

UNICEF WRITTEN SUBMISSION
2012 DAY OF GENERAL DISCUSSION
COMMITTEE ON THE RIGHTS OF THE CHILD

THE RIGHTS OF ALL CHILDREN IN THE CONTEXT OF INTERNATIONAL MIGRATION

**“ACCESS TO CIVIL, ECONOMIC AND SOCIAL RIGHTS FOR CHILDREN
IN THE CONTEXT OF IRREGULAR MIGRATION”***

EXECUTIVE SUMMARY

The 2012 Day of General Discussion of the Committee on the Rights of the Child comes at a time when there is pressing need for debate and analysis regarding how migration policies affect all children, and how States Parties can fulfill their human rights obligations upon them without discrimination. Any evaluation of the impacts of international migration on children must be explicitly inclusive of all children affected by migration, and analyze the many different ways in which international migration dynamics impact them.

The comprehensive approach of the Convention on the Rights of the Child (CRC) provides an excellent framework for such an analysis. As stated in the 2012 CRC DGD Background Paper, all children in the context of migration should be treated, first and foremost, as children. States Parties to the CRC have positive obligations to ensure that the rights enshrined in the CRC are guaranteed to all children present on State territory on equal terms, regardless of their or their parents' migration status. Children in the context of migration should be addressed as a holistic group, and challenges to their rights in countries of origin, transit and destination equally prioritized.

This UNICEF written submission focuses on challenges that children in the context of international migration, especially those in an irregular situation, face when accessing civil, economic and social rights in countries of origin, transit and destination, in particular their right to birth registration, education, health care, housing, and social and economic protection. The available evidence presented in this submission confirms that numerous barriers remain as a result of gaps in legal entitlements and in their implementation. The paper also highlights examples of innovative means of addressing these challenges. Annex I provides recommendations to improve human rights fulfillment of children in the context of international migration. Annex II provides examples of explicitly inclusive and comprehensive legislation that guarantees all children's basic civil, economic and social rights, as well as court rulings and civil society interventions that protect the rights of children in the context of migration when State provision fails.

Children affected by migration can be prevented from accessing their right to birth registration by excessive administrative requirements in countries of origin and destination, with negative implications for their access to rights, services, justice and protection. Low levels of birth registration, particularly in countries of origin, also make migrant children vulnerable to statelessness. Further, migrant children's right to birth registration is violated by discriminatory law and practice, such as restricted access to maternity services and reporting obligations. Flexible policies which allow, for example, testimonial evidence and third party applications can contribute to ensuring all children's right to birth registration.

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Children in the context of migration face numerous barriers to education, such as the need to work to support their family and discriminatory refusal of registration. Undocumented children are at times denied the full enjoyment of the right to education, with restricted access to certification, internships, vocational training, and non-compulsory education, among others. Lack of education and opportunities has significant impact on children's cognitive and psychosocial development. Legislation which is explicit in its inclusion of all children, regardless of migration status, in all aspects of education, including financial assistance, can remedy this, in conjunction with clear guidance and flexible administrative procedures for registration.

Although parental migration can improve children's access to health care services in countries of origin, they may be less likely to access preventive care and face emotional trauma due to family separation. Entitlements to health care for migrant children in countries of destination vary considerably and are often insufficient. Practical barriers such as lack of clarity in the rules, discretionary refusal of treatment, and complex and bureaucratic procedures render many migrant children, particularly undocumented children, unable to access their right to the enjoyment of the highest attainable standard of health. However, a number of destination countries do provide equal access to health care for all children, regardless of migration status. Further, regional and local authorities, or professional networks and NGOs, often undertake initiatives to provide services and promote access to mainstream services by advocating for change and tackling practical barriers.

Access to housing for children in the context of migration is highly problematic, also impacting children's access to other social rights, such as education and health care. Children 'left behind' in countries of origin may be at risk of experiencing poor housing conditions if they do not receive remittances. In countries of destination, State housing and social support provisions for unaccompanied children often do not adequately protect children's rights. Further, housing support is highly restricted for migrant families and inaccessible for undocumented children or children with regular status with an undocumented primary caregiver, except in emergency situations. Even this support is problematic, due to, inter alia, a shortage of places, reporting obligations, and the living conditions themselves. Many undocumented children have insecure, substandard housing, being obliged to move frequently. Legal provisions ensuring access to State-funded emergency accommodation and initiatives to find temporary housing solutions and mediate between tenants and landlords can provide vital support to children.

Children affected by migration and their families are largely excluded from social and economic protection measures, despite their heightened vulnerability to poverty and social exclusion, and their increased psychosocial needs. In countries of origin, children whose parents have migrated, both those who receive remittances and those with no contact with their parents abroad, often face practical difficulties in accessing social support measures. In countries of destination, migrant children often receive much lower levels of support than that provided to nationals, despite their eligibility. Undocumented children are excluded from all economic and social protection measures in most countries, despite the negative implications of deprivation on their well-being and development. However, a few States and courts are recognizing the need to provide economic and social protection to all children, regardless of their migration status.

In conclusion, restrictive migration policies can place children in situations of vulnerability, exposing them to abuses and violations of the rights enshrined in the Convention on the Rights of the Child (CRC) and other human rights instruments, which States Parties are

legally bound by. Children affected by migration, particularly undocumented children, are often exposed to long periods of fear, uncertainty, poverty and limited access to basic rights. Failure to provide access to education and health care, adequate housing and family life can have serious and long-term implications for child's health, well-being and development.

Introduction

The 2012 Day of General Discussion (DGD) of the Committee on the Rights of the Child (CRC Committee) on "The Rights of All Children in the Context of International Migration" comes at a time when there is pressing need for comprehensive debate and analysis regarding how migration policies affect all children, in countries of origin, transit and destination.

For analytical purposes, children in the context of international migration are often divided into various categories (asylum seekers, children left behind, unaccompanied / accompanied, trafficked, smuggled, regular / irregular, returned, etc.). While there are specific legal and protection mechanisms available to these different categories of children affected by migration, UNICEF concurs with the 2012 CRC DGD Background Paper in acknowledging the crucial importance of, and the need for, a comprehensive approach that recognizes the rights of all children in the context of migration. The Convention on the Rights of the Child (CRC) codifies a comprehensive set of children's rights underpinned by the principle of non-discrimination. The rights enshrined in the CRC must be guaranteed to *all* children, regardless of their additional protection needs, and violations of those rights equally prioritized. Further, due to the complexity of migration dynamics, categories are fluid and temporary, and children affected by migration may transition between various categories within the course of their childhood. For instance, asylum-seeking and trafficked children are not always recognized as such, and children who are undocumented at a given point in time may access regular status at a later stage.

For this reason, this submission analyzes how policies on irregular migration can affect all children in the context of migration beyond categories. Restrictive migration policies have significant implications for the way families, parents and children migrate. Literature reviewing reasons for irregular migration¹ notes how the lack of channels for regular migration and restrictions to family migration² severely limit possibilities for migrants, causing families to live with long periods of separation, and increase the likelihood of families and independent child migrants to migrate irregularly or remain in destination countries after their visa or permit has expired. Crossing borders irregularly, often through smugglers and recruitment agencies, and having irregular status, leaves all migrants, and particularly children travelling alone or with adults, vulnerable to human rights violations, exploitation, and human trafficking.³ Families and independent child migrants who migrate to claim international protection or are trafficked are not always recognized within these policy frameworks, and so also become undocumented.⁴

Children's migration status is usually linked to their parents', and therefore lapses and becomes irregular along with theirs.⁵ Further, the child-specific needs and individual rights of every child, including the requirement to act only in every child's best interests, are rarely considered independently when parents' claims for international protection are reviewed, leaving them more vulnerable to inappropriate refusals of protection.⁶ Children born to irregular migrant parents in countries of destination often become undocumented by inheriting their parents' migration status, as few destination countries still have fully inclusive *jus soli* regulations in which all children born on the territory are granted citizenship.⁷

Thus, restrictive migration (and citizenship) policies can place children in situations of vulnerability to human rights abuses and violate rights enshrined in the Convention on the Rights of the Child (CRC), as well as numerous other human rights instruments,⁸ which States Parties are legally obliged to uphold and protect.

In countries of origin, many children face family separation, as parents have no choice but to leave their children behind when they migrate, and there are very few regular channels for children to join parents at a later stage.⁹ This can significantly impact children's right to family life as well as their personal and social development. Although children in countries of origin whose parents have migrated do not face legal discrimination, they do face a number of practical obstacles to enjoying basic rights arising from parental absence,¹⁰ as well as significant emotional and psycho-social challenges.

In countries of destination, migrant children, particularly undocumented children, experience restricted access to rights, as a result of gaps in legal entitlements, and in practice, where practical and administrative barriers reduce the accessibility and real enjoyment of rights. For example, migrant children experience limited access to basic rights such as access to compulsory education and health care due to discriminatory laws and practices, and issues such as poverty, lack of awareness, and language barriers.

Restrictive migration policies also increase the likelihood that children have insecure or irregular migration status in countries of destination. Furthermore, children are subjected to immigration control measures which include detention, deportation and restrictions on access to services, which have significant negative impacts on their rights. It can take many years before children may be able to regularize their status, for example by qualifying for regularization based on years of residence and ties to the country of destination.¹¹ Such possibilities are insecure and many children lose all the protections afforded to them as children as soon as they turn 18 years of age. The considerable periods of time which undocumented children live with fear, uncertainty, and restricted access to basic rights can have significant and long-term implications for their health, well-being and development. Further, children repatriated to countries of origin or transit also face a number of barriers to accessing rights and services, as a result of loss of social support networks and property, limited services (particularly health care services), prejudice, psychosocial trauma, and language barriers, particularly when children have spent considerable periods of their childhood and development in the country of destination.

This UNICEF written submission focuses on challenges that children in the context of international[†] migration face when accessing civil, economic and social rights. The submission does not address the human rights challenges relating to detention and deportation (including the vulnerabilities faced by repatriated children), nor the lack of consideration of the best interests of the child in migration decisions, nor access to regularization. These issues are addressed from the perspective of the right to family life in another UNICEF submission. The following sections elaborate some national and regional examples of legal and practical barriers to migrant children's access to birth registration, education, health care, housing, and social and economic protection.

As well as analyzing some of the key issues which migrant children face in the main body of the text, this submission seeks to highlight examples of innovative means of addressing them.

[†] The 2012 CRC DGD focuses on international migration; however, UNICEF Offices in all regions have stressed how, in some countries, rights challenges faced by children in the context of *internal* migration are often very similar to those faced by children in the context of international migration.

Annex I provides recommendations to improve human rights fulfillment of children in the context of migration. Annex II provides practical examples of legislation which is explicitly inclusive and comprehensive, and thus guarantees all children's basic civil, economic and social rights. Examples of court rulings and civil society interventions, which protect the rights of migrant children when State provision fails, are also included in Annex II.

As stressed above, many of the human rights challenges analyzed in this submission are common to most children in the context of migration. Yet undocumented children face a number of further challenges, both de jure and de facto, and are therefore among the most vulnerable to human rights violations. For this reason, this submission pays particular attention to children in the context of irregular migration, especially in the presentation of innovative practices in Annex II.

1. Birth Registration

The CRC stipulates that every child shall be registered immediately after birth (Article 7). Birth registration is closely linked to the right to a legal identity, to State protection and to nationality. Birth registration normally enables children to obtain a birth certificate – a document recording the registration and officially recognizing the child's legal personhood. Birth registration can contribute to the protection of children from human rights violations stemming from doubts about their age. Children whose births are not registered may be more vulnerable to human trafficking and other forms of abuse and exploitation.

Lack of birth registration can also serve as a barrier to accessing other rights, particularly in countries where rates of birth registration are near universal, as birth certificates are routinely required as proof of identity to access services. For example, birth certificates are sometimes required for children to enroll in school and in medical programs, such as immunization campaigns.¹²

As birth registration enables the right to nationality, lack of birth registration also increases the risk of statelessness. Rates of birth registration remain low in many countries of origin,¹³ increasing the risk that migrant children are unable to prove their nationality if they were not registered in their countries of origin before migrating. (For an example of a practice that addresses this, see Annex II 1.1).

At the same time, access to citizenship by virtue of *jus soli* or being born on the territory is being restricted in many destination countries.¹⁴ Restrictions, such as requiring at least one parent to be a regular permanent resident, directly discriminate against children born to undocumented parents and make them particularly vulnerable to statelessness.

Further, children in the context of migration, including internal migration,¹⁵ face a number of barriers to accessing birth registration and certification.¹⁶ For example, strict requirements for identity documentation (such as birth certificates and valid passports) and marriage certificates of parents, can affect children born in the country of origin after one parent has migrated, children born in countries of destination to migrant parents with regular status but without the appropriate documents,¹⁷ and children born to undocumented parents.¹⁸ In this way, citizenship laws which discriminate against women may also disproportionately affect children in the context of migration, as the father may not be present and/or his documentation not available.

