

Report of PICUM's International Conference on Undocumented Children in Europe: Invisible Victims of Immigration Restrictions

Brussels, January 22-23, 2009



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

PICUM, the Platform for International Cooperation on Undocumented Migrants, held an international conference in Brussels on 22-23 January 2009 to culminate its two-year project on undocumented children in Europe.

For the first time in Europe, more than 150 representatives of NGOs, local authorities, social workers, policy makers, researchers and other actors came together to specifically address the situation of undocumented children and how control policies directed against irregular migration affect them. Representing more than 20 countries both in the EU and beyond (some participants travelled from the United States, Canada and Morocco to attend the event), participants highlighted numerous examples of violations of undocumented children's rights. Undocumented children face various obstacles when trying to access basic social services such as housing, health care and education, and several recommendations were made to address these issues. Participants called for more visibility of undocumented children and stressed the need for greater recognition of their inherent rights as children.

This report seeks to provide a general overview of the conference itself, what was discussed by the speakers and participants, and to deliver the overall themes and sentiments shared during the event.

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This project received funding from the European Community under the Daphne II Programme 2007 – 2013.



This report was made possible with the generous support of: Bond Zonder Naam, Haëlla, Missionarissen van Steyl, State Street Netherlands, Zusters van het Arme Kind Jezus.



STATE STREET.

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM also seeks dialogue with organizations and networks with similar concerns in other parts of the world.

PICUM promotes respect for the basic social rights of undocumented migrants, such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid and the right to fair labour conditions.

PICUM's activities are focused in five main areas:

- 1. Monitoring and reporting:** improving the understanding of issues related to the protection of the human rights of undocumented migrants through improved knowledge of problems, policies and practice.
- 2. Capacity-building:** developing the capacities of NGOs and all other actors involved in effectively preventing and addressing discrimination against undocumented migrants.
- 3. Advocacy:** influencing policy makers to include undocumented migrants in social and integration policies on the national and European levels.
- 4. Awareness-raising:** promoting and disseminating the values and practices underlying the protection of the human rights of undocumented migrants among relevant partners and the wider public.
- 5. Global actors on international migration:** developing and contributing to the international dialogue on international migration within the different UN agencies, international organizations, and civil society organizations.

Based in Brussels, Belgium, PICUM has over 100 affiliated members and 107 ordinary members in 25 countries primarily in Europe as well as in other regions of the world. PICUM's monthly newsletter on issues concerning the human rights of undocumented migrants is produced in seven languages and circulates to PICUM's network of more than 2,400 civil society organizations, individuals and further.

Acknowledgments

PICUM would like to thank Gaby Felix for helping to prepare this report and all of the speakers for sharing their experience and insight on undocumented children in Europe. We are also very grateful to Marleen Brouwer, Gaby Felix, Joan Kelly, Christine Lenz, Sayira Maruf and Marianna Restaino who volunteered their time and skills during the conference.

Day One: Undocumented Children: Children First and Foremost

Opening Remarks

Don Flynn, Chair of the **Platform for International Cooperation on Undocumented Migrants (PICUM)**, began the conference by welcoming the participants and remarked that this conference was the concluding event of the two-year project during which PICUM monitored the situation of undocumented children across Europe in cooperation with organisations working in this field. Mr. Flynn explained that during the past two years PICUM conducted many interviews and held many discussions with advocacy organisations throughout the European Union to properly understand the real difficulties faced by children who find themselves in a situation of danger. Furthermore he affirmed that while this was a concluding event it was by no means an end to PICUM's involvement in the matter and that PICUM will continue to play a part in the ongoing dialogue concerning the protection of undocumented children.

Having led PICUM's two-year research project on undocumented children, **Luca Bicocchi**, PICUM Program Officer, provided an introduction to the situation facing these children to provide insight into PICUM's motivations for conducting this research before moving to outlining the principal aspects of the project as well as some of the general findings and recommendations of the final report regarding access to education, housing and health care for undocumented children.



The first aspect he emphasized was the invisibility of these children in Europe who generally represent a mobile and open category which is difficult to define and quantify. It is on account of the complexities of this category that there are no reliable figures, or even estimates, of the number of

undocumented children in Europe either at the national or regional level. This lack of figures perpetuates the lack of awareness regarding these children from the media, authorities, and social workers.

The vulnerability of undocumented migrant children was another key issue. There is a general lack of protection of these children observed in almost all EU member states, an issue which has gained the recent attention of both civil society organizations as well as institutional bodies such as the European Parliament and Council of Europe.

A resolution by the European Parliament on 14 January 2009 regarding fundamental rights in the European Union from 2004-2008 stated that particular attention must be paid to the children of parents who are asylum seekers, refugees or undocumented, so that every child can fully exercise its right including the right to non-discrimination. In the resolution, special attention is to be given to unaccompanied minors and minors separated from their parents who arrive on EU territory via irregular immigration. The resolution also states that administrative detention of children should not exist and that children accompanied by their families should be detained only in truly exceptional circumstances, for the shortest time possible and only if such detention is in their best interests.

In January 2008, the Committee of Social Affairs of the European Commission released a report entitled "Child Poverty and Well-Being in the EU." In this report, the Commission states that the risk of poverty faced by migrant minors in most countries can be two to five times higher than the risk faced by children whose parents were born in the country of residence. Even if the report doesn't mention the status of these families it can be easily argued that for those families in irregular status the risk could be even higher.

