 See for instance Derluyn, I, Orsini, G., Adeyinka, S., Berhrendt, M., Rota, M., Uzureau, O., Verhaeghe, F., & Lietart, I., 2022, [Impact of flight experiences on the mental health of unaccompanied minors on the move. The ChildMove Project](#). Ghent University

12 See figure 4.1 and 4.2, Derluyn, I, Orsini, G., Adeyinka, S., Berhrendt, M., Rota, M., Uzureau, O., Verhaeghe, F., & Lietart, I., 2022, [Impact of flight experiences on the mental health of unaccompanied minors on the move. The ChildMove Project](#). Ghent University, p. 26

13 Derluyn, I, Orsini, G., Adeyinka, S., Berhrendt, M., Rota, M., Uzureau, O., Verhaeghe, F., & Lietart, I., 2022, [Impact of flight experiences on the mental health of unaccompanied minors on the move. The ChildMove Project](#). Ghent University

clearly, with safeguards few and far between in any of the positions of the three institutions.¹⁴ The fact that children can (still) be detained for immigration-related reasons is another example. **Given that migration law and policies do not usually include sufficient child rights safeguards, it is crucial that child protection law and policies do make that link and actively work towards protecting migrant children from harm, and helping those who are victims.**

Linked to this, is the **harm done to children by government officials**. This includes, but is not limited to, harm and violence experienced at the hands of police or border guards. For example, all 48 children interviewed by the University of Sarajevo and Save the Children in a 2022 study "had personally experienced violent, even cruel behaviour by the border police."¹⁵ In another study, 18 out of 31 victims of trafficking interviewed in Italy reported sexual and physical violence after arriving in Italy. This includes two experiences of attempted rape and one experience of physical brutality by male staff of the organizations whose care the girls and women were under.¹⁶ These examples not only illustrate how certain government personnel prioritises enforcement over child protection, but also **explains why migrant children victims of crime or abuse are very likely to distrust government personnel** who do take their child protection mission seriously.¹⁷ It also causes underreporting by witnesses and victims themselves.

An additional barrier to protection is **the complexity of the migration systems** that children and their caretakers, families and protection specialists must navigate. While both professionals and migrants themselves may know the basic principles of an asylum procedure, few may know much about the many other residence permits that member states have. These include residence permits for victims of crime, labour exploitation or trafficking, for school-going children and their families, for children and young people enrolled in training, for unaccompanied and former unaccompanied children specifically, for children under a protection order, etc.¹⁸ All of these have different requirements, procedures, costs,¹⁹ decision-making mechanisms, appeals procedures, and renewal systems. What's more, every EU member state has developed their own specific set, and no two migration systems are alike. The child protection actors assisting children in migration need a thorough understanding of these different permits to do their job.

14 Based on internal research, comparing the Commission's, Parliament's and Council's final positions on the Screening and Asylum Procedures Regulations (September '23). The different institutions' positions are, for the Screening Regulation: [Commission proposal](#), [Parliament report](#), [Council General Approach](#), and for the Asylum Procedures Regulation: [consolidated Commission proposal](#), [Parliament original report](#) and [revised amendments](#), [Council General Approach](#).

15 University of Sarajevo and Save the Children, 2022, "[Wherever we go, someone does us harm.](#)" [Violence against refugee and migrant children arriving in Europe through the Balkans](#)

16 Adeyinka S, Lietaert I, Derluyn I, 2023, [It Happened in the Desert, in Libya and in Italy: Physical and Sexual Violence Experienced by Female Nigerian Victims of Trafficking in Italy](#). *International Journal of Environment Research and Public Health*. 28;20(5):4309, p. 9

17 *Ibid.* found this too (pp. 18-19).

18 See PICUM's [publications page > 'Regularisation'](#) for our publications listing many of these residence permits.

19 Application, renewal, and incidental costs. For more on this, see PICUM, 2023, [The use of fees in residence procedures in Europe: Pricing people out of a residence status?](#)

Key aspects of integrated child protection systems that help protect children with an insecure or irregular residence status

Because of the specific vulnerabilities of children in migration, and especially undocumented children and children at risk of becoming undocumented, **we recommend that any policy affecting (integrated) child protection systems explicitly strengthens the following principles:**

- Presumption of minority and benefit of the doubt (cfr., a child's age)
- Children first and foremost
- Finding a durable solution as a keystone to the child's protection
- Trauma-informed care and support
- Accessibility and presence in areas of concern
- Knowledgeable staff, access to information, administrative support, and legal aid
- The best interests of the child as a guiding principle and an objective

Presumption of minority and benefit of the doubt

Applying the benefit of the doubt and the presumption of minority is especially relevant for unaccompanied children, who regularly see their age put into question and treated as adults because of it.²⁰ This results in children being placed in harm's way, either because they are placed in spaces with unrelated adults and without the proper safeguards in place, or because they are pushed into homelessness while they appeal the decision.²¹

That is why any child whose age is unclear, or cannot be proven through documents, should be presumed to be child. They should be given the necessary protection and support – at least until their age can be assessed, the appeal process

ended or there are no longer any doubts.