Migrant children also face additional obstacles to having their birth registered in countries of destination, including: lack of awareness on the part of parents, though this is also a problem among civil servants concerning undocumented children, when they may be unaware of migrants' entitlements; bureaucratic and complicated procedures; and costs, both direct, in terms of registration fees and fines for late registration, and indirect, such as costs of travel, time off work, etc.¹⁹ While there is generally a separation between civil registries and immigration enforcement, undocumented parents may also fear detection,²⁰ particularly in countries where civil servants have a duty to report undocumented migrants.²¹ (For an example of legislation that addresses this, see Annex II 1.2).

Limited access to maternity services, for example in countries where costs are associated with child birth in a hospital, can also be an obstacle for accessing birth registration. Indeed, in some countries, birth registration is carried out by the hospital rather than, or as well as, the civil registry. (For an example of legislation and practice that address this, see Annex II 1.3). In other countries, the notification of birth provided by the hospital may be required when officially registering the birth at the civil registry, or be the only certification available to migrant parents, due to discriminatory laws.²² (For further examples of legislation and practices that address barriers to birth registration for children in the context of migration, see Annex II 1.4, 1.5 and 1.6).

2. Education

The right to education is enshrined in Article 28 of the CRC. According to States Parties' obligations under the CRC, they must ensure education is available and accessible to every child on the basis of equal opportunity.

Nonetheless, children in the context of migration face particular vulnerabilities regarding their access to education. For example, research on households in countries of origin indicates that while remittances can have a positive effect on children's access to education, these benefits can be reduced or even negated by the psycho-social impact of parental absence²³ or by the need for children to take on some of the roles and obligations of the parent who has migrated.²⁴ Furthermore, remittances are not always spent to the benefit and advantage of the child, which limits their access to education.²⁵ Children may have lower incentives to complete education in the country of origin, due to lack of parental supervision or intentions to migrate themselves. Some studies²⁶ have identified how differently boys and girls are affected by these issues, in relation to gender roles and responsibilities, as well as likelihood to migrate. Children of migrants may also face prejudice and negative attitudes, both on the part of teachers and other students, for example due to financial inequality resulting from remittances.²⁷ (For an example of practice that addresses this, see Annex II 2.1).

Parents who migrate may also find they are unable to send remittances, due to difficulties in finding employment and surviving in destination countries, as well as on-going debts to smugglers and traffickers, leaving children in countries of origin vulnerable to poverty. (For an example of practice that addresses this, see Annex II 2.2). All migrant children, regular and irregular, unaccompanied or with their families, may need to work in order to support themselves and their families, at the expense of their education.²⁸

In countries of destination and transit, migrant children's enjoyment of their right to education may also be jeopardized by practical barriers including, inter alia, lack of familiarity with the school and admission system, complex procedures, especially for entry at

irregular times, lack of places, language difficulties, and inability to meet direct and indirect expenses of school attendance.²⁹ Migrant children can also be subject to segregated schooling. (For an example of a court ruling that addresses this, see Annex II 2.3). Further, discriminatory enrollment requirements can delay migrant children's access to education or exclude them entirely in practice.³⁰ (For an example of a practice that addresses this, see Annex II 2.4). Migrant children may also face discriminatory treatment and prejudice from teachers and school staff as well as from other students and their parents, which can act as a barrier to their enjoyment of education. Migrant children may face double discrimination on the basis of their gender, disability or religion. Furthermore, the absence of remedial classes and extra-curricular programs that facilitate the integration of these children severely affects their educational performance.

There are a number of barriers more particular to undocumented children that are important to highlight, both legal and practical. Education is an area where the discrepancy between law and practice is very evident. Despite widespread acceptance of the right of undocumented children to attend school, their access in practice varies greatly, especially at the local level. For example, some regions or cities require schools to check the migration status of migrant children, despite the obvious detrimental implications this has for children's education. (For an example of a court ruling that addresses it, see Annex II 2.5).

Further, for the most part, laws on compulsory education refer to 'all children', and thus implicitly include undocumented children. However, this indistinctness can result in lack of awareness among service providers and inappropriate requests for documentation. (For examples of legislation that addresses this, see Annex II 2.6). Even when the required documentation is not immigration-related, it can be difficult for undocumented families to meet administrative requirements such as proof of address and valid identity documents.

Undocumented children also face discriminatory refusal of registration.³¹ Other practical barriers include: fear of detection, barriers associated with living in an irregular situation, such as frequent moving and over-crowded living conditions, and being denied formal certification of studies. Indeed, research from the United States highlights the impacts of living in an irregular migration situation, by studying citizen children with undocumented parents in mixed-status families. The study finds that there are persistent educational disadvantages for citizen children of undocumented migrants compared to citizen children of regular migrants, including fewer average years in education. The authors note that the high levels of stress, lack of money for academic enrichment activities, and pressures to work lead many to drop out of school.³² Further, migration and labor policies, which leave undocumented workers' employment rights unprotected and often lead to parents working in insecure and poor conditions with low pay and long working hours, result in high levels of poverty and stress.³³ These conditions are also felt by citizen children, and can have significant repercussions for their well-being and development. (For examples of legislation that addresses some of these practical barriers, see Annex II 2.7).

Additionally, even when a *compulsory* component of an education program, access to internships for undocumented children is also a contentious issue in many countries, as many internships are considered a form of work requiring a work permit, rather than a form of education. (For an example of legislation that addresses this, see Annex II 2.8).

Undocumented children are commonly denied access to *non-compulsory* education, including pre-school, as well as vocational training and higher education. (For an example of a court ruling that addresses this, see Annex II 2.9). Access to public pre-schools is often restricted by law, as this education is not considered compulsory, despite the increasing global

recognition of the importance of early childhood education and care for cognitive and social development in early years. The often precarious working conditions of undocumented parents can make it extremely difficult for their children to obtain quality early childhood education and care. Legal exclusion from publicly-subsidized pre-school education and support programs, as well as administrative barriers, effectively prevents access to education, even when there are no additional legal barriers. Research from the US referring to professional indicators for measuring early development of cognitive skills³⁴ found that several aspects of being an undocumented parent can harm early child development. The factors highlighted are sparse social networks, lower-quality jobs, less access to stimulating professional child care, and fewer financial resources to invest in children, which increase parental stress and reduce the amount of stimulation that parents can provide and purchase for young children.³⁵ Thus, children of undocumented parents are disadvantaged regardless of their age – younger children lacking access to early childhood care, and older children lacking access to education, as they often have to care for the younger ones.

Similarly, undocumented children and young people are often excluded from accessing higher education, which in some countries includes education from the ages of 16 to 18, as well as post-18 education. The lack of opportunities for undocumented children to pursue further education, at the time when they reach or are nearing the age of majority and begin to realize the full implications of living with irregular status, can have significant negative effects for children's identity formation, friendship patterns, aspirations and expectations, and social and economic mobility.³⁶ Under these circumstances, undocumented children are at risk of leaving school early, even when education is accessible, due to limited chances for further education and job opportunities.

3. Health Care

The right of the child to the highest attainable standard of health is guaranteed in Article 24 of the CRC. The CRC is explicit that this includes the right to health care facilities and services. However, access to health care services and public health care systems varies widely on the global level.

Children in the context of migration face a number of barriers to accessing health care services, including mental health care. Children of migrant families in countries of origin often enjoy increased access to health care services and medicine, and higher levels of nutrition as a result of remittances. However, additional responsibilities and the stress associated to them, such as undertaking work and household chores, can lead to poorer health outcomes. Research from Mexico³⁷ indicates that children whose parents have migrated may be less likely to receive preventative care, such as immunizations, which can have short- as well as long-term health implications. As discussed in the previous section on education, parents may also struggle to send remittances, at least initially, leaving their children vulnerable to poverty and reduced access to health care in the initial stages of their migration. Separation from parents and adapting to parental absence can also significantly impact children's mental health and psycho-social development. In some cases, parental migration can lead to children losing contact with their parents altogether, with potentially severe implications for their mental health and well-being.

In countries of destination, barriers faced by regular migrant children in accessing health care, such as lack of understanding of complex procedures and language barriers, as well as lack of availability of services (particularly for mental health care), are also faced by

undocumented children. Nonetheless, undocumented children often face additional legal, financial and administrative barriers to accessing health care services.

Undocumented children's legal entitlements to health care are usually below the standards set out in international law. (For examples of legislation that addresses this, see Annex II 3.1). Although emergency care is generally provided, in some countries parents may be expected to pay for the treatment afterwards.³⁸ The majority of countries with insurance-based health systems (as opposed to tax-based health systems) exclude undocumented children from accessing public health insurance altogether, but may set up parallel administrative systems for regulating undocumented migrants' access to public health services. Treatment for public health reasons, including immunizations as well as screening and treatment for transmittable diseases, is usually available free of charge, though in some countries, for HIV only screening is provided free of charge and treatment must be paid for.³⁹ In many countries, 'urgent' or 'immediately necessary' treatment is available free of charge for undocumented children.⁴⁰ However, interpretations of 'urgent' care vary considerably, including in terms of provision – whether care must be accessed through hospital emergency departments or whether children may access primary health care and other services.

In such circumstances, where only 'emergency' or 'urgent' care is available free of charge, children often have to wait until their health deteriorates significantly before they are able to access care, with obvious implications for their health and recovery. (For an example of regional legislation that addresses it, see Annex II 3.2). Undocumented children are also rarely able to access continuous and specialist health care services appropriate to their needs, and face difficulties in accessing sexual and reproductive health care. As well as affecting children's immediate state of health, poor health during early years can significantly affect children's development and future health outcomes.⁴¹ Where government provision is highly limited on both the national and the regional level, health professionals and NGOs frequently provide health care through independent clinics, in order to fill the void and advocate for change. (For examples of this, see Annex II 3.3, 3.4 and 3.5).

Another common issue is discretionary refusal of treatment by administrative staff at medical facilities. In particular, complex and lengthy reimbursement procedures can create reluctance among medical personnel to treat undocumented patients. (For an example of practice that addresses this, see Annex II 3.6). Thus, even when there is some State provision of services, serious problems in the administration of these services create disparities between law, practice, and the capacity of service providers to fulfill their duties, leaving the weight of meeting urgent need on civil society, migrant associations, and migrant families themselves.

4. Housing

Article 27 of the CRC recognizes the right of children to a standard of living adequate for their physical, mental, spiritual, moral and social development. The importance of suitable housing for children's development cannot be underestimated. This is also recognized in the CRC, which obliges States Parties to provide material assistance, including housing, where possible, to families in need so that parents may ensure this right for their children. Poor housing conditions can also have negative impacts on the enjoyment of other rights, including education, health and family life.

As discussed above, remittances can raise the income level of children of migrant households in countries of origin, which can improve their living and housing conditions. However, parents may be unable to send remittances due to financial insecurity in countries of

destination, leaving children at risk of experiencing poor housing conditions and even homelessness.

In some countries of destination, migrant children are automatically placed in detention on arrival. While children may have access to education and health care services in detention, detention is a *de facto* breach of children's right to housing, and can never be considered an appropriate means of providing shelter and basic assistance to children. (For an example of a practice that addresses it, see Annex II 4.1).

In many countries, systems are being put in place to provide shelter and basic assistance to unaccompanied migrant children. However, the number of places available in shelters is often insufficient for the demand.⁴² The quality of the services provided, in terms of adequate and appropriate facilities for children, as well individual guidance and support, is another key area of concern. (For an example of practice that addresses this, see Annex II 4.2).

While reception systems for unaccompanied children in place in many countries are insufficient, there are virtually no child-adequate provisions for children living with their families. Regular migrant families face severe restrictions, and undocumented migrant families are entirely excluded from accessing housing subsidized by the government, as well as rent and housing financial support measures.

A few European countries provide emergency accommodation in shelters for undocumented families who have an ongoing application with immigration authorities, for example Belgium, the Netherlands and the UK.⁴³ However, these shelters cannot be considered appropriate housing for children in the long term. For example, families are often accommodated together in one room, without sufficient personal space and privacy. The living conditions can jeopardize children's right to family life, further straining family enjoyment as well as parental roles. Further, parents can be disempowered by the arrangements of the centers, for example by not having control of meal times and content.

Most families access housing on the private market, where a shortage of affordable housing makes decent housing difficult to find. In some countries there are restrictions on renting property without a residence permit or sanctions for those who provide rental property to undocumented migrants. This means that undocumented families often sublet from citizens or regular migrants, which weakens their rights as tenants. Irregular status can make migrants vulnerable to exploitation by unscrupulous landlords, who charge high rates for indecent, over-crowded and unsanitary living spaces. They rarely report such exploitation to the authorities for fear of being identified or having to find alternative accommodation. Initiatives that promote the enforcement of housing standards and tenants' rights, when separated from immigration enforcement, can mitigate this kind of situations.