The Council of Europe has also made a number of appeals regarding undocumented children. A 2007 statement released by Thomas Hammarberg,

Commissioner for Human Rights of the Council of Europe on the situation of migrant children in Europe, stated that: "Migrant children are one of the most vulnerable groups in Europe today" and that "At particular risk are those who are separated from their families and have no - or only temporary - residence permits."

Mr. Bicchocchi went on to articulate how the vulnerability and invisibility of undocumented children leads to a third aspect: that undocumented children are increasingly victims of repressive policies on migration control that all European states have developed and enforced. Providing some examples from France and UK, he illustrated how regulations tend to create a tension between the need to protect these children and the perceived need for security and control over irregular migration, with the latter prevailing.

It was from a growing awareness of undocumented children's vulnerability and the important role of civil society in upholding the rights of these children that PICUM developed its research project "Fighting Discrimination-Based Violence Against Undocumented Children." To carry out the research, PICUM worked in association with four other European associations: Save the Children (Denmark), Defence for Children International (the Netherlands), Association Jeunes Errants (France) and Andaluçia Acoge (Spain) over a period of two years to investigate on the discrimination against undocumented children in their access to basic social rights in nine European countries: Belgium, France, Hungary, Italy, Malta, the Netherlands, Poland, Spain and the UK. A series of nine field trips were carried out and over 80 interviews held with NGOs, those working with children and local authorities to pinpoint the weakness and strengths of the laws protecting undocumented children and to highlight the principal practical barriers that might impede a correct access to the services for these children.

For the second part of his presentation, Mr Bicchocchi provided a more detailed analysis of some of the results of PICUM's research findings.

Firstly among many of the NGOs and institutions interviewed there was a general demand for more studies and information on the issue of undocumented children as these actors recognised that the reality of these children was generally unknown. While there were many differences evident between countries in regard to undocumented children, both in respect to the profile of these children and the level of access to the services, NGOs often reported that practical and concrete barriers, rather than direct legal discrimination, made laws ineffective. As the state was often hesitant to assume responsibility for these children and their families, NGOs had been forced to assume the role of protector and advocate.

"While there are many differences amongst EU member states concerning the profile (e.g. nationality, age, etc.) of undocumented children on their territories and the level of access to social services, NGOs across Europe often report that practical and concrete barriers, rather than direct legal discrimination, make laws ineffective. As the state is often hesitant to assume responsibility for these children and their families, NGOs are forced to assume the role of protector and advocate."

LUCA BICCOCHI, PICUM

Important findings were revealed in relation to undocumented children's access to education, health care and housing. Generally, the right to compulsory education for all children was provided by law in all of the states investigated with no clear legal provision denying undocumented children's access to compulsory education. However, research did uncover practical barriers of discrimination that often impeded access for these children, for example the need to show a residence permit, families' fear of detection by authorities, denial of assistance for additional expenses such as books or

transportation and finally, the fact that diplomas are not regularly issued to undocumented children at the end of their schooling. Furthermore, the precarious living conditions of these children adversely affected their schooling.



In response to this situation, PICUM's final project report has recommended that all migrant children, irrespective of their status, should have access to the same statutory education as national children. Formal recognition of their education through the issuing of recognized diplomas should be undertaken; access to vocational training and secondary education should also be promoted. Any form of limitations to the enjoyment of this right should be removed as they are contrary to international obligations. All the administrative and practical barriers that impede correct access should be eliminated.

Regarding health care, access to primary care and "urgent" care is generally granted for undocumented children but they do not have access to continuative, preventive and specialized care. Those NGOs interviewed during the fieldtrips highlighted the significant gaps existing between the legal provisions and their implementation. In some of the countries visited, no specific legislation existed with only indirect laws and rules applying. NGOs identified the lack of information regarding entitlements among undocumented families and health professionals, the fear of detection by immigration authorities and finally, language barriers as the main barriers preventing

undocumented children from accessing health care. Once again, the right to health was shown to be affected by other rights and the poor housing conditions of undocumented children was reported as having a highly negative impact on their physical and mental well-being.

To address this urgent health need, PICUM recommends that all migrant children, irrespective of their status, should have access to health care on an equal basis with national children. Furthermore, access to health care should not be limited to emergency care but also include continuous care granted by general practitioners and specialists. Any form of limitations to the enjoyment of this right should be removed as they are contrary to international obligations. All of the administrative and practical barriers that impede correct access to health care should be eliminated.

The denial of the right to housing also emerged as a key concern within the research. While the legislation in those countries studied generally granted accommodation to all children, undocumented families were not eligible for housing assistance. As a result, family unity was often threatened with highly negative consequences for the child. While exceptions were generally made for mothers with young children, they were often housed in "bed and breakfasts" or hostels which housed single males and were largely an unsuitable environment for children. Mr. Biccocchi cited a worrying case reported in Madrid in which police visited shelters housing juvenile migrants to arrest those about to turn 18. As a result, many of the youths had left the shelter, choosing to live on the streets rather than risk deportation.

PICUM stresses that housing provisions should not be denied to undocumented children on the grounds of their irregular status, particularly given the importance of the right to adequate housing for the enjoyment of other social rights. States must take care whenever possible to protect the family unit and avoid separating the child in all possible manners. Finally, undocumented families with children should receive social assistance to prevent destitution.