Any child protection system policy or law should explicitly embed the presumption of minority and the benefit of the doubt.

The benefit of the doubt also applies to age assessments themselves. UN General Comment no 6 on unaccompanied children also states "The [age] assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner; avoiding any risk of violation of the physical integrity of the child; **giving due respect to human dignity; and in the event of remaining uncertainty, should accord the individual the benefit of the doubt such**

20 For example: people's age has been determined solely on a person's appearance in Germany and Greece and the Belgian Immigration Office has been accused of systematically casting doubts on young people of certain nationalities. Sources: ECRE, 2019, [Country Report: Germany](#); HIAS Greece, Refugee Support Aegean [RSA], Greek Council for Refugees, DIOTIMA, Legal Centre Lesvos, European Lawyers in Lesvos [ELIL], FENIX Humanitarian Legal Aid and PRAKSIS, May 2020, [Observations on the Implementation of Law 4636/2019 "on International Protection and other Provisions" at the "Hotspot" of Lesvos](#); Platform Kinderen op de Vlucht, 2017, [Leefijdsschatting van niet-begeleide minderjarigen \(NBMV\) in vraag: Probleemstelling, analyse en aanbevelingen](#)

21 This is the case in France, for example.

that if there is a possibility that the individual is a child, s/he should be treated as such.²² EASO (now EUAA) guidance on age assessments concurs.²³

This is because age assessment methods have been notoriously inaccurate. For example, determining a person's exact chronological age through medical means such as X-rays is impossible. Children grow and age at widely different rates, influenced by their

genetics, the environment, and their experiences,²⁴ and skeletal maturity doesn't necessarily match chronological age. "Teenagers can have adult bone structure as early as 15 or later than 20," according to scientists, with dental or wrist scans giving the wrong answer about whether someone is under or over 18 up to a third of the time.²⁵

Children first and foremost

Any child in need of support and protection should be treated as a child first, whatever their residence status.

This is seminal to making sure all children are protected from harm, treated as intended by the UN Convention on the Rights of the Child, and make sure that all children get the best possible start in life.

Finding a durable solution as a keystone to the child's protection

Many child protection systems do not adequately prevent or assist migrant children, especially undocumented children and children at risk of becoming undocumented. One important reason for this is the fact that **few child protection actors have the child's residence status on their radar.** Even though the child's residence status may be the cause of many of the issues they face, prevent them from receiving the help they need,²⁶ or may cause them harm down the line.

Some member states have provisions that enable children placed in care or placed under a child protection order to access to a

residence permit (e.g., Finland, Germany, Latvia, Luxembourg, Portugal), although it is usually a permit on humanitarian grounds rather than a child protection-specific permit.²⁷ **The permit is not usually issued automatically, but requires a separate application** by the child or their guardian or representative. Three member states ensure that the children placed under a child protection order reside regularly until the child ages out or the protection order is lifted (Bulgaria, Finland, Latvia).²⁸ **This does not mean the child's long-term residence permit is secure, but rather increases the risk of the child becoming undocumented on**

22 UN Committee on the rights of the child, 2005, *General comment no 6. Treatment of unaccompanied and separated children outside their country of origin*

23 EASO, 2022, [EASO Practical Guide on age assessment \(2nd edition\)](#)

24 Z. Solomon, A. Ohry, 2010, *The Toll of War Captivity: Vulnerability, Resilience and Premature Aging*, in E. Martz (eds.), *Trauma Rehabilitation After War and Conflict*, Springer; K-H. Ladwig, AC. Brockhaus, J. Baumert, K. Lukaschek, RT. Emeny, et al., 2013, *Posttraumatic Stress Disorder and Not Depression Is Associated with Shorter Leukocyte Telomere Length. Findings from 3,000 participants in the Population-Based KORA F4 Study*

25 New Scientist, 9 May 2012, *With no paper trail, can science determine age?*

26 For instance, if services are only available for regularly residing people.

27 European Migration Network, 2023, [Ad Hoc Query on granting a residence permit on the basis of a child protection order](#)

28 European Migration Network, 2023, [Ad Hoc Query on granting a residence permit on the basis of a child protection order](#)

their 18th birthday.²⁹

This also means that **several member states do not have the necessary provisions in place to ensure children placed under a protection order also have a secure, independent residence permit** (e.g., Austria, Croatia, Cyprus, Estonia, Lithuania, Slovakia, Slovenia).³⁰ Without the security of a regular residence, the children remain highly vulnerable to harm.³¹

However, **a secure residence status should be part and parcel of a child-centered approach to child protection.** This includes ensuring the child has a regular residence status while in child protection but does not end there. It also means **identifying a durable solution for that child if they are undocumented or at risk of becoming undocumented** (before or when turning 18). That durable solution "protects the long-term best

interests and welfare of the child and is sustainable and secure from that perspective."³² In essence, it can be one of three options: integration in the country of residence (with a secure residence permit that lasts into adulthood), (re)integration in the country of origin or (re)integration in a third country where the child and their caregivers have resided and have a residence permit.³³ Because of the current systems in place, the first option (integration in the Member State) usually involves applying for a residence permit/regularization mechanism.