Undocumented families' housing can at best be characterized as insecure, with frequent moving, at times relying on friends and family, and even staying in squats or living in public parks and on the streets. Such conditions often pose significant safety concerns for children, particularly girls, as well as their mothers. (For an example of practice that addresses this, see Annex II 4.3).

5. Social and Economic Protection for Children

As outlined in the previous section, Article 27 of the CRC obliges States Parties to take appropriate measures assisting parents to implement the child's right to an adequate standard

of living, and in case of need, provide material assistance and support programs, particularly with regard to nutrition, clothing and housing. Most States have implemented a number of social policies and support programs to this end, to ensure a minimum standard of living for children, including, inter alia, child benefit payments or tax breaks, rental and fuel support payments, subsidies for school-related costs and free school meals, and conditional cash transfers to support family's health and children's education.

However, children in the context of migration and their families are often excluded from social protection and poverty reduction programs in both their countries of origin and destination. Lack of access to this minimum basic coverage violates the right of these children and their families to an adequate standard of living, and considerably increases their vulnerabilities.

Children in countries of origin whose parents have migrated, both those who receive remittances and those with no contact with their parents abroad, may face practical difficulties in accessing social support measures. Comprehensive reform aimed at strengthening the capacity of social and child protection systems to detect, refer, and support situations of vulnerability beyond material poverty can help these children and their caregivers in overcoming the specific challenges brought about by migration, and avoiding its negative consequences on child well-being. Concrete examples of such initiatives include: enhancing social support services (including social workers, case managers, and/or gatekeepers); improving coordination and information-sharing between teachers, social workers, and other competent actors; and expanding support for vulnerable groups such as single mothers. (For an example of a government program and of a policy which address this, see Annex II 5.1 and 5.2).

Access to social and economic protection measures, including social assistance and other social services, is also highly restricted for migrant children in destination countries. While migration policies can be characterized as inconsiderate of child rights, migrant children face a parallel invisibility in social policies aimed at protecting children and families from poverty and social exclusion.

Recent UNICEF research that presents internationally-comparable data on child deprivation and relative child poverty emphasizes the costs of child poverty for both individual children and society, in terms of, inter alia: reduced skills and productivity; lower levels of health and educational achievement; increased likelihood of unemployment and welfare dependence; higher costs of judicial and social protection systems; and the loss of social cohesion.⁴⁴ Crucially, these social and economic costs remain relevant regardless of whether migrant children stay in the society of destination or migrate elsewhere. In addition, the denial of children's fundamental right to development is a severe human rights violation with much broader implications and long-term consequences.

Children of migrant families are known to be more at risk of poverty and deprivation,⁴⁵ and undocumented children even more so. Nevertheless, access to social security and income-support programs and measures designed to protect children from poverty and deprivation is highly restricted for migrant families, even those with regular status.⁴⁶ (For an example of a court ruling and legislation that address this, see Annex II 5.3 and 5.4). Further, undocumented children and families are usually completely excluded from such measures. (For an example of legislation and a legislative proposal that address this, see Annex II 5.5 and 5.6). Also, the social and economic assistance provided to eligible groups of migrants, for instance asylum seekers, is often well below the level of basic subsistence, and also below the

standards of assistance provided to the nationals of the country. (For an example of court ruling that addresses this, see Annex II 5.7).

It is also important to note the impact of migration policies on children of mixed status families, for example, children of undocumented migrants who may themselves have regular migration status or indeed be citizens of the destination country. Families with citizen children and undocumented parents can be seen most evidently in the United States, where children born on the territory automatically gain citizenship.⁴⁷ Recent research into such mixed-status families has found that although children have the right to a number of social protection programs and inclusion as citizens, they are less accessed by undocumented parents, primarily due to lack of awareness and fear that contact with the authorities will result in detention, deportation, and family separation.⁴⁸

Additionally, children of undocumented migrants can experience particular vulnerabilities due to the everyday impact of irregularity upon families. For example, families with an undocumented parent often experience household and personal debt, social isolation, anxiety and parental depression, and less time spent with children, due to, inter alia, precarious living and working conditions, poverty, and fear of detection. Such factors have been found to have psychosocial impacts upon family life, as well as upon children's mental and emotional well-being and development.⁴⁹ Therefore, children of undocumented migrants are often in particular need of social and economic protection measures.

6. Conclusion

Restrictive migration policies increase the likelihood of children experiencing prolonged periods of family separation, losing their regular migration status, or migrating irregularly due to lack of regular opportunities. These conditions often leave all children affected by migration vulnerable to limited access to basic rights and services.

In its mission to help build a world where the rights of every child are realized, UNICEF works globally to promote access to birth registration, education, and health care services for all children, and to fight against poverty, violence, disease and discrimination. This written submission has shown that there are key obstacles to accessing basic rights faced by all children affected by migration, such as discriminatory treatment and issues arising from poverty and lack of parental identity documents. Children whose parents have been forced to 'leave them behind' in countries of origin may enjoy limited access to services despite remittances due to the effects of parental absence, as well as significant psychosocial challenges. Parents may also be unable to send remittances, due to financial insecurity in countries of origin. Assumptions that children of migrant parents have more financial support can lead to their needs and vulnerabilities being overlooked and to their exclusion from social protection and poverty reduction programs.

Further, policies on irregular migration within destination countries, such as detection practices and restrictions on access to basic services, make children vulnerable to abuse and exploitation, and at times violate their internationally recognized human rights. In many destination countries, migration control policies create legal and practical obstacles for migrant children - particularly undocumented children - to access their rights. Despite being among the children most vulnerable to poverty and social exclusion, in most destination countries undocumented children are excluded from measures of social and economic protection. While industrialized countries promote access to education, health care services, and poverty reduction through development programs in less industrialized countries, also

within the framework of preventing irregular migration by strengthening development in countries of origin,⁵⁰ they are denying undocumented children access to those same services within their borders.

A number of barriers to undocumented children accessing basic rights are common across service sectors. National legislation is often below the standards set out in human rights law, inexplicit, or contradicted by other rules and practices, such as the duty to denounce or administrative requirements. There are frequent changes in national policies, and while service providers are being given increasing responsibility for determining migration status, there is a lack of training for them to effectively do so. At the same time, there is a lack of clarity in the rules, leaving wide room for discretion in decision-making. Fear of detection and lack of awareness on the part undocumented families regarding their rights are also common difficulties. A core issue is the lack of separation between service provision and immigration control, whether in law, or in practice, due to contradictory provisions and heavy-handed immigration enforcement or lack of awareness on the part of service providers about what their duties are towards both undocumented migrants and immigration authorities.

While there is a clear need for further research, available evidence presented in the submission indicates the short and long-term implications of poverty, limited access to education and health care, inadequate housing, parental anxiety and limited family life, for children's health and well-being. States Parties to the CRC have positive obligations to ensure that the rights enshrined in the CRC are guaranteed to all children through legislative and policy reform.

A number of examples of legislative measures that guarantee migrant children's rights are presented in Annex II. As well as national legislation, there are examples of regional or city regulations, where regional and local authorities facing the reality of undocumented families in their communities have bypassed or extended national provisions to promote the inclusion of undocumented families. While recognizing the crucial role of NGOs and migrant associations in orienting, supporting and providing services to children and families when State provision fails, particular attention has been paid to examples of law and government policy, as it is fundamental that States fulfill their human rights obligations to protect all children in the context of migration. Nonetheless, barriers remain as a result of gaps in legal entitlements, or in their practical implementation, and several examples of professional and NGO initiatives that address these barriers have also been presented. It is intended that these examples can stimulate the discussions at the 2012 CRC DGD regarding ways that States, regional and local authorities, professionals and other civil society actors can improve the protection of all children in the context of migration.

ANNEX I – RECOMMENDATIONS

This submission has analyzed how policies on irregular migration can affect all categories of children in the context of migration. Policies on irregular migration impact the ways parents and families migrate and their living conditions, which can affect children left behind and children with regular status or citizenship in countries of destination, as well as undocumented children. Policies on irregular migration also affect whether children are left behind and for how long, whether they migrate alone or with family, whether they move regularly or irregularly, and whether they are able to maintain regular status. Categories and migration statuses are fluid and temporary. Therefore, any evaluation of the impacts of international migration on children must be explicitly inclusive of all children affected by migration, and analyze the many different ways in which international migration dynamics and policies impact them. The comprehensive approach of the Convention on the Rights of the Child (CRC) provides an excellent framework to ensure that the rights of all children affected by migration are equally prioritized and to encourage cooperation between child rights and migrant rights actors on all levels, principles which should underpin any outcomes from the 2012 Day of General Discussion of the Committee on the Rights of the Child.

1. Adopt a comprehensive human rights- and child rights-based approach to migration, respecting international obligations

All children in the context of migration should be entitled to the same treatment, services and protection as national children, and treated, first and foremost, as children. All rights enshrined within the CRC should be guaranteed to all children present on State territory on equal terms, regardless of migration status, and effectively applied and monitored in the context of migration. A comprehensive approach should avoid the categorization and prioritization of particular groups of children's rights and be guided by the principle of non-discrimination. Reservations on the CRC should be withdrawn and contrary legislation and policy reformed. Laws, policies and practices which rely on superficial consideration of the best interests of the child, including those that result in family separation, detention or deportation, should be discontinued. Age-appropriate programs enabling children affected by migration in countries of origin, transit, and destination to access child-friendly information on their rights should be promoted.

2. Ensure access to civil, economic, social and cultural rights for all children in the context of migration

All children in the context of migration should have equal access as national children to civil, economic, social, and cultural rights and to basic services, regardless of their or their parents' migration status. States Parties should eliminate legislation and policy which prevents children in an irregular situation from accessing birth registration, nationality, and services, and make their rights explicit in legislation. Administrative and financial barriers to accessing services should be removed, including through the acceptance of alternative means of proving identity and residence, such as testimonial evidence. Training and guidance for civil registries and public-service providers should be carried out to ensure access is effective in practice. The difficulties faced by children 'left behind' when accessing rights and services should be specifically addressed by States in collaboration with civil society and local communities.

3. Include children affected by migration in social protection systems, policies and programs

Policies, programs and measures to protect children from poverty and social exclusion must include children in the context of migration, regardless of status, and consider their particular needs and vulnerabilities. The capacity of social protection systems to detect, refer and support situations of vulnerability beyond material poverty should be strengthened. States Parties should ensure the inclusion of households affected by migration in local statistical and data systems, as well as in nationally-representative living standards, expenditure, and labor force surveys. This will lead to evidence-based social policies that include these families and their children in local planning and budgeting processes. Consultation with vulnerable groups, including populations affected by migration, should take place before formulating a particular policy or program. In countries of origin, specific social protection provisions for children 'left behind' should be introduced; in particular, measures to strengthen families in their child-care role and special services for children living outside a family environment, including kinship care, should be put in place. In countries of destination, migrant households with children should be a specific target group of social policies and programs.

4. Prohibit sharing of personal information between service providers and immigration authorities

Civil registries and public-service providers should be prohibited from sharing personal information of irregular migrant children and their families with immigration authorities. This firewall between public service provision and immigration control must be erected in law and in practice, through the issuing of clear guidance for both service providers and undocumented parents. Undocumented children and their families should not be arrested at or near civil registries or service providers. This firewall should be complemented by efforts to improve the knowledge and change the mindset and behavior of local authorities towards populations affected by migration.

5. Promote access to secure residence status

States Parties should promote regular and secure residence, through designing and implementing permanent and accessible mechanisms for children and their parents to regularize their status for the long-term. In this regard, asylum and immigration procedures should be expedited in the best interests of the child. Existing mechanisms should be made more accessible, flexible, and available at lower cost. Requirements for residence to be regular in order to access to permanent residence status and citizenship should be removed when other conditions have been met, including the right to acquire the nationality of a country in which the child has lived for a specific period of time.

6. Enhance evidence-based legislative and policy reform, and cooperation between child rights and migrant rights stakeholders

Particularly in view of the 2013 High-Level Dialogue on International Migration and Development, there is pressing need for a global consultation on the impacts of migration and migration policies on the rights of children in the context of migration in countries of origin, transit and destination, with the engagement of the CRC Committee, the Committee on Migrant Workers, OHCHR and the Special Rapporteur on the Human Rights of Migrants, States Parties, the Global Migration Group, UN Agencies, and child rights and migrant rights organizations, and with meaningful participation of children affected by migration. Such a

consultation would have the objective of identifying concrete legislative and policy reforms required to assist countries in efforts to comply with their international obligation to protect and fulfill the rights of all children under their jurisdiction.

7. Improve monitoring of CRC implementation in relation to children in the context of migration

States Parties could incorporate systematic evaluation of CRC implementation in relation to all children affected by migration into their periodic reporting to the Committee, and empower national institutions responsible for guaranteeing human rights (ombudsmen, equality bodies, etc.) to play a key role in monitoring compliance with the Convention, with a specific mandate to address the needs of children affected by migration.