Panel I: The protection of migrant children in international and European legislation

Keynote Speakers - Plenary Session

Hugues Feltesse, Chief Executive of "le Défenseur des enfants" (the French Ombudsman for children) began his presentation by acquainting participants with the organisation he represented. Le Défenseur des enfants is member of **ENOC, the European Network of the Ombudspersons for Children**. Established in 1997 on the basis of the Convention on the Rights of the Child (CRC), ENOC has 31 members in 24 European countries, of which 17 are EU member states. ENOC is made up of independent authorities financed by public funds but who are not controlled by the government. Aiming to defend children's rights on the basis of the CRC, the ombudspersons for children may receive complaints directly from children themselves.



Mr. Feltesse's presentation focused on unaccompanied children, whom he defined as minors (anyone under the age of 18) who found themselves in an irregular situation and did

not have an adult responsible for them with them. According to him, these children are in a particularly dangerous situation, not only because they tend to live in precarious situations with little or no access to most of their social rights but also because they suffer great uncertainty about their future. They come to France or other European countries in search of a better life, an opportunity to study and have a future, or perhaps to be reunited with their families. For the most part they encounter discrimination and inaccessibility to their rights. Mr. Feltesse estimated that there were approximately 5,000 to 6,000 unaccompanied minors in France but there were no official statistics as not all end up in the official protection system.



"These children should be treated as children and not foreigners. To be without papers does not mean to be without rights."

HUGUES FELTESSE,
le Défenseur des enfants
and ENOC (European
Network of the
Ombudspersons for
Children)

Mr. Feltesse argued that these children must be treated like children, not like foreigners, because not having papers does not mean not having rights. While these rights were recognised in international legal texts, particularly Article 2 of the CRC and other relevant international

conventions on respecting and ensuring the rights of all children without discrimination of any kind, they were often not implemented in practice. ENOC has published a list of recommendations regarding states' obligations to unaccompanied minors and from these, Mr. Feltesse outlined four key priorities to be respected and included in national and international legal instruments, administrative practices and services:

1. The right to information and representation:

While in the hands of public authorities, all children should be informed of their rights, especially of the right to apply for asylum and its consequences and properly guided in how to exercise their rights in their own mother tongue or in a language that they can understand. Communication with the child should be done individually, through an interpreter

or a person trained to communicate with children including those with particular needs, and where possible, in the presence of a guardian. They should be guaranteed an independent interpreter who is physically present and not just providing support via telephone.

2. The right to immediate protection:

Unaccompanied children should be given immediate protection and not be subject to prosecution for irregular entry or detained solely because of their immigration status. The care arranged for them should be appropriate to their needs. Upon arrival every unaccompanied child should be referred to the relevant judicial or other competent authorities and a skilled guardian should be appointed without delay and continue until the child is reunified with his/her family or receives an appropriate care placement, which identifies the carer as a guardian. The guardian, who is appointed to serve the child's best interests, should ensure that the rights, welfare and care needs of the child are properly safeguarded and met by the responsible agencies. Each child should be offered a confidential psychological assessment at an appropriate time.

3. Strict rules on the use of age assessment:

Age assessment should only take place in cases of serious doubt and should be systematic, using independent experts and modern technological tools and include a combination of physical, social and psychological maturity assessments. The child should be fully informed about the process of age assessment and its consequences. The child's views should be given due weight in accordance with their age and maturity. The age assessment should be carried out as soon as possible. In case of any doubt concerning the age of the involved person, the benefit of doubt should be given and worked out in favour of his/her age declaration. All expenses related to age assessment and family identification should fall upon the state. Techniques for age assessment should respect the child's culture, dignity and physical integrity and should take into account that some physical assessments might be particularly stressful or traumatic for children who



have suffered physical or sexual abuse. The age assessment should be open to revision if new evidence comes to light.

4. Fight against discrimination in relation to education:

From their arrival, unaccompanied children should have access to education, vocational training and health provisions, on an equal basis to other children within the jurisdiction of the state. Access to employment should also be allowed to children with a temporary or permanent residence permit, according to the age limit set in national legislation. Special measures should be taken to support unaccompanied children within these processes and to assure that they are protected from any kind of discrimination or exploitation.

Finally, Mr. Feltesse addressed the need for harmonisation of EU legislation regarding the human rights of children and the equal application of these norms in every EU member state. In regards to the recent EU return directive, he highlighted ENOC's message that unaccompanied minors should be treated first and foremost as children and these "minors have rights...independent of anything...and they should be protected, not expelled."

Hatem Kotrane, Member of the **UN Committee on the Rights of the Child** in Geneva, thanked PICUM for the opportunity to participate in the conference and stated that his purpose was to present the point

of view of the CRC. Then, he shared a few UN developments concerning migrant children. The first development was in 1994, when the UNHCR adopted "Guidelines on Protection and Care of Refugee Children." In 1997, the UNHCR adopted guidelines on unaccompanied children, which endorses the general principle of "best interests of the child" set forth in Article 3 of the CRC to ensure that such children receive special protection and assistance that is systematic, comprehensive and integrated. Finally, the CRC's General Comment no. 6 (2005) relates to the treatment of unaccompanied and separated children outside their country of origin.

Various articles of the CRC provide for a holistic approach to the rights of children: the right to non-discrimination in article 2, the superiority of the child's best interests at all times in article 3 and the inherent right to life, survival and development in article 6. One key problem in the realisation of these rights for unaccompanied minors is the many definitions of an unaccompanied or separated child: Mr. Kotrane stated that a single definition of "unaccompanied child/minor" was needed. He also asserted that common criteria on determining the age of the child and whether or not they were asylum seekers while keeping in mind the dignity of the child first and foremost was essential. The system of age determination in most EU member states consists of a medical evaluation which contradicts the UNHCR's principles. It is an outdated procedure and should not be used.