Resolving the residence status of children in care, placed under a protection order or in a child protection system should be a key objective of the support and care they receive.

Trauma-informed care and support

Many children in migration have suffered traumatic experiences and need trauma-informed, child-centered care and support.

This includes ensuring physical safety and providing medical and psychological support. **The support should be extended into adulthood if necessary.**

Accessibility and presence in areas of concern

Migrant children have testified to feeling unsafe in border areas as well as reception centers. They also said that they felt safe in spaces and centers where

"the security staff do their jobs" and where "well-developed security procedures and a functioning security service" were in place.³⁴

29 For more on the importance of children accessing a secure residence status that lasts into adulthood, see PICUM, 2022, [Turning 18 and undocumented: supporting children in their transition into adulthood](#).

30 European Migration Network, 2023, [Ad Hoc Query on granting a residence permit on the basis of a child protection order](#)

31 For more on the impact of being undocumented on children in general, see PICUM, 2021, [Navigating irregularity: the impact of growing up undocumented in Europe](#)

32 Drawn from the definition of a 'comprehensive, secure and sustainable solution' as defined by the Committee on the Rights of the Child in Joint General Comment No. 22 (para 32(j)), here quoted from UNICEF, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle, 2019, [Guidance to respect children's rights in return policies and practices: Focus on the EU legal framework](#), p. 5.

33 More details on the procedure to make this decision can be found in guidance by UN agencies and civil society: UNICEF, IOM, UN Human Rights, Save the Children, ECRE, PICUM and Child Circle, 2019, [Guidance to respect children's rights in return policies and practices: Focus on the EU legal framework](#)

34 University of Sarajevo and Save the Children, 2022, ["Wherever we go, someone does us harm." Violence against refugee and migrant children arriving in Europe through the Balkans](#), p. 16.

It is fundamental that (local) child protection services are present in any area where children in migration find themselves, so they can identify protection needs and take the appropriate steps.

These spaces include border areas, reception centers, immigration detention centers and de

facto detention spaces (e.g., police cells, boats).³⁵ The child protection actors should have the ability to refer children with protection needs away from the area of concern and away from the border towards a child protection service on the territory, should the child find themselves in a border procedure as conceptualised by the 2020 Asylum and Migration Pact.

Knowledgeable staff, access to information, administrative support, and legal aid

Note the intersection with the European Commission's recent proposal to revise the Victim Rights Directive here. In particular, the intersection with article 9a(new). Please see PICUM's [First reactions to the European Commission proposal to revise the Victim Rights Directive](#) p. 6 for more on this article.

A child's experience of any child protection systems depends on the different protection actors' skills and knowledge. Any professional entering into contact with children should have the necessary training and knowledge to work with and assist migrant children, including undocumented children and children at risk of becoming undocumented. That means that **child protection actors need a level of understanding of the broader migration system in place, beyond the asylum system** (e.g., other residence permits, undocumented children's entitlements to services and support, vulnerabilities of children and young people in migration).

The child, too, needs to be adequately informed, so they can better understand what is happening and make informed decisions. Any information should be given in a child-appropriate manner, adapted to the child's age, maturity and language skills.

Another key safeguard is **a child's access to administrative support, legal aid and, in the case of unaccompanied children, a legal representative/guardian**. As the child will de facto and de jure have less agency and less ability to navigate the legal and administrative aspects of their life – either because of their age and maturity, their legal

competence, or the emotional whirlwind they're experiencing – they must have access to these services. This support will also help ensure the child participates in the processes that affect them and should aim to ensure that their views are given due weight in decision making.

Actors from the child protection system should not only support children in accessing legal aid but should themselves be contributing evidence or be engaged in implementing the outcomes of decision-making procedures, if appropriate.

Every policy strengthening (integrated) child protection system should explicitly encompass administrative support and legal aid, support the work of legal aid providers and guardians, and help ensure child protection actors have a working understanding of the broader migration system in place, beyond the asylum system.

This should apply both for children who are found on the territory and those at borders / in border procedures.

³⁵ See PICUM, 2022, [Immigration detention and de facto detention: what does the law say?](#) for more examples.

The best interests of the child as a guiding principle and an objective

The UN Convention on the Rights of the Child codified the best interests of the child as a primary consideration in all actions and decisions (article 3). This substantive right is directly applicable and creates an intrinsic obligation for all EU Member States. Article 24(2) of the Charter on the Fundamental Rights of the European Union codifies this principle: all actions relating to children, whether taken by public authorities or private institutions, must take the child's best interests as a primary consideration.

Children's best interests should not only be "a primary consideration."

Serving children's interests should be the main purpose of (integrated) child protection systems.

The design of any system or collaboration between any system should reflect and service that purpose.



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