ANNEX II - PROMISING LEGISLATION AND PRACTICES ACROSS FIVE REGIONS

1. BIRTH REGISTRATION

1.1 *Practice: Mexican State of Oaxaca*

In Mexico, the State of Oaxaca's program to address low birth registration in municipalities with high social exclusion concluded that some of those children without birth registration documents had already migrated within the country and to the United States. These migrants live in a situation of dual invisibility and lack of documentation, as they are often unable to prove their nationality neither in the country of destination nor of origin. Oaxaca and other Mexican States are coordinating with Mexican communities and Mexican Consulates in the United States to promote mechanisms for issuing birth registration documents to those originally born in Mexico, as well as the necessary legalization of identity documents for children born in the United States, so that these documents are valid on either side of the border. This complements other efforts to liaise between Mexican States to issue birth registration documents for seasonal migrant workers and their families.

1.2 *Legislation: The Netherlands*

In the Netherlands, it is a legal obligation for all births to be registered, and migrant parents are equally bound by this duty.⁵¹ The law allows registration to be made by an appropriate third party,⁵² if undocumented parents fear presenting at the municipality to register their child.

1.3 *Legislation and practice: Thailand*

The 1991 Civil Registration Act and its amendment the 2008 Civil Registration Act (No.2) provide a legal basis for birth registration of every child born in Thailand regardless of the legal status of their parents.⁵³ The Civil Registration Act (No.2) B.E. 2551 (2008) also clarifies the procedures for registering the birth of abandoned children and children whose parents are unknown. Officials of the Ministry of Social Development and Human Security and staff of care institutions operated by non-governmental organizations are tasked to facilitate birth registration of the children in their care. The updated legislation has given new impetus to ensuring universal birth registration and the Government, with UNICEF support, is now implementing a new online birth registration system which links all public hospitals to their local civil register office, thereby capturing records of all new births.

1.4 *Legislation: Vietnam*

In Vietnam, the law on civil registration specifies the competence and procedure for a variety of scenarios regarding birth registration, including registering the birth of children born in Vietnam if either or both parents are Vietnamese, with dual nationality, or if either or both parents are foreigners or stateless. It further details the registration of children born overseas if both parents were residing abroad and have returned to reside in Vietnam, without having registered their child previously. Moreover, it addresses a frequently encountered need of returning Vietnamese migrant or trafficked mothers to register their children born overseas, regardless of the nationality of the father or the parents' civil status, provided that the child's birth was not registered previously.⁵⁴

1.5 Legislation: Chiapas State and Mexico

Chiapas, on Mexico's southern border with Guatemala, pioneered legislative reform in 2010 affirming in its Civil Code⁵⁵ the obligation of local civil registrars to register children born in that State, independently of the migratory status of their parents. Also in 2010 the National Migration Institute trained State civil registration services on their obligations to register children of migrant parents born in Mexico. In 2011 Mexico's new migration law incorporated the principle that "judges and civil registration officials cannot deny migrants authorization for acts related to their civil status, nor the registration and recognition of children, marriage, divorce, and death, independently of their migration situation or status."⁵⁶

1.6 Practice: UNICEF and NGO support for registration systems in Jiangsu Province, China

In China, obtaining official urban residence status is extremely difficult for internal migrants, even for rural migrants who have lived in their new homes for years. Access to key social services such as education and health care is often limited by this lack of legal residence status. Since 2003, UNICEF has been supporting the implementation of new registration systems for migrant children in two cities in the Jiangsu Province, in cooperation with the National Working Committee on Children and Women (NWCCW). More than 360,000 children have been registered thanks to this initiative, and now the Jiangsu Provincial Government has decided that this system will be rolled out across the province in the coming five years. Additionally, NWCCW has included registration of migrant children as a goal for the whole country in the new National Plan of Action for Children, the key policy document that presents China's plans to implement the CRC by 2020.

2. EDUCATION

2.1 Practice: Atikha Overseas Workers and Communities Initiative, The Philippines

The non-governmental Atikha Overseas Workers and Communities Initiative has developed a manual that serves as a guide for primary and secondary school teachers to integrate migration issues into lessons plans and school activities, sensitizing children, particularly girls, to the sacrifices their migrant parents have made, to the values of education and savings, and to the importance of maintaining good communication within the family unit. The Department of Education has included the modules in the curricula of three sending regions, and the good results shown in the preliminary evaluations and informal assessments suggest that the initiative will eventually be scaled up.

The Atikha Overseas Workers and Communities Initiative organization also offers livelihood training and economic opportunities to children and other relatives 'left behind' to increase their self-reliance.

2.2 Practice: The Government of Morocco

The government of Morocco provides a series of programs and strategies for children living on the streets,⁵⁷ including those whose parents have migrated elsewhere and those who have been deported back to Morocco. For example, "welcome centers" give shelter and facilitate children's social insertion through education and professional training.⁵⁸ There are also

NGOs supporting and complementing State interventions, like Bayti, working on protection, rehabilitation, and education.⁵⁹

The Moroccan government has also been funding a program for informal education of children ‘out of school’, including migrants, since 1998. The program is run in collaboration with international and local NGOs, including Caritas, Fondation Orient–Occident (FOO), Terre des Hommes, Association Oum El Banine, Association Affak Chaba, and implemented by NGOs. The objectives of the informal education program include: (i) to take into consideration children in difficult situations, (ii) to offer them access to adaptive/alternative programs, and (iii) to integrate them into the formal education system, vocational training or social life in general. Thus, this informal education program offers children marginalized from the formal education system an opportunity to complete compulsory education in a flexible environment, and tackles the source of the lack of schooling by integrating mechanisms of prevention, accompaniment, hearing, and intermediation into the formal educational establishments. Informal education also provides migrants with complementary language training (Arab, English and French). The number of children benefitting from this program has increased from 34,550 in 1998 to 46,119 in 2011.

However, improvement is needed in the quality and organization of informal education, and in teacher training on the specific needs and challenges of sub-Saharan migrant children, especially those who speak neither French nor Arabic. Further, difficulties in integrating migrant children into the formal education system persist.

2.3 Legal Action and Court ruling: NGO Coalition, District Court and High Court of Justice, Israel

In Israel, all children must attend school, including those in detention facilities.⁶⁰ Registration is carried out with the municipality. However, in the city of Eilat, asylum seeking and undocumented children have been required to attend a separate school with lower standards. In response to the situation there, the Hotline for Migrant Workers, TAU Refugee Rights Clinic and ACLB Migrants Rights Clinic filed a petition claiming discriminatory segregation of children based on their race, ethnicity and residence status.⁶¹ The municipality of Eilat rejected the obligation to provide equal schooling⁶², and the Ministry of Education supported its view and allocated additional funds for segregated schooling.⁶³ However, the Beersheba District Court has recently condemned the policy of segregation.⁶⁴ Following this decision, the High Court of Justice also voiced its criticisms and ordered the city to integrate the children of migrants and asylum seekers into the local school system. The municipality has agreed to end the segregated schooling, in place for four years, and to provide assistance and special classes to ease migrant children’s integration into the municipal school system.

2.4 Practice: Civil society and local government, Malaysia

In the Sabah region of Malaysia, government schools will not accept children identified as “foreigner” on their birth certificates, nor those without birth certificates. Private schools accept migrant children, but the costs are prohibitive for most families. Church and community organizations are filling this gap, providing private education at reduced cost. For example, the HUMANA Child Aid Society provides primary education for approximately 10,000 Indonesian and Filipino children living in the oil palm plantations in Sabah.⁶⁵ In March 2011, the Ministry of Education, together with the Malaysian Teachers’ Foundation, the Sabah Task Force, and UNICEF, launched an education center in the coastal village of Kg Numbak, Kota Kinabalu, to provide basic education for 300 refugee and undocumented children in the village.⁶⁶ A second learning center was built in June 2012 in Sandakan, Sabah,

with support from the IKEA foundation, the Ministry of Education, and the Sabah Task Force. This center provides basic education for 900 refugee and migrant children. Evidence and experience gained from these projects are being used to develop an alternative learning policy at the country level.

2.5 Court Ruling: Federal Appeals Court, United States

Recent State legislation in Arizona and Alabama⁶⁷ is threatening children's access to education by requiring schools to check the migration status of their pupils. Media reports from Alabama recorded an immediate drop in the number of Hispanic children attending school.⁶⁸ This provision in Alabama was recently ruled to be contrary to equal protection measures by a federal appeals court.⁶⁹ Certain local schools in these States are also resisting the implementation of the laws.⁷⁰

2.6 Legislation: Explicit inclusion of undocumented children

In the Americas, recent migration laws have made explicit that all children, regardless of migration status, are entitled to access compulsory schooling, for example, in **Argentina, Mexico** and **Uruguay**.⁷¹ Similar legislation can be found in several European countries, including the **Netherlands, Belgium, Spain, Italy** and **Greece**.⁷²

In July 2005, the Cabinet of the Royal Government of **Thailand** issued a Resolution on the Education of Unregistered Persons requiring that all children be provided with access to all levels of education regardless of their citizenship status or that of their parents or guardians. The government allocates additional funds to the Ministry of Education to defray the costs of providing educational services to migrant children.⁷³ There is evidence that implementation of the Resolution has helped ensure that, at least, migrant children have access to primary education.⁷⁴

2.7 Legislation: Access to education tackles practical barriers to children's attendance and includes all school-based services

In the **United States**, the Supreme Court ruled in the landmark *Plyler v. Doe* case⁷⁵ in 1982, that it was a violation of the Constitution to deny undocumented children free compulsory education under the same conditions as citizen and regular migrant children. The explicit legal ruling has been complemented by **clear guidelines**, for example produced by The National School Boards Association (NSBA) and The National Education Association (NEA)⁷⁶ regarding legal issues and specific schools.⁷⁷ **A number of States** have fully implemented this ruling to include access to other school-based services, such as **free and reduced-price meals** and **educational assistance for children with learning disabilities**.⁷⁸

In **Spain**, undocumented children can legally access **subsidies and grants**, which are vital for many undocumented children to meet the extracurricular expenses of attendance in school (such as uniforms, books, transport, and meals).⁷⁹

In **Greece**, children can be enrolled with insufficient documentation if they are refugees, have applied for asylum, have come from a country in which disorderly conditions prevail, or are undocumented.⁸⁰ Similarly, in **Italy**, school registration is possible even if no identification documents are available, on the basis of **declared data**.⁸¹ Further, the law is clear that the right to education⁸² includes receiving formal recognition of education and the **final school-leaving qualification**, regardless of whether students have a residence permit or identity

documents. Diplomas should be issued with the personal data declared at the moment of registration.⁸³

2.8 Legislation: Internships: Spain

In Spain, the legislation clearly allows undocumented children to carry out internships. The contract is made between the educational institution and the internship provider. As there is no internship or employment contract between the student and the internship provider, there is no requirement for the student to have a valid work permit.⁸⁴

2.9 Court Ruling: Pre-school education: Italy

In Italy, the issue of access to pre-schools for undocumented children has been the subject of a court ruling, following the introduction of measures preventing undocumented children from being registered in pre-schools. The measure was found by the Court of Milan to be discriminatory and contrary to the right to education enshrined in the CRC and domestic legislation, which it interpreted to include all school grades.⁸⁵ Although this interpretation is not accepted and implemented nationwide, a residence permit is no longer required for undocumented children to register in pre-schools in Milan.⁸⁶

3. HEALTH CARE

3.1 Legislation: Explicit inclusion of undocumented children

There are countries with inclusive legislation at the national level. For example, in Europe, undocumented children have the same entitlements to health care services as national children in **Spain**,⁸⁷ **Romania** and **Portugal**.⁸⁸

There are several countries in the Americas where national legislation gives equal access to health care services for undocumented migrants, including children. These include **Argentina**, **Mexico** and **Uruguay**.⁸⁹ In Argentina, this law was passed at a time when official estimations indicated between 750,000 and 1 million undocumented migrants present in Argentinian territory and the country was experiencing severe economic crisis.⁹⁰

3.2 Regional Legislation: State of Illinois and City of San Francisco, United States

In the United States, access to subsidized health care is highly restricted for migrants.⁹¹ Generally, undocumented migrants are excluded from the public health insurance programs for low-income families and children, Medicaid and the State Child Health Insurance Program (SCHIP).⁹² Unless they have the means to access private health insurance, undocumented migrants are only entitled to access emergency medical care free of charge (through Emergency Medicaid).

However, some States and local governments have extended coverage for undocumented children with their own funds. For example, both the State of Illinois and the City of San Francisco have specific programs to provide health care to uninsured children under the age of 19 whose families meet the income requirements, regardless of migration status.⁹³

3.3 Practice: MHAK mobile clinic, South Korea

In South Korea, the Migrants Health Association in Korea (MHAK) runs a mobile health clinic which provides health care to irregular migrants 10 times a year in 8-10 cities.⁹⁴ An interdisciplinary team of doctors is able to treat about 100 irregular migrants a day. The bus has space for dental and gynecological visits, as well as space for minor surgeries. They also provide vaccinations to children. Using the buses, MHAK visits areas where irregular migrants work and live and provide on-site health care free of charge. MHAK was started in 1999 to respond to the health challenges of irregular migrants. As well as creating a network of medical institutions to provide services to irregular migrants, MHAK have been engaged in ongoing advocacy for a comprehensive health care policy for migrants, which would include mental health services.