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HATEM KOTRANE, Member of the UN Committee on the Rights of the Child

In addition to establishing a common practice to facilitate proper representation of unaccompanied children such as a tutor or guardian for each child, appropriate education and training for all actors involved (i.e. judges, lawyers, civil servants) is also needed. Furthermore, Mr. Kotrane stated that there is a need to consider the right of the child to express him/herself and to not be treated like a person who needs to have all their choices made for them by others. Other key areas in which minimum standards should be set are detention and repatriation schemes. He then proceeded to give examples of states, such as the UK, Belgium, Austria, Germany and France, in which inappropriate repatriation schemes were in place.

Don Flynn thanked Mr. Kotrane for his very informative presentation and went on to say that within the European Union there is a legislative regime that guarantees children's rights but that the problems tend to be with public culture. Consequently, it was the job of NGOs to try and bridge the gap between law and practice.



The next speaker, **Annick Goeminne** of the **Office for the Commissioner for Refugees and Stateless Persons (Belgium)**, culminated the first panel by focusing her presentation on the EU. She began by stating that while there is no legislation specifically pertaining to undocumented children in the EU, instruments do exist at the EU level which oblige member states to respect the rights of undocumented children. Furthermore, all EU

member states are signatories and have ratified the Convention on the Rights of the Child which places the obligation on all states to protect the rights set forth by the convention to “each child within their jurisdiction without discrimination of any kind” including on the basis of migration status.¹

At the EU level clear attention is paid to the rights of children. The European Court of Justice has affirmed that all EU measures must recognise the rights of the child. The Lisbon Treaty – if it enters into force - contains a provision that would make the EU Charter of Fundamental Rights legally binding to all EU member states (except the UK and Poland, who have opted out of this provision). The charter affirms the rights of the child including the right to protection and obliges authorities to ensure that the child’s best interests are a primary consideration in all actions taken by public authorities and private institutions. These protections outline the minimum guarantees of child-specific rights to be upheld by EU member states when adopting the recently adopted EU return directive, notably the best interest of the child, right to family life and the inability of remove a child unless they can be returned to a family member.

The return directive makes specific reference to undocumented and unaccompanied minors as a “vulnerable group” but in the final version the provision of “legal assistance” was dropped. Due to the extreme vagueness of the legislation regarding the rights of children and the amount of interpretative discretion given to each member state in adopting the directive, a lot of monitoring and advocacy work will need to be done to ensure that member states apply the directive in accordance with their international obligations.

Ms. Goeminne continued by stating that in terms of human rights the EU has much more developed policies regarding asylum seeking children, but even here there are major gaps between policy and implementation. Recently the Commission came to a realisation of the existence of these gaps and is

currently seeking to bridge them by including a commitment to mainstreaming children’s rights in all EU policies and proposed changes to the Dublin II regulation and the Directive on Reception conditions for



asylum seekers to increase child protection. Ideally, any steps taken by the Commission would extend to all undocumented children, not only those who are asylum seeking. Possibly by implementing a horizontal proposal to guarantee the rights of all children, the Commission would be able to inspire and create more comprehensive legislation.

Discussion

The first participant in the general discussion made reference to recent research by the IOM on exchange and best practices on the treatment of unaccompanied children, which culminated in a manual of best practices and recommendations. Reference was also made to a voluntary repatriation and integration scheme for migrant children which was operated by the IOM.

A participant from France asked Mr. Feltesse why, in light of all of the laws in place in France, on 19 January 2009, only a few days before the conference, a 12 year-old Congolese girl had been held in a detention centre in an airport in Paris for five days. Mr. Feltesse replied that he was at a complete loss as to how this had happened and that her detention was in direct violation to the rights of the child. Mr. Kotrane added that France was up for its periodical report to the Convention on the Rights of the Child in early 2009 and informed the audience that NGOs had the option to submit alternate

¹ UN Convention on the Rights of the Child (CRC). 1990. Article 2. Available at: <http://www2.ohchr.org/english/law/crc.htm> [Accessed 19 February 2009].

reports. He urged those present to participate in such alternate reports as that is the only way in which the CRC can learn of such instances and address the issues with directly the state.

A representative of a French organisation noted that EU law was fundamentally failing to guarantee rights for children, as each time EU directives were drawn up, they didn't emphasise states' obligations to uphold children's rights. For example, the EU return directive places immigration control in a greater priority than children's rights.

Some participants from Spain made reference to the fact that many times the problem was not so much with the legislation or lack thereof, but rather with the attitude of civil servants and the police. As such actors are inevitably part of the solution in terms of the protection that they can offer within the institutional framework to undocumented children, how can we overcome such a problem? Ms. Goeminne acknowledged that the huge gap existing between law and practice was indeed a problem, and the European Commission was seeking to address it through the sharing of good practices existing in several member states between states and stakeholders, including the training of public officials for the correct treatment of these minors. Mr. Kotrane added there was a deficit in the law and that there was a need to improve the legal framework of protection as well as a system to report abuses. In his opinion, violation of the rights of the child by civil servants was a legislative problem and sanctions for those who did not adhere to the legislation should be implemented to improve the situation.

Another participant brought up the issue of age assessment procedures, asking the panel if the European Commission would look into establishing provisions on these procedures and whether or not they believed some of these methods should be banned (for example methods using x-rays, due to radiation). To the best of the panellists' knowledge no bans had been discussed in any of the expert meetings on the EU level and member states retained substantial discretion when it came to this.