3.4 Practice: The Tamkine-Migrants project, Morocco

In Morocco, a day-care center delivering mother and child health services and social counseling for migrant women and children was opened in Rabat in May 2011, within the framework of the 'Tamkine-Migrants' project. Within twelve months, the center received 357 women and children from sub-Saharan countries, and records show that the number of social counseling sessions provided are double than the estimations foreseen at the beginning of the project. Over 30 per cent of these women and children are suffering from serious traumas (sexual violence, persecution, death of family members) due to their migration history and their irregular status in the country. The medico-social team assisted more than 50 births in State maternity hospitals, also providing medical follow up for the mothers and babies, delivering basic assistance in hygiene, food and clothes. However, the problems they face regarding lack of income and decent housing remain highly problematic. Replications of some activities are planned in Tangier and Oujda, in collaboration with Moroccan civil society.

The project is financed by the EU and coordinated by Terre des Hommes (TDH)-Spain in partnership with the Moroccan associations Oum El Banine and GADEM (Groupe Antiraciste d'Accompagnement et Défense des Etrangers et Migrants). TDH and its partners also promote access to education by informing migrant families and public schools staff about the importance of formal education, intercultural exchanges, and the right to education.⁹⁵

3.5 Practice: The Right to Health Initiative, Sweden

In Sweden, the Rosengrenska clinic in Gothenburg was established in 1998 to support undocumented migrants, who in Sweden are only entitled to receive emergency treatment, and this at cost, since they are liable to pay after receiving the treatment. Only undocumented children who have been refused asylum are entitled to equal access to health care as national children, while other undocumented children have the same entitlements to health care as undocumented adults. As a voluntary charity network of health professionals, the clinic has been able to provide an increasing amount of services, including medical, psychological and dental assistance, as the number of volunteers has increased. The network also uses its expertise to raise awareness about the extreme exclusion of undocumented migrants in Sweden, and has played a pivotal role in the Right to Health Initiative, which has been lobbying for a change in legal provisions for health care.⁹⁶ As a result of concerted advocacy efforts from wider civil society, the Swedish government has recently announced plans to extend the provision of health care for undocumented children on an equal basis with national

children. Entitlements for adults are being extended only to ‘urgent care’, as is the case for asylum-seeking adults.⁹⁷

3.6 Practice: NGOs, South Korea

In South Korea, irregular migrants can receive emergency care free of charge, and hospitals are able to claim reimbursement from the government. However, it is common practice for hospitals to ask undocumented migrants for payment upfront, due to the lengthy reimbursement procedure, an insurmountable barrier for many. To enable access if the migrant cannot pay, NGOs often sign a declaration agreeing to take financial responsibility for the medical treatment.⁹⁸

4. HOUSING

4.1 Practice: Hotline for Migrant Workers, Israel

In Israel, the automatic detention of all migrants crossing the border irregularly,⁹⁹ including children, means that many children spend prolonged periods of time in detention facilities. The conditions in such centers are highly inappropriate for children.

As a result of advocacy efforts from the Hotline for Migrant Workers, since November 2009 150 unaccompanied children have been transferred to boarding schools for children under 16 years of age. However, the number of places available is highly insufficient (a total of 150 places), and there is no governmental plan to increase those numbers, meaning that many children remain in detention. Further, there are no places in boarding schools for girls, a situation which forces them to spend longer periods in detention before alternative shelter can be found.¹⁰⁰

4.2 Practice: Defence for Children-the Netherlands and the European Parliament, Europe

In Europe, the NGO Defence for Children – the Netherlands has developed *Core Standards for guardians of separated children in Europe*. The goals of the core standards are to empower guardians across Europe to work towards common objectives and to inspire State authorities to offer guardians the work environment and mandates that they need. The Core Standards are based on eight country reports (Belgium, Denmark, Germany, Ireland, Italy, the Netherlands, Slovenia and Sweden) which include the views of unaccompanied children and their guardians measured against international standards. The Core Standards were endorsed by Members of the European Parliament at the launch in the European Parliament on 30 November 2011.¹⁰¹

4.3 Practice: NGO coalition, United Kingdom

A group of organizations, including Praxis Community Projects, Spare Room, Housing Justice, and London Churches Refugee Network, has developed an initiative called *London Hosting*, which aims to create viable alternative accommodation provision for destitute migrants and refugees in London. Praxis recruit, assess, train and continuously support people who are able and willing to host migrants in a difficult situation, and match them with potential guests. At the same time, they carry out development work in the community to support or help start local hosting initiatives in collaboration with local churches, other faith

organizations, voluntaries, and refugee support groups, and work to resolve the immigration, benefits, legal and health issues in the guests' lives and to help them successfully move on.¹⁰²

5. SOCIAL AND ECONOMIC PROTECTION

5.1 *Government Program: Overseas Workers' Welfare Administration, the Philippines*

The Overseas Workers' Welfare Administration in the Philippines manages a trust fund to support Filipino migrant workers and their families. The fund is generated through membership fees from the Filipino migrants or their employers (\$25), and workers who contribute are eligible for a range of social services, including insurance, healthcare and family-assistance loans. In addition, their children have access to education and training programs. For example, the 'Tuloy-Aral' or 'Continuation of Education' project helps cover the expenses of elementary and high-school students in financial need, by providing them with \$100 a year to pay for books and other supplies, transportation, etc.

5.2 *Policy: National Action Plan on Children Left Without Parental Care and census of children left behind, Moldova*

The National Action Plan on Children Left Without Parental Care adopted for 2010-2011 addressed the multiple aspects of vulnerability of children left behind, including by the creation of social services for children at the community level; awareness-raising among the general public and potential migrants on the potential negative impacts of migration on children; and capacity-building for professionals working with children (teachers, psychologists, police, health workers, etc.) on the vulnerabilities of children left behind and protection of their rights. The Plan also envisaged the introduction of life-skills education in school curricula (not yet in place) and the establishment of a monitoring and evaluation system of children left behind.

The Plan was drafted by the Governmental Commission on Children Left Without Parental Care as a result of migration, with the support of line ministries. The Ministry of Labor, Social Protection and Family is accountable for the Plan's overall coordination and supervision.

As of May 2012, the Ministry of Labor, Social Protection and Family is carrying out a census of children left behind, with the support of partners. The results of this census will be used to further strengthen the social protection system for these children.

5.3 *Court Ruling: High Court of Pretoria, South Africa*

In South Africa, the High Court of Pretoria found that unaccompanied migrant children must be treated in accordance with the Child Care Act of 1983 (now superseded by the Children's Act 38 of 2005 as amended), in the same manner as South African children. The Court found that the legal mechanisms for the protection of children in the Constitution and the Child Care Act apply equally to unaccompanied migrant children. Therefore, unaccompanied migrant children are subject to the same procedure for determining whether they are in need of care, and the provision of the care itself, as South African children.¹⁰³

5.4 Legislation: Argentina

In Argentina, migrants and their families are entitled to access to protection and rights under the same conditions as nationals, particularly in relation to social services, public goods, health, education, and justice.¹⁰⁴ Migrant families are also eligible to access the Universal Child Allowance, an income-support measure for children, though only after three years of regular residence. It is not yet clear whether this period may begin from the moment of entering into a procedure to obtain a residence permit, or whether it begins once a permit has been granted. The United Nations Committee on Migrant Workers and their Families has recommended that the provision be extended to irregular migrant children.¹⁰⁵

5.5 Legislation: The Government of Belgium

In Belgium, the right to social and economic protection guaranteed to all people under Belgian law¹⁰⁶ has been explicitly recognized as applying to undocumented children.¹⁰⁷ Both accompanied and unaccompanied undocumented children are afforded a certain level of inclusion in social protection by law. However, the implementation of Belgian legislation discriminates against unaccompanied migrant children in practice, by separating provision from mainstream services. As for children with families, they face discrimination in law as well as in practice. This makes both groups of children vulnerable to deprivation when specialized services lack capacity.

Implementation is problematic because, for example, the provision of material assistance and housing for undocumented families has been limited to that provided in the federal reception centers for asylum seekers.¹⁰⁸ Further, the federal agency for asylum seekers and refugees, Fedasil, and the Office for Foreigners signed a protocol of cooperation,¹⁰⁹ according to which families are accommodated in a reception center and protected against eviction only if they are cooperating with a process leading to regularization or return.¹¹⁰ Therefore, there are significant limits to the protection offered to undocumented children. Additionally, at the current time, there is a severe shortage of places in the reception centers, making access near impossible even for those who are eligible.¹¹¹

This situation is also affecting unaccompanied non-asylum seeking children in Belgium. The provision of social and economic protection to unaccompanied children is not limited to the Fedasil centers.¹¹² However, the support is organized around these centers, and children who have not been assigned to a reception center do not receive the same level of social support and guidance, and may face periods of homelessness. Fedasil is currently refusing to support unaccompanied non-asylum seeking children, unless they are particularly vulnerable,¹¹³ leaving them outside the system of social protection which they are legally entitled to.¹¹⁴

5.6 Legislative Proposal: Brazil

In Brazil, the Parliament is currently discussing a legislative proposal which would guarantee the fundamental rights enshrined in the Constitution to all migrants, regardless of migration status, in particular the civil and social rights recognized for Brazilians; the right to education; the right to public health; and access to justice.¹¹⁵

5.7 Court Ruling: Federal Constitutional Court, Germany

In Germany, until a recent ruling from the Federal Constitutional Court,¹¹⁶ the benefits provided to asylum seekers and other eligible migrants¹¹⁷ had not increased since the law regulating the benefits came into force in 1993, despite considerable increases in prices.¹¹⁸ The Court has ruled that the law was incompatible with the fundamental right to minimum existence, and that the new provisions must be made immediately available and correspond to regular social welfare payments.¹¹⁹

ENDNOTES

¹ See for example CLANDESTINO (2009) “Pathways into Irregularity: The Social Construction of Irregular Migration”, CLANDESTINO Research Project Counting the Uncountable: Data and Trends across Europe, October 2009

² Destination countries are adopting increasingly restrictive policies on family migration and imposing requirements relating to, inter alia, minimum income and housing, minimum length of residence, minimum age and length of relationship for spousal visas, and age limits for children (See for example, Council of Europe Committee on Migration, Refugees and Displaced Persons (2012), “Position paper on family reunification”, AS/Mig (2012) 01, 2 February 2012; Yves Pascouau (2011), “Conditions for Family Reunification Under Strain: A comparative study in nine EU Member States”, Yves Pascouau in collaboration with Henri Labayle, European Policy Centre, November 2011; Migrants’ Rights Network (2012), “Keeping Families Apart: The impact of a new income threshold for family migration”, Migrants’ Right Network Briefing Paper, April 2012. See also Migration Integration Policy Index: www.mipex.eu).

³ See for example United Nations Interregional Crime and Justice Research Institute (UNICRI) and Australian Institute of Criminology (AIC), “Global Programme Against Trafficking in Human Beings, Rapid Assessment: Human Smuggling and Trafficking from the Philippines”, A/CONF.187/CRP.1, 7 February 2000; Report of Regional Seminar on *Children Who Cross Borders in Southern Africa*, Convened by Save the Children UK in collaboration with University of the Witwatersrand, Forced Migration Studies Program, May 25 - 27, 2009 in Johannesburg, South Africa.

⁴ There is evidence that restrictive interpretations of requirements to qualify for international protection, and practical barriers such as lack of interpretation services and quality legal advice, have contributed to low recognition rates in some destination countries, and growing populations of refused asylum seekers who do not return to their country of origin. This can be, for example, because they fear for their safety, have incurred large debts for their migration journey, or have practical difficulties in obtaining identification documents, etc. (See for example Keßler, S. & Schöpf, M. (2010) “Living in Limbo: forced migration destitution in Europe”, Advocacy Network on Destitution, Jesuit Refugee Service, Brussels; Williams, R. & Kaye, M. “At the end of the line: Restoring the integrity of the UK’s asylum system”, Still Human Still Here, London; Gibbs, J. (2010) “Justice at Risk: quality and value for money in asylum legal aid”, Interim Report, City University, Information Centre on Asylum and Refugees, London; Independent Asylum Commission (2008) *Saving Sanctuary: The Independent Asylum Commission’s first report of conclusions and recommendations*, Independent Asylum Commission, London.).

⁵ In this background paper, the term ‘parents’ is used to refer to parent(s) and other primary caregiver(s).

⁶ See for example K. Johansson Blight et al (2012) “Children without a voice: Report on children with symptoms of severe depressive devitalization who have been refused asylum and protection in Sweden”, Etikkommissionen i Sverige, January 2012.

⁷ Countries which grant citizenship purely (but not only) on the grounds of being born on the territory include the United States, Argentina, Brazil, Bolivia, Canada, Chile, Costa Rica, Mexico, Pakistan, Peru, and Venezuela.

⁸ For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), and, in Europe, the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union. 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 States Parties, but for which some of the rights have been established by the case law to apply to irregular migrants, particularly in the case of children.

⁹ Many parents make the difficult decision to migrate nonetheless, in order to secure a better life for their children.

¹⁰ For example, if a parent’s identity documentation is needed to access services, or because the child needs to work or care for younger siblings due to poverty and changes in household configuration.

¹¹ In some countries, children may qualify for regularization based on years of residence and ties to the destination country, and family reasons are often central considerations in both permanent and temporary regularization measures. For example, in Belgium, additional criteria for regularization were temporarily introduced between 9 July and 9 December 2009. One of the criteria related to local ties, demonstrated primarily by five years of continuous residence (Centre for Equal Opportunities and Opposition to Racism, *Annual Report on Migration 2011*, 2012). In the United States, an executive order was recently instituted in order to provide work permits to young migrants (no more than 30 years old) who entered the US before age 16, have lived there

for at least five years, are in school, high-school graduates or military veterans in good standing, and have clean criminal records. The deferred action for childhood arrivals (DACA) measure does not provide a permanent residence status, but grants a suspension of deportation proceedings and issues renewable temporary permits of residence. For more information see USCIS website: <http://www.uscis.gov/>. The Migration Policy Institute has estimated that as many as 1.76 million young undocumented migrants could be eligible (Migration Policy Institute, Fact Sheet, “Relief from Deportation: Demographic Profile of the DREAMers Potentially Eligible under the Deferred Action Policy”, August 2012).

¹² Health insurance coverage has expanded rapidly in Vietnam over the past decade, with the introduction of several forms of contributory and non-contributory schemes for children, the poor, farmers and people working in the informal sector. All children under six receive free health insurance, and students in school are eligible for a voluntary insurance program. The Health Care Fund for the Poor, a non-contributory scheme for low-income households and people living in remote areas, was established in 2003. The government has set a goal of universal coverage by 2014, and estimates that about sixty per cent of the population is covered by some form of health insurance. However, migrants report that without permanent residence they cannot obtain insurance cards for their children, which limits their access to both services and information. In Vietnam, a new Residence Law came into effect in 2007, collapsing earlier categories into two groups, namely permanent and temporary residents. Earlier categories were: (i) people who live where they are registered; (ii) people who live in the same province of their registration but in a different district; (iii) “official migrants”, meaning people with official permission to live in another province; and (iv) temporary migrants. A fifth category of unregistered (usually temporary) migrants existed alongside the officially recognized groups. The new Residence Law also reduced the requirements for applying for permanent status, which enables temporary migrants to become full-fledged urban citizens. The enactment of the law has therefore made it easier for migrants to acquire permanent registration. However, the impact of the new law has been limited, due to inconsistent implementation at the local level and an absence of central government guidance. In practice, many migrant children still find it difficult to obtain official resident status in cities, thus experiencing difficulties accessing public services (UNICEF Vietnam, September 2012).

¹³ See UNICEF (2011) [State of the World’s Children. Statistical table on birth registration](http://www.unicef.org/protection/Table_9_state_of_world_children_12082010.pdf), for 2000-2009 figures (available online at: http://www.unicef.org/protection/Table_9_state_of_world_children_12082010.pdf).

¹⁴ For example, the Dominican Republic was condemned by the Inter-American Court of Human Rights for arbitrarily refusing birth registration to children born in the Dominican Republic to undocumented Haitian migrants, in order to deny them citizenship on the grounds of *jus soli* (IA Court of Human Rights, Case of Dilcia Yean and Violeta Bosico v. Dominican Republic, Judgment of September 8, 2005, (Ser. C), No. 130 (2005). Instead of implementing the decision and changing the practice, the Constitution was changed in 2010 in order to include an exception, that children born to undocumented migrants are not entitled to *jus soli* nationality.

¹⁵ For instance, in Vietnam, internal migrants face (mainly practical) difficulties registering their residence in a new place. This leaves their children without access to birth registration, school enrolment, health insurance, and other social services. In China, under the current household registration system, children of internal migrants face challenges similar to those of international migrants. Due to the difficulty of obtaining legal urban residence status, even for rural migrants who have lived in their new homes for many years, access to key social services such as education and health care is often limited for migrant families.

¹⁶ In some countries, there are separate procedures for registering a birth and receiving a birth certificate, and it can be difficult to obtain a certificate (Michael Miller, “Birth registration and the rights of the child”, a report prepared for the European Parliament, 2007, p. 3).

¹⁷ Such problems may arise particularly for refugees and asylum seekers, who often do not have official identity documents. However, some countries have discriminatory practices which also exclude regular migrants. For example, in Greece, according to the citizenship law only parents who are registered on the municipal roll (*dimotologio*) can receive a birth certificate for their babies, and only Greek citizens may register. Thus, in practice, neither regular nor irregular migrant parents are able to receive birth certificates for their children (Jyothi Kanics, “Realizing the rights of undocumented children in Europe” in: Jacqueline Bhabha (ed.) *Children without a State: a global human rights challenge*, MIT Press, Cambridge, Massachusetts, 2011, p. 135).

¹⁸ For example, in the Sabah region of Malaysia, if the mother, father or informant is a non-citizen, it is necessary for them to produce a valid travel document, pre-natal examination documents, confirmation of birth or still born and marriage documents (for first born only) if parents are married, in order to obtain a birth certificate (Sabah Ordinance Cap 23 for births of children born in Sabah).

¹⁹ Jyothi Kanics, “Realizing the rights of undocumented children in Europe” in: Jacqueline Bhabha (ed.) *Children without a State: a global human rights challenge*, MIT Press, Cambridge, Massachusetts, 2011, p. 135; Michael Miller, “Birth registration and the rights of the child”, a report prepared for the European Parliament, 2007, p. 6

²⁰ For instance, when Vietnamese women migrate irregularly or are being trafficked to China, they cannot get married without paying large sums of money to local authorities and often do not register their children in China due to fear of deportation. When returning or being deported to Vietnam with their children born in China, despite legal provisions it is difficult for them to register their children or apply for Vietnamese nationality for them, without birth registration and without money to pay for DNA tests to prove parenthood. Ignorance of the law by some officials may also play a role. Consequently, accessing basic services becomes a challenge for these children.

²¹ For example, in Italy, the criminalization of unauthorized entry or stay brought in 2009, introduced a duty on all public officers to report undocumented migrants to the police, as they have a duty to report any crime. In Italy, a child's birth is registered at a hospital or at a municipal registry office. Health professionals are prohibited from reporting irregular migrants to the immigration authorities, meaning that birth registration in hospitals can be accessed without fear. There is no similar prohibition for registry offices. However, the Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) argues that, as parents cannot be deported within six months of having a child, they are not technically committing the crime of irregular stay, and so there is no duty to report. Therefore, there is chance that registry offices would contact the immigration authorities, and it is equally possible that undocumented parents may fear registering their child's birth in a registry office, but in practice, it is a legal obstacle which is little implemented. (PICUM paper prepared for UNICEF Brussels Office, "Rights of Accompanied Children in an Irregular Situation," November 2011)

²² For example, in Israel, uninsured migrants must cover the costs of delivery and hospitalization (about 480 US dollars a day), and in 2011 alone, the Hotline for Migrants Workers counseled 70 women who were denied official birth notification documents after non-payment. Further, the notification of birth provided by the hospital is not an official birth certificate, which is normally issued based on registration in the official population register, from which migrants are excluded. Thus migrants also face great difficulty in obtaining birth certificates and there have been cases where birth certificates have only been issued once a voluntary return declaration has been signed (Information provided to PICUM by the Hotline for Migrant Workers, 26 June 2012).

²³ For example, in Sri Lanka, children left behind by migrant mothers performed poorly in academic activities, lacked concentrating abilities, and failed to improve despite additional help. They did not participate in extracurricular activities due to poor moral support and had a wide range of behavioral problems such as aggression, cruelty, stealing, hyperactivity, and disruptive behavior (BCV Senaratna, Sri Lanka Journal of Child Health, 2012; 41(2): 71-75, *Left-behind children of migrant women: Difficulties encountered and strengths demonstrated*).

²⁴ UNICEF / UNDP Background Paper for the 2007 Global Forum on Migration and Development, pp. 5-6; R. Cortés, 2008, *Children and Women Left Behind in Labor Sending Countries: An Appraisal of the Social Risks*, UNICEF Division of Policy and Practice Working Paper, August 2008; Cortés, R., *Adolescents' Rights, Gender and Migration: Challenges for Policy-Makers*, ADAP Learning Series, UNICEF April 2011.

²⁵ This is often the case when siblings are separated and when delegation of legal guardianship is unclear.

²⁶ Ibid. See also UNICEF DPS Policy Initiative on Migration and Children, Moldova Fact Sheet, July 2012.

²⁷ R. Cortes (2008), *op cit* note 20, page 17-19.

²⁸ For example, in Kazakhstan, it is common for the children of labor migrants to also be working in the informal economy, typically in agriculture, on family farms, or begging (Information provided to PICUM by the The Legal Center for Women Initiatives «Sana Sezim», 20 July 2012), People who migrate seasonally from other Commonwealth of Independent States countries to work in tobacco and cotton farming often migrate and work as a family to meet the labor-intensive demands of the work (Human Rights Watch (2010) *Hellish Work: Exploitation of Migrant Tobacco Workers in Kazakhstan*, Human Rights Watch, July 2010). Thus children's employment means they miss periods of school in their country of origin. Further, the labor is often highly physical and over long hours, so can harm their health and physical development, as well as education and social development.

²⁹ Government expenditure for public education in Vietnam is higher than in other countries in the region. More than twenty per cent of the State budget is allocated to education, which represents more than five per cent of GDP. However, the education system relies heavily on out of pocket payments, particularly among certain population groups, including migrants. Migrant children face two main obstacles to entering and remaining in school: (i) the household registration system, which ties school eligibility to residence status; and (ii) high out-of-pocket spending on education; with the cost of education being a greater barrier to access than the household registration system. The question therefore facing education policy makers is not necessarily how to increase funding but why the system relies so heavily on out of pocket payments in a context of relatively generous public support (UNICEF Vietnam, September 2012).

³⁰ For example, in Mexico, the government requires that any official document from another country is certified inside that country with a seal known as an 'apostille', and is then translated by a certified, and often expensive, translator in Mexico. This includes identity documents, such as birth certificates, required to register in school

and access public health care. Migrants are often unaware of these requirements beforehand and must arrange for documents to be sent back to the country of origin for certification. Cases have been reported in particular regarding Mexicans returning to Mexico from the United States with US citizen children, without the required official seal on their children's birth certificates. Responding to questions from The Associated Press, Mexico's health officials said in a statement that they offer a temporary care plan for U.S.-born children, but families must certify the children's documents within 90 days to continue receiving health care. A spokesman from the education department informed Associated Press that each Mexican State, and sometimes individual school administrators, can temporarily waive requirements and let children register in school despite the lack of official paperwork (Associated Press, "US-born kids of migrants lose rights in Mexico", *The Guardian*, 18 July 2012).

³¹ Schools may discriminate due to, inter alia, lack of funding for undocumented pupils, perceived difficulties about their integration, and personal prejudice.

³² Frank D. Bean et al (2010) "Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education?", US 2010 Project Research Policy Brief: Discover American in a New Century, Russell Sage Foundation, New York, October 2011

³³ Frank D. Bean et al. (2010) "Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education?", US 2010 Project Research Policy Brief: Discover American in a New Century, Russell Sage Foundation, New York, October 2011

³⁴ Mullen Scales of Early Development

³⁵ H. Yoshikawa (2011) *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, Russell Sage Foundation, New York, page 135-136.

³⁶ See for example R. G. Gonzales (2011) "Learning to Be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood", *American Sociological Review* 76(4) 602–619; R. G. Gonzales & L. R. Chavez (2012) "'Awakening to a Nightmare': Abjectivity and Illegality in the Lives of Undocumented 1.5-Generation Latino Immigrants in the United States" *Current Anthropology* Volume 53, Number 3, June 2012.

³⁷ D. McKenzie (2005) "Beyond Remittances: The Effects of Migration on Mexican Households" in *International Migration, Remittances and the Brain Drain*, C. Ozden and M. Schiff (eds.) The World Bank: Washington D.C.

³⁸ For example, in Poland, while it is clear that emergency care provided by medical rescue teams is free of charge, it is not clear whether such care would be free of charge in hospital emergency departments, as there is no legislation establishing who would bear the costs. Hospitals can request cost coverage. (Fundamental Rights Agency (FRA) (2011) *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, p. 16, 17, 27).

³⁹ See for example, FRA (2011), *ibid*, page 23.