Another participant mentioned that some EU institutions tend to be so vague concerning the rights of undocumented children and it is worthy to explore other channels for advocacy. The European Court of Justice (ECJ) court decisions give a final interpretation as to how principles concerning children's rights can be interpreted. The ECJ currently can hear cases concerning asylum when these cases have reached their finality at the national level, but this may change soon and organizations could think of ways to use advocacy to take cases forward concerning undocumented children.

Prior to the break, **Lise Bruun, Separated Children in Europe Program, Save the Children Denmark**, made a short presentation of an art exhibition which involved separated migrant children living in fourteen different EU countries. The project was described as a real eye-opener for the children involved and addressed the issue of children's rights. "Many of these children didn't know they had any rights and many of those rights had been violated," she said. Due to its relative success, the exhibit was displayed in Brussels and a part of it was displayed in the lobby of PICUM's conference.



"Our project was a real eye-opener for the children involved. We addressed the issue of children's rights, which many of them didn't know they had and many of which had been violated."

LISE BRUUN, Separated Children in Europe Program, Save the Children Denmark

Panel II: What impact do immigration control policies have on children?

Mr. Flynn opened the second panel by identifying the notable rise in irregular migrants in Europe. The Council of Europe estimated in 2008 that approximately 19 million undocumented migrants resided in the Council of Europe region, of which 11 million are in Russia alone. Mr. Flynn noted that “migration policies and the bureaucracy that comes with them tend to produce more irregular migration than they control.”

Keynote Speakers - Plenary Session

Fr. Paul Pace of the **Jesuit Refugee Services Malta** spoke of the reality of detained minors by first focusing on the situation in Malta, and then expanding to the situation in other EU countries.



Malta has a policy of mandatory detention for all people arriving in the country irregularly. Yet, it is also official policy that minors and unaccompanied minors should not be detained as they are considered vulnerable immigrants. In practice this means that minors are first detained and then freed as soon as they are identified and acknowledged as vulnerable.

In reality their identification and acknowledgment as minors is a major hurdle, and means that even migrants who are obviously minors, i.e. babies and young children, can spend considerable time in detention, from weeks to long months. The reasons for this can be many, often related to accommodation: the high numbers of arrivals to tiny Malta, the smallest EU member state with the highest population density, stretch resources to the limit. However, even when release is decided, children can spend more weeks inside detention centers as the authorities look for a place where they can stay.

The situation is immeasurably worse for those who claim to be underage but have to go through a whole process to prove it. The biggest snag is certainly the age verification process. Unfortunately, this process takes so long that sometimes the migrant who claims to be underage is freed after the other adult members of the same group: it would have been better for the minor not to claim to be a child.

This shows how easily, even in a state that explicitly prohibits the detention of children, the underlying attitude towards minors can degenerate to unacceptable levels; how difficult it becomes for a bureaucracy that lacks transparency, to give those who are or claim to be minors the benefit of the doubt or much less grant them any special status beyond that given to detained adults.

Detention has very serious detrimental effects on children, all of whom are also dealing with other major traumatic events. Moreover, detention makes access to health care, education and housing much more difficult for the detained child. The effects on eventual integration are also obvious, especially because of the criminalization of child detainees in the eyes of the general public.

In the second part of his presentation, Fr Pace argued that while the situation in Malta may or may not be worse than in other EU countries, detention of minors is much more widespread than we are ready to admit. He quoted from a report presented to the European Parliament on detention of vulnerable persons that states that in the most of the countries studied minors were detained in closed centres.

The legal basis for this widespread detention of children is obviously very weak or even contrary to specific provisions of international and national law and policy, from the Convention on the Rights of the Child to the EU Reception Directive.

Fr Pace ended his presentation with the following conclusions:

“Detention has very serious detrimental effects on children, all of whom are also dealing with other major traumatic events. Moreover, detention makes access to health care, education and housing much more difficult for the detained child. The effects on eventual integration are also obvious, especially because of the criminalization of child detainees in the eyes of the general public.”

FR. PAUL PACE, Jesuit Refugee Service Malta

- The legal basis for detention is not only weak, but also contrary to the protections offered to children in international human rights law.
- Once detention is established as a migration control policy it is impossible to prevent children from being detained. Detention of migrants propagates the image that they are dangerous and therefore must be detained.
- Over the short and long term, detention can provoke great trauma to children who have already been through difficult and often dangerous situations. Imprisonment of children is more reminiscent of the 19th than 21st century Europe.
- “Kids don’t belong in centres!”

Terry Smith, an independent researcher from the UK, presented the findings of his research on the effects of immigration policy upon children.



Emphasising the importance of the principle of non-discrimination as outlined in article 2 of the CRC, Mr. Smith noted that immigration policy tends to be more about border control than human rights and that it rarely ever includes inspection measures. The arrival of immigrants is generally considered on a spontaneous basis making this a changing and volatile environment. In many states, such as the UK for example, migration policy is reviewed almost on an annual basis and passed in record time to prove the “toughness” of the state. When it comes to accessing

public services, through his research Mr. Smith has affirmed that while both domestic and international law may stipulate one thing, the reality in practice can be quite another. Undocumented children are affected regarding access to social services as well as immigration determination procedures.