⁴⁰ For example, Belgian legislation guarantees only "Urgent Medical Care" free of charge for undocumented children (and adults) when medically certified as such. (Loi organique des Centres Publics d'Action Sociale of 8 July 1976 and Arrêté Royal relative à l'Aide Médicale Urgente of 12 December 1996 (c.f. HUMA Network, Access to health care for undocumented migrants and asylum seekers in 10 EU countries: Law and practice, 2009, p. 23).

⁴¹ World Health Organisation Regional Office for Europe Report, *The Impact of Health and Health Behaviours on Educational Outcomes in high income countries – a review of the evidence* (2011) available online at http://www.euro.who.int/_data/assets/pdf_file/0004/134671/e94805.pdf; The Future of Children: A Collaboration of The Woodrow Wilson School of Public and International Affairs at Princeton University and The Brookings Institution *Consequences of Childhood Health for Economic Success in Adulthood* (2006) available online at <http://futureofchildren.org/publications/journals/article/index.xml?journalid=35&articleid=91§ionid=558>

⁴² For example, in the United States, the care of unaccompanied migrant children was transferred from the immigration authorities to the Office of Refugee Resettlement (Section 462, Homeland Security Act of 2002), which is charged with providing a safe and appropriate environment and caring for unaccompanied children incorporating child welfare principles and the best interests of the child. The number of unaccompanied children crossing the border irregularly has increased in recent years. For example, the U.S. Department of Human Services' Division of Unaccompanied Children's Services has reported 6,500 to 7,100 children in its care for the fiscal year 2011, compared to 1,050 to 1,400 for the fiscal year 2008 (For 2011, see:

http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm and for 2008, see:

<http://www.acf.hhs.gov/programs/orr/about/divisions.htm#3>). This has prompted the use of temporary measures for shelter. Indeed, the Department of Health and Human Services (HHS) and the Air Force turned a San Antonio Air Force base into a temporary shelter for undocumented children in April 2012 when State, non-profit and religious facilities in the area were at full capacity. According to a report in the San Diego Union-Tribune, 200 boys and girls younger than eighteen were staying in the base dormitory on 28 April 2012 Christopher Sherman, Associated Press, "Surge in child immigrants stresses support network", published in San Diego Union-Tribune, 28 April 2012 (c.f. PICUM Bulletin 9 May 2012).

⁴³ In Belgium, a Constitutional Court ruling (22 juillet 2003 – Arrêt n° 106/2003 de la Cour d'Arbitrage statuant sur une question préjudicielle relative à l'article 57, §2, de la loi du 8 juillet 1976 organique des centres publics d'aide sociale (M.B. du 04/11/2003, p. 53695), established that the government is required to give children, regardless of migration status, social assistance that is necessary for their wellbeing, including housing. In the Netherlands a complaint was taken against the government 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" to prevent homelessness. The full text of the complaint is available online at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47SummaryMerits_en.pdf. In the UK, local authorities are obliged to provide assistance to prevent a breach of human rights, which can amount to emergency shelter, usually for mothers with young children in emergency situations, but they get no central government funding for this provision. This creates tension between local authorities and central government, as local authorities lack the capacity and resources to fulfill their duties, and are known at times to refuse assistance to families in need. Further, local authorities are obliged to report undocumented migrants to the immigration authorities, meaning that families only access this assistance when they have an application in process with the immigration authorities and are in desperate situation. Additionally, Section 20 of the Children Act 1989 requires local authorities to 'provide accommodation for any child in need within their area', but this only explicitly imposes the duty to house the child.

⁴⁴ UNICEF Innocenti Research Centre (2012) "Measuring child poverty: New league tables of child poverty in the world's rich countries", *Innocenti Report Card 10*, UNICEF Innocenti Research Centre, Florence.

⁴⁵ See for example UNICEF Innocenti Research Centre (2012) "Measuring child poverty: New league tables of child poverty in the world's rich countries", *Innocenti Report Card 10*, UNICEF Innocenti Research Centre, Florence.

⁴⁶ For example, in the UK, many migrants are considered as having 'no recourse to public funds', with no entitlement to any public housing or welfare benefits. As free school meals are provided to children of families in receipt of welfare benefits, they are equally inaccessible. Migrants with no recourse to public funds include people on sponsorship visas, such as spousal visas, overseas visitors, people on student visas, some unemployed migrants from Central and Eastern Europe, and all irregular migrants. For more information on which benefits are considered 'public funds', see <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/rightsandresponsibilities/publicfunds/>. [Similar problems exist for internal migrants in China, who are ineligible to receive the government's income supplement program for poor households in their new hometowns.](#)

⁴⁷ There are nearly four million children born in the United States with undocumented parents (Pew Research Centre, "Unauthorized Immigrants and Their U.S.-Born Children, 11 August 2010 (available online at: <http://www.pewhispanic.org/2010/08/11/unauthorized-immigrants-and-their-us-born-children/>).

⁴⁸ H. Yoshikawa (2011) *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, Russell Sage Foundation, New York.

⁴⁹ See for example Asociación Salud y Familia (2012) *El Derecho de los Extranjeros a Vivir en Familia en España*, Asociación Salud y Familia, January 2012, Barcelona, Spain; K. Johansson Blight et al (2012) "Children without a voice: Report on children with symptoms of severe depressive devitalization who have been refused asylum and protection in Sweden", *Etikkommissionen i Sverige*, January 2012; H. Yoshikawa (2011) *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, Russell Sage Foundation, New York.

⁵⁰ See for example, the EU Global Approach to Migration and Mobility (European Commission Communication COM(2011) 743 final, "The Global Approach to Migration and Mobility", {SEC(2011) 1353 final}, Brussels, 18.11.2011.

⁵¹ Title 1 Article 19e Civil Code Book 1 stipulates the obligation to register a new-born child. There are no groups mentioned as excluded from this obligation, while undocumented migrants are explicitly excluded from other provisions.

⁵² This can be someone who was present at the birth (i.e. the doctor or nurse or a friend who was present). If no one who was present at the birth is able to carry out the registration, the main occupant of the house or head of the establishment where the child was born is obliged to do so. As a final possibility, if no such competent person is available, the registrar at the municipality is authorized to register the birth (Title 1 Article 19e, Civil Code Book 1).

⁵³ Thailand's Civil Registration Law; Articles 14 and 15 of Civil Registration Act (No.2) B.E. 2551 (2008).

⁵⁴ Circular No 01/2008/TT-BTP guiding the implementation of a number of provisions of the government's Decree No.158/2005/ND-CP of December 27 2005, on civil status registration and management.

⁵⁵ <http://www.congresochiapas.gob.mx/images/legislacion/codigos/01.pdf>

⁵⁶ Ley de Migración, Diario Oficial Federal, México 25 May 2011

⁵⁷ See <http://www.social.gov.ma/fr/index.aspx?mod=3&rub=14>

⁵⁸ For a comprehensive overview of Moroccan approach to the issue of unaccompanied children see pages 30-67 in *Conférence régionale sur "La migration des mineurs non accompagnés: agir dans l'intérêt supérieur de l'enfant"* of the Council of Europe, October 2005,

http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/MG-R-CONF%282005%2927_Malaga_conference_proceedings_final_fr.pdf

⁵⁹ For more info see <http://www.bayti.ma/?lang=fr>.

⁶⁰ Section 2 (a) Compulsory Education Law. Education is compulsory from age 5 to 16 (including 1 year pre-schooling at age 5). Further, children are allowed to take the final exams, meaning they can attend school until age 18.

⁶¹ Admin. Petition 29883-07-11, *Atush Majid Manjan et al v The Municipality of Eilat et al.*, District Court of Beer Sheva, 18 July 2011.

⁶² In its response to the petition regarding these children, the Municipality of Eilat argued: "The State of Israel and the municipality of Eilat are not obliged to include those who have infiltrated Israel and are residing illegally in Israel, in its educational system [...] humanitarian obligations do not and cannot include all rights granted by the State to its citizens, including equality of education". It further describes asylum seekers: "In general, we can say that most infiltrators possess little - if any - awareness about the importance of education for their children [...] the petitioners are illegal infiltrators from Sudan (an enemy country) who have stolen the border to Israel and entered Israel using tricks and deception [...]. The presence of the petitioners in Israel is not meant to culminate in their naturalization, acceptance in Israel, assimilation or integration in any way [...]. The petitioners' ungratefulness for the shown benevolence and their insolent and aggressive demands reflect mainly on the petitioners themselves and on whoever guided them in submitting this petition."

⁶³ Information provided to PICUM by the Hotline for Migrant Workers, 26 July 2012.

⁶⁴ Judgment 5 August 2012 by Judge Rachel Barkai in Admin. Petition 29883-07-11, *Atush Majid Manjan et al v The Municipality of Eilat et al.*, District Court of Beer Sheva, 18 July 2011. Information provided to PICUM by the Hotline for Migrant Workers, 6 August 2012.

⁶⁵ Refugees International (2007), "Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness", Refugees International Bulletin, 13 June 2007 and information provided by UNICEF Malaysia, 4 September 2012.

⁶⁶ UNICEF East Asia and Pacific, "New school gives vulnerable children hope for a bright future", 26 March 2011 (available online at: http://www.unicef.org/eapro/media_15419.html).

⁶⁷ In Arizona, SB 1070; in Alabama HB 56.

⁶⁸ *Fox News Latino* "Alabama Official: Self-Deportation is What We Want", 6 October 2011 (available online at <http://latino.foxnews.com/latino/politics/2011/10/06/alabama-official-lauds-exodus-undocumented-from-schools-and-jobs-in-his-town/>); *Huffington Post* "Alabama's HB56 shows racism still part of State culture", 4 October 2011 (available online at http://www.huffingtonpost.com/keith-rushing/alabamas-immigration-law_b_992801.html); *Los Angeles Times*, "Alabama's Schools caught in Immigration Law Crossfire", 16 October 2011 (available online at <http://articles.latimes.com/2011/oct/16/opinion/la-ed-alabama-20111016>); *Examiner.com*, "Migrants fearing deportation forced to make plans for children", 11 October 2011 (available online at <http://www.examiner.com/article/migrants-fearing-deportation-forced-to-make-plans-for-children>) (c.f. PICUM Bulletin 24 October 2011).

⁶⁹ 11th Circuit Court of Appeals, *Hispanic Interest Coalition of Alabama, et al. v. Governor of Alabama, et al.* Issued: 20 August 2012 Case#: 11-4535 and *USA v. State of Alabama, et al.* Issued: 20 August 2012 Case#: 11-14532. See for example, New York Times, "Appeals Court Draws Boundaries on Alabama's Immigration Law", 21 August 2012.

⁷⁰ See for example *Non-compliance to SB1070 in Phoenix Schools*: Phoenix Union School Board for non-compliance with SB 1070 (<http://blog.altoarizona.com/blog/2010/05/noncompliance-to-sb1070-in-phoenix-schools.html>); *Repeal Coalition in Flagstaff*: Repeal Coalition, a grassroots, all-volunteer organization with chapters in Flagstaff and Phoenix (<http://www.repealcoalition.org/new-arizona.html>).

⁷¹ In Argentina, Article 7 Ley de Migraciones, Law 25.871, 2004. The new law in Argentina encourages school authorities to play an active role to effectively include irregular migrant children, stipulating that they should provide legal advice on possibilities and necessary arrangements to regularize undocumented children enrolled in their school. In Mexico, Article 8 Ley de Migración, May 2011; in Uruguay, Article 11 Ley 18.250 Migración, 2008.

⁷² In the Netherlands, Article 3 and 4 Compulsory Education Act 1969 and Wet van 30 mei 1968, houdende vaststelling Leerplichtwet 1969 obliges all children to attend school. In 1998 the "Linking Law" was introduced, amending the Dutch Immigration Act and other relevant laws, to exclude undocumented migrants from accessing most social services. Education was an exception (Article 10 Immigration Act 2000) - WET van 23 november 2000 tot algehele herziening van de Vreemdelingenwet. In Spain, Article 27 Spanish Constitution of 1978 States that all children must attend school. Migrant children, regardless of status, have the right to

education under Point 3 of Article 10 of the Organic Law 1/1996 of 15 January on the Legal Protection of Minors, and partially amending the Civil Code and the Civil Procedure Law. In Belgium, Article 24(3) of the Belgian Constitution October 2007 States that all children have the right to attend school. In both the French and Flemish speaking communities, the inclusion of undocumented children in the right to education is explicit: French Speaking Community: Article 40 of the Decree of 30 June 1998 as amended under the Decree of 27 March 2002; Flemish-Speaking Community: Circular letter of 24/02/2003 from the Flemish Minister for Education on the right to education for children without legal residence status (replacing the circular of 24/06/1999). The legal bases of the circular are the Decree of the Flemish government regarding ethnic and cultural minorities (28/04/1998); the Law regarding school obligation (29/06/1983); Art. 26 of the Decree on basic education (25/02/1997); the Decree on equal opportunities in education (28/06/2002). In Italy, Article n.34 of the Constitution of the Italian Republic guarantees all children access to schools. Article 45 D.P.R. 394/1999, *Decreto del Presidente della Repubblica 31 Agosto 1999, n. 394, e successive modificazioni, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n. 286*; Article 38 National Immigration Law T.U. 286/98 *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (No. 286/1998, 25 July 1998); in Greece, Article 72 Codification of Legislation on the Entry, Residence and Social Integration of Third-country nationals on Greek territory, Law 3386/2005.

⁷³ *Thailand Migration Report*, IOM Thailand, 2011

⁷⁴ *Gaining from Migration: Migration Trends and Policy Lessons in the Greater Mekong Sub-region*, World Bank, 2012

⁷⁵ *Plyler v. Doe*, 457 U.S. 202 (1982) Appeal from the United States Court of Appeals for the Fifth Circuit No. 80-1538, Argued: December 1, 1981, Decided: June 15, 1982.

⁷⁶ The National School Boards Association (NSBA) and The National Education Association (NEA) (2009) "Legal Issues for School Districts Related to the Education of Undocumented Children", National School Boards Association, 2009

⁷⁷ See for example Catholic Legal Immigration Network (2009) "Enrolling Undocumented Children in Public Schools and in Catholic Schools", September 2009; J. Hunter & C. B. Howley (1990) "Undocumented Children in the Schools: Successful Strategies and Policies. ERIC Digest", ERIC Clearinghouse on Rural Education and Small Schools Charleston WV.

⁷⁸ The National School Boards Association (NSBA) and The National Education Association (NEA) (2009) "Legal Issues for School Districts Related to the Education of Undocumented Children", National School Boards Association, 2009.

⁷⁹ Article 9 *Organic Law 4/2000 de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*.

⁸⁰ Article 72, Law 3386/2005, *op cit* note 20.

⁸¹ Article 45 National Immigration Law T.U. 286/98, *op cit* note 20.

⁸² In particular, according to the law, "migrant children under the Italian jurisdiction are subject to compulsory education and to every provision concerning the right to education, including access to educational services and participation to the life of the school community". Article 38 National Immigration Law T.U. 286/98 *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (No. 286/1998, 25 July 1998).

⁸³ Article 45 D.P.R. 394/1999, *op cit* note 20.

⁸⁴ In Spain, *Real Decreto 1147/2011, de 29 de julio, por el que se establece la ordenación general de la formación profesional del sistema educativo*. In the Netherlands a recent test case brought on 2nd May 2012 granted an undocumented child the right to undertake internships. The court found that Dutch national law (Aliens Employment Act or WAV) is in violation of Article 2 of the 1st Protocol of the ECHR. A summary of the judgment from Fischer Advocaten is available online at <http://www.fischeradvocaten.nl/index.php?&w=123>

⁸⁵ Court of First Instance (Milan) decision of 11.02.2008.

⁸⁶ *La Repubblica*, "Asili, libertà di scelta e spazio ai figli degli immigrati irregolari", February 2012 (c.f. PICUM Bulletin 15 February 2012).

⁸⁷ In Spain, Article 43 *Spanish Constitution 1978*, Article 1(3) *Ley General de Sanidad 14/1986 of 25 April 1986*, and Article 12 *Organic Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration*. On April 20, 2012, the Spanish government issued a Royal Decree to limit adult undocumented migrants' access to health care to emergency health care only. While the decree does not affect undocumented children's legal entitlement to healthcare, health care professionals and civil society organizations working with undocumented migrants throughout the country are concerned about the impact that the new restrictions will have on undocumented children's access to health care in practice, as their parents' right to health care will be severely curtailed. For example, parents may delay seeking care for their children due to fear of contact with local authorities as well as hospitals and clinics. Children may also be negatively affected

by their parents' poorer health conditions (*Real Decreto-ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones*).

⁸⁸ In Romania, Article 43 *Romanian Law on the protection and promotion of the rights of the child/ 272/2004*; Article 213 *Law 95/2006 on healthcare reform*; in Portugal, *Despacho do Ministério da Saúde number 25 360/2001*; *Decreto Lei Number 135/99, 22 April 1999*. Both cited from: European Union Agency for Fundamental Rights (2011), *Fundamental rights of migrants in an irregular situation in the European Union*, page 78.

⁸⁹ In Argentina, Article 8 *Ley de Migraciones, Law 25.871, 2004*. The new law in Argentina also stipulates that health authorities should provide legal advice about possibilities to regularize irregular migrant children who seek health care in their vicinity. In Mexico, Articles 8 and 27 *Ley de Migración, May 2011*; in Uruguay, Article 9 *Law 18.250. Migración, 2008*.

⁹⁰ IOM (2012), *El impacto de las migraciones en Argentina*, Cuadernos migratorios No. 2, IOM Regional Office for South America, Buenos Aires.

⁹¹ Following the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) most regular migrants must have lived in the United States for five years before they can be eligible for Medicaid. Refugees and other humanitarian migrants are among those excluded from this requirement. These restrictions also applied to the State Child Health Insurance Program (SCHIP) (Kaiser Commission, "Key Facts of Medicaid and the Uninsured: Medicaid and SCHIP Eligibility for Immigrants", The Henry J. Kaiser Family Foundation, April 2006 (available online at: <http://www.kff.org/medicaid/upload/7492.pdf>). To improve coverage for regular migrants, the 2010 Patient Protection and Affordable Care Act (PPCA) will provide eligible regular migrants with premium credits to purchase health insurance plans through the State-based health insurance exchanges beginning in 2014 (Rayden Llano, "Immigrants and Barriers to Healthcare: Comparing Policies in the United States and the United Kingdom." *Stamford Journal of Public Health*, 2011).

⁹² Kaiser Commission, "Key Facts of Medicaid and the Uninsured: Medicaid and SCHIP Eligibility for Immigrants", The Henry J. Kaiser Family Foundation, April 2006 (available online at: <http://www.kff.org/medicaid/upload/7492.pdf>).

⁹³ For the Illinois *All Kids* program, see <http://www.allkids.com/hfs8269.html#insurance>; For the San Francisco *Healthy Kids* program, see http://www.sfhfp.org/visitors/programs/healthy_kids/do_i_qualify.aspx. For other examples and an overview of State health care provisions for migrants ineligible for State programmes, see S. Fremstad and L. Cox, "Covering New Americans: A Review of Federal and State Policies Related to Immigrants' Eligibility and Access to Publicly Funded Health Insurance" *Kaiser Commission on Medicaid and the Uninsured*, November, 2004, page 16-18.

⁹⁴ As reported by Irene Kohlmann, who attended and presented on behalf of PICUM at the conference "International Forum on Migrants' Right to Health in the Eyes of Human Rights: Civil Society Responses and Developing Strategies in Human Rights Perspectives", Seoul, Korea, 25-27 September, 2009.

⁹⁵ See <http://tdh.ch/en/news/morocco-a-country-of-transit-for-thousands-of-migrant-women-and-children>

⁹⁶ PICUM (2007) *Access to Health care for Undocumented Migrants in Europe*, PICUM, Brussels, page 93.

⁹⁷ The Local, "Sweden to give illegal immigrants healthcare", 28 June 2012 (available online at: <http://www.thelocal.se/41702/20120628/>); *United Press International*, "Sweden gives illegal aliens healthcare", 28 June 2012 (available online at: http://www.upi.com/Top_News/World-News/2012/06/28/Sweden-gives-illegal-aliens-healthcare/UPI-75821340910320/#ixzz1zTTEKzyh) (c.f. PICUM Bulletin, 11 July 2012).

⁹⁸ As reported by Irene Kohlmann, who attended and presented on behalf of PICUM at the conference "International Forum on Migrants' Right to Health in the Eyes of Human Rights: Civil Society Responses and Developing Strategies in Human Rights Perspectives", Seoul, Korea, 25-27 September, 2009.

⁹⁹ *Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954*

¹⁰⁰ Information provided to PICUM by the Hotline for Migrant Workers, 26 June 2012.

¹⁰¹ The Core Standards were endorsed by MEPs Judith Sargentini (NL, Greens) and Cecilia Wikström (SE, ALDE) (ECRE Weekly Bulletin, 2 December 2011, c.f. PICUM Bulletin 17 January 2012).

¹⁰² Praxis Community Projects, London Hosting (available online at: http://www.praxis.org.uk/index.php?page=2_10).

¹⁰³ *Centre for Child Law and Another v Minister of Home Affairs and Others (2005 (6) SA 50 (T))*. See Lawyers for Human Rights (2008) *Monitoring Immigration Detention in South Africa*, December 2008; Lawyers for Human Rights, "Deportation of Foreign Unaccompanied Children from South Africa", 8 April 2008 (available online at: <http://www.lhr.org.za/case/deportation-foreign-unaccompanied-children-south-africa>).

¹⁰⁴ Article 6 *Ley de Migraciones No. 25.871/04* and *Decreto No. 1602/09*.

¹⁰⁵ Paragraph 30b, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2011) "Concluding observations: Argentina", Consideration of reports submitted by States Parties under article 74 of the Convention, Fifteenth session, 12-23 September 2011.

¹⁰⁶ The Law organizing the Centre Public D'Action Sociale (CPAS) or Openbaar Centrum voor Maatschappelijk Welzijn (OCMW), States that "Every person has the right to social welfare. The aim of this is to allow every person to live a life in conformity with human dignity" (Article 1 of the Organic Law Organizing the Social Welfare Centers (Public Social Action Centers) of July 8th 1976).

¹⁰⁷ A Belgian Constitutional Court ruled on 22 July 2003 that the government is required to give children, regardless of migration status, social assistance that is necessary for their wellbeing, including housing. The Court found that it was a violation of both the Belgian constitution and of the UN Convention on the Rights of the Child to deny all social assistance to children residing irregularly with their parents in Belgium (Arrêt n° 106/2003 de la Cour d'Arbitrage statuant sur une question préjudicielle relative à l'article 57, §2, de la loi du 8 juillet 1976 organique des centres publics d'aide sociale (M.B. du 04/11/2003, p. 53695).

¹⁰⁸ Royal Decree of June 24th 2004 Fixing the Conditions and Modalities For the Granting of Material Help for a Foreign Minor Residing Illegally in the Kingdom with his Parents, which was again later modified by the Royal Decree of July 1st 2006.

¹⁰⁹ Protocole de coopération entre l'Office des Etrangers et Fedasil concernant le trajet d'accompagnement des familles avec mineurs qui séjournent irrégulièrement sur le territoire et qui sont accueillies en vertu de l'arrêté royal du 24 juin 2004; 17 September 2010.

¹¹⁰ Families who refuse to return voluntarily are not currently being deported.

¹¹¹ The "reception crisis" has been ongoing since 2009, with the network of federal reception centers completely saturated.

¹¹² See for example As clarified by the Brussels Labor Court, "according to the consistent case-law of the Court of Cassation and the Constitutional Court, Section 57§2 does not apply (...) to foreigners who for administrative (...), medical (...), legal (...) or family reasons (...) cannot be forced to leave Belgium. Such is the case with unaccompanied foreign minors who cannot be deported from Belgium unless there are sufficient guarantees as to the care that is effectively available in their country of origin (...) notwithstanding the Aliens Office's assessment" (Brussels Labor Court, judgment 30 November 2009).

¹¹³ Non-asylum seeking unaccompanied children are considered vulnerable if they are under the age of thirteen, a girl who is pregnant or has a child, or an alleged victim of human trafficking.

¹¹⁴ Fedasil letter dated 21 March 2011, submitted to Committee of the European Social Charter in the Complaint No. 69/2011 Defence for Children International v Belgium.

¹¹⁵ Article 5 Projeto de Lei elaborado pelo Governo, No. 5655/2009.

¹¹⁶ Constitutional Court (*Bundesverfassungsgericht*) ruling July 18th, 1 BvL 10/10.

¹¹⁷ In Germany, there are migrants who have '*duldung*' status, a formal, temporary 'tolerated' status or waiver of deportation. This status is issued to people who cannot be deported for strong humanitarian or personal reasons. These migrants, as well as asylum seekers, refugees, regular migrants and those subject to enforced departure proceedings are eligible (Federal Constitutional Court, Press office, Press release no. 56/2012 of 18 July 2012).

¹¹⁸ Asylum Seekers Benefit Act, *Asylbewerberleistungsgesetz* (AsylbLG), 30.06.1993.

¹¹⁹ The Federal Constitutional Court has ordered a transitional arrangement that will apply until new provisions enter into force. From 1 January 2011 onwards, basic benefits in the area of application of the Asylum Seekers Benefits Act shall be calculated based on the generally applicable provisions regarding the Second and Twelfth Book of the Code of Social Law (*Zweites und Zwölftes Buch des Sozialgesetzbuches*). This shall apply retroactively from 2011 onwards to benefits that have been set but are still disputed and until the new provisions are enacted (Federal Constitutional Court, Press office, Press release no. 56/2012 of 18 July 2012).