In the UK, access to public services is a very contentious issue. Tabloids are quick to promote the perception that immigrants (undocumented or not) jump the queue to receive public benefits and services, propagating sentiments of resentment in the receiving population and further marginalising the migrant population. Only in 2008 did the UK finally remove a reservation which limited the application of the CRC to “overseas children.” For instance, while most basic services such as healthcare and education are afforded under UK law to all children, some serious practical barriers prevent undocumented children from receiving them. One of the most difficult barriers for undocumented children to overcome is the need provide personal information to public authorities such as general practitioners and school administrators through registration. This information is a necessary requirement for access, however it is information that can be used to detect, track or even expel migrants from the country. Therefore it is mostly out of fear of detection and possible removal that many undocumented children go without access to these services.

Another topic which Mr. Smith covered in his presentation was age determination procedures in the UK. According to his research authorities have drifted into a climate of disbelief in which the onus is placed on children to prove that they are children. In many cases the benefit of the doubt is no longer given to children who are treated as de facto adults and all the necessary supports are removed from them.

“Sometimes I think that we should take off our professional hats and think, ‘What would we want for our own children?’ ... That they feel safe....secure....loved. I want their childhood to be fun and happy and they should be able to learn from their mistakes. This is what childhood is about, but for those who are undocumented their childhood is stolen.”

TERRY SMITH, independent researcher

All of these barriers and abuses have an adverse impact on the lives of these children. Suffering from social exclusion and marginalisation leads to isolation, poverty, instability, insecurity, and developmental difficulties. All of which can lead to emotional, mental, and physical health problems making them more susceptible to exploitation and crime, as well as taking their childhood away.



Simone Troller of **Human Rights Watch** focused her presentation on repatriation schemes for unaccompanied migrant children from Spain and Greece. Throughout her presentation she provided abundant information on the facts and flaws of both of these schemes, and also made reference to the parallels between these schemes and the EU return directive.

In Spain, the government has established specific legal provision for the expulsion of unaccompanied migrant children. These provisions include agreements with sending countries, most notably

with Morocco and Senegal, but the agreements don't provide for transparency or independent monitoring. Through her research, Ms. Troller noticed that generally speaking the law in Spain is not problematic, but rather the loopholes utilised by the government and the poor division of responsibilities are what impedes realization of rights. In many ways Spanish law is in accordance with international law and standards. Nonetheless its practical application is deeply flawed. Administrative procedures are complicated and convoluted, and too many governmental entities are involved at certain points but only one acts as both the guardian and legal representative for the child. None seem to agree on whose responsibility it is to hear the child and what they want. These practical flaws have earned Spain a deplorable record regarding the repatriation of children. Ms. Troller also remarked that in Spain the threat of widespread repatriation is sometimes used as a political tool. These threats, which are often made around election times, do not match reality since the numbers of children being repatriated are consistently decreasing. In 2008 approximately 20 to 30 children were repatriated yet many more repatriation procedures are underway.

The situation in Spain has raised several concerns for Human Rights Watch. There are no specific safeguards spelled out for readmission arrangements and they often include tight deadlines. Unaccompanied children returned to Morocco are often detained, subject to abuse and then simply dumped on the street upon return. No government agency exists to provide protection and care for these children after their return.

“Spain has a deplorable record in repatriating children to Morocco. They have been detained and abused by Moroccan security officials ... the procedure is to hand them over to a Moroccan security officer or they have been simply dumped on the street without any care arrangements made.”

SIMONE TROLLER, Human Rights Watch

The situation in Greece is quite different with regards to unaccompanied children. For starters, Greek law does not make any distinction between an undocumented migrant child and an adult. Undocumented children are considered to be irregular migrants, and their fate is in the hands of the police from start to finish. They can be detained (sometimes multiple times) and deported like an adult without any additional provisions for their safety and security in their country of origin. The only exception is a bilateral agreement between Greece and Albania. However, for the most part, these children have no access to legal representation and no legal aid. Between January 2007 and January 2008, over 2,599 undocumented children were deported from Greece.

After presenting her two case studies Ms. Troller appealed to the audience to take a look at the return procedures in their own countries. She then went on to draw the parallels between the case studies mentioned in her presentation and the EU return directive. She said that the directive states in both the preamble and article 6(a) that the “best interests of the child” shall be the primary consideration of EU member states in its application. Article 10 states that:

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration given to the best interest of the child.
2. Before removing an unaccompanied minor from its territory, the authorities of the Member State shall be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

Yet the EU return directive does not provide sufficient guarantees for legal aid and representation nor does it establish any procedure to ensure that the best interest of the child is actually given due account and it may not apply to

children apprehended in connection with irregular crossing into the EU. All in all the directive is very vague and does not provide key safeguards needed and its implementation won't remedy the flaws in repatriation procedures in Spain or Greece.



Mr. Flynn thanked Ms. Troller and said that the message to be taken from her presentation is that the issue of legal rights of children is never a clean cut issue, as it's a question of negotiating, mediating and fighting an array of agencies to ensure that fundamental rights are protected.

Discussion

The first contributor is the director of a children's centre in Barcelona, who agreed with Ms. Troller that not many repatriations were done for the very reason that not enough guarantees were in place to protect the children. Reporting that few repatriations occurred in Catalonia, she introduced the audience to a voluntary repatriation programme in which social workers accompanied those minors who were being returned to the Magreb region. Direct contact is made with the families and appropriate safety precautions are made. The participant reiterated the failure of Spain to implement long-term solutions for undocumented children turning 18, many of whom end up in the streets as undocumented adults. She stressed that more attention should be paid to the root causes of migration and to offering these children more possibilities in their countries of origin, so that migration would not be a necessity.

Following this comment, a representative from IOM Vienna stated that it was not enough to have a handbook detailing the perspective of agencies and not the children themselves. For that reason, she

was involved in a project with the Fundamental Rights Agency (FRA) to take into account the approach towards migrant children, focusing specifically on methodology. This project focuses on children's rights and practice is very important, as such projects can only work when all the different actors come together to support this research.

A worker with the Belgian Youth Services brought up the important point that not enough attention is paid to undocumented children who are accompanied by their families. He noted that in Belgium the situation is much worse for those with their parents as their situation is more difficult due to their precarious situation.

A representative of an organization in Morocco noted that through working with families of these children in Morocco, her organization has witnessed that it is not always the family encouraging the children to leave. She also said that repatriations from Spain were ongoing and that in her opinion, Catalonia had one of the worst track records of repatriation. In Morocco, there are no care and protection mechanisms for children and it would be better if more was invested in the restructuring of society rather than on complex repatriation schemes.



Panel III: Access to basic social rights for the well-being of the child

George Joseph of **Caritas Sweden** and board member of PICUM acted as chair of the last panel and introduced the first speaker.

Keynote Speakers - Plenary Session

Elena Rozzi of **ASGI (Association for Juridical Studies on Immigration)** presented some of the main problems and good practices existing in Italy towards undocumented children. Undocumented children are a complex category in Italy, particularly because laws and practices are quite different according to the family status and nationality of the child. There are two categories of undocumented children in Italy: unaccompanied children who have been separated from their families and children together with their parents who have either been born undocumented in Italy or migrated irregularly with their parents.

Unaccompanied children cannot be expelled, except for reasons related to public order and state security, and they must be issued a residence permit "for minor age." Children accompanied by undocumented parents receive notably less protection. They may be expelled along with their parents and are generally not issued any residence permit. In December 2007, there were an estimated 7,548 separated children in Italy, while the number of those in an irregular status with their families is unknown. While both categories of children face serious difficulties in accessing basic social rights, the right to health care is much less protected than the right to education, with many of those accompanied by their parents living in squalid conditions. Ms. Rozzi noted that in the last year, following the election of the Berlusconi government, the situation has seriously worsened.

According to Italian law, all children, even those without a residence permit and identity documents, have the right to education and are obliged to attend compulsory education under the same conditions as Italian children. Nonetheless, it is debated whether the right to education refers only to compulsory school or to any grade of education (including



kindergarten, secondary school and vocational training). In 2007 the Court of Milan declared that an ordinance that prevented children of irregular migrants from enrolling in kindergartens was discriminatory. But this interpretation is not always adopted and undocumented children are often unaccepted before or after the age of compulsory schooling, in particular in vocational training courses.

The right of undocumented children to health care is much less protected by Italian law than the right to education, with very serious violations of the rights provided for by the CRC. No special guarantees for children are provided so the same norms are applied as to undocumented adults. Undocumented migrants are entitled to care for urgent or essential ongoing treatment and to preventive medicine programmes, but they cannot register with the National Health System and do not have access to specialists (such as paediatricians, dentists, etc.).

Regarding housing and social assistance, Italian law provides separated children with the right to shelter and assistance until the age of majority under the same conditions as Italian children, irrespective of their migration status. However, these rights are not guaranteed by law to children accompanied by their undocumented parents. Administrative provisions vary significantly in different cities. Many municipalities do not allow undocumented migrants in reception centres or authorized "nomad camps",

“Many undocumented children accompanied by their parents live in seriously inadequate accommodation such as factories or huts without basic services such as water and electricity, and are totally isolated from society. For them, the only chance to achieve support is to become separated from their parents so they may receive the protections afforded to separated children. The child, their families and support services are forced to choose between the right to family life and the right to adequate living conditions.”

ELENA ROSSI, ASGI (Association for Juridical Studies on Immigration)

except for those who are particularly vulnerable (such as mothers with very young children) or during limited periods of the year (such as in the winter), but this is completely left to discretionary decisions of local authorities. Consequently, many children accompanied by undocumented parents live in seriously inadequate accommodations such as overcrowded apartments, deserted factories, huts, etc.

Besides restrictions provided by the law, there are numerous practical obstacles preventing undocumented children from accessing education, health care, housing and social services. Firstly, the law is not always applied in practice by institutions. For example, some schools discourage the enrolment of undocumented children by maintaining that they are “temporarily residing in Italy” and will be soon removed from the territory. A second problem is the lack of awareness among undocumented migrants with regards to their rights. Finally, and probably the most serious problem, is the widespread fear of undocumented migrants of being detected and expelled from Italian territory.

While some good practices do exist in Italy, such as the ability of the Juvenile Court to authorize an undocumented parent to legally stay in Italy for serious reasons related to the physical and psychological development of their child, the prospects for the future are bleak. The Italian Senate looked likely to remove a ban forbidding the denouncement of undocumented migrants to the

authorities while the Berlusconi government’s recent proposals to make irregular migration a crime would place an onus upon health care personnel to report undocumented migrants to the authorities. In finalising her presentation, Ms. Rozzi noted that in 2009 that the Italian government would have to submit a report to the UN Committee on the Rights of the Child outlining its implementation of the CRC. Therefore, those witnessing violations of undocumented children’s fundamental rights in Italy had an opportunity to submit a report to the Committee so that these concerns could be raised directly with the Italian government.

Martine Goeman of Defence for Children International (DCI) Netherlands began by introducing DCI, an international organisation with 45 national chapters worldwide dedicated to promoting and protecting the rights of the child, as articulated in the CRC and other human rights instruments. The key activities of the Dutch branch of DCI are to provide information regarding the CRC, operating a help desk for parents and children, as well as investigating and denouncing violations against children’s rights. The organization estimates that 20,000 to 30,000 undocumented children are currently residing in the Netherlands.

On 1 July 1998, “the Benefit Entitlement Residence Status Act” (commonly known as the “Linking Law”) came into effect across the Netherlands. This law effectively linked the right to social services in the Netherlands to the possession of a valid residence status. Those without a residence permit may

however can claim “medically necessary” care, education up to the age of eighteen and free legal assistance. While this right exists in principle, accessibility seems to be largely lacking with regards to the rights of undocumented children.

A lack of knowledge among all actors involved seems to be a major problem with regards to access to healthcare. Not only is there a lack of knowledge amongst undocumented children and their parents, but also amongst doctors, nurses and staff in hospitals. In addition to this “knowledge gap,” there is a complex set of procedures and administrative procedures which can scare off both the health care professionals and undocumented families. Ms. Goeman highlighted the difficulties facing undocumented children in the Netherlands: “Even when you know you have the right to healthcare, it can still be difficult to get healthcare.”

“The right to education and healthcare does not mean a lot when you have to sleep under a tree or in a church. You become ill and you cannot do your homework when you have to live under these conditions. One young girl told us that she had to live with her mother in a church which mainly served as a shelter for drug addicts: ‘There were needles on the ground and in the shower too. One day I saw a person passed out, covered with blood in the bathroom. Now I cannot believe that I was able to live there for over three years. It was difficult for me to concentrate at school. At that time I had very bad headaches. For many people is a huge effort to get the health care they’re entitled to, they get depressed and stop trying,’ she said.”

MARTINE GOEMAN, Defence for Children International (DCI) Netherlands

All children in the Netherlands fall under the scope of the Compulsory Education Act, which obliges them to be educated. Under the Benefit Entitlement Residence Status Act, children up to the age of 18 may begin education, and if their intake was before age 18, they are entitled to complete the education programme. However, for undocumented children in the Netherlands, a number of problems impede the full utilization of their right to education. Children also often need to follow internships when they want to get a degree but for such internships they must have a work permit. The lack of a work permit in practice means that access to education at a certain level is blocked for undocumented children. Together with other organisations Defence for Children intends to lobby for a “learning permit” instead of a work permit for these children.

Regarding the right to housing, this is excluded for undocumented children. In the Netherlands children are dropped on the streets when all legal avenues are exhausted.

In an attempt to address the large deficit existing in the Netherlands regarding the innate and legal entitlements of undocumented children, Defence for Children International Netherlands has launched a website (www.ilegaalkind.nl) to provide information directly to undocumented children, professionals and lawyers. In addition to providing information on children’s rights, the organisation is also actively involved in their defence. Together with some lawyers, UNICEF, Stichting LOS and the Dutch section of the International Commission of Jurists, DCI Netherlands has filed a complaint towards the European Committee of Social Rights which the Committee recently found admissible. The complaint states that Dutch legislation currently deprives undocumented children residing in the Netherlands of the right to housing and consequently violates a series of additional rights laid down in the European Social Charter and the CRC. To support this complaint, DCI has submitted a detailed report including the testimonies of several children explaining their experience of homelessness in the Netherlands, which is supported by contributions from NGOs and scientists.

Discussion

In the brief discussion which followed these presentations, several issues were raised. Firstly, a French participant brought attention to an agreement which has been signed between Romania and France to repatriate Romanian children. The organisation Hors la Rue had released a report highlighting the counter-productiveness of this accord as the children who were repatriated to Romania simply returned back to France in a worse physical and mental state than when they left.

Another participant noted that in the federal system in Germany, only 5 of the 16 states provide for the education of undocumented children. The obligation of public officials to denounce undocumented migrants often prevents the realisation of these limited rights in practice. German authorities essentially seek to “use the law as a tool to go against those who violate the law,” she noted. Concerned about recent developments in Italy, another participant expressed deep regret that the Italian government was failing to take decisions by the European Court of Justice into consideration.

Keynote Speakers - Plenary Session



Caroline Bouhane and **Nathalie Fessol**, were from **RESF (Réseau Éducation Sans Frontières)** (Education Without Borders Network), a network of ordinary citizens whose aim is to stop deportations of families with schoolchildren. Founded in Paris in 2005, the network has since spread throughout

France and beyond, now consisting of over 200 member organizations.

It is not an association as such, but simply a movement of parents, teachers and others who do not agree with or accept the deportation of school children. The members of the network use the internet to communicate, enabling them to mobilise and react on a pending deportation. When a family is in danger of being deported, RESF provides sponsors to protect the family. They try to find three sponsors for each family as often as possible, one of them always being a high profile person from the local community with good connections, a good image in the media and so on - even members of the European Parliament are among the sponsors. The network benefits from the support of many high profile people in different ways. It is RESF's experience that as soon as the “case” has a face, the deportation of the children may be prevented. They believe that authorities in European countries are well aware of this, which is why so many asylum camps are well hidden in the woods and rural areas - simply so the local community do not see and thus cannot relate to undocumented families.

In 2006, between 32,000 and 33,000 demands for regularisation were submitted in France as a result of a major campaign led by RESF and other organisations to encourage Nicholas Sarkozy, then French Interior Minister, to allow the regularisation of undocumented families with school going children. Having already ceded to civil society pressure in October 2005 to cease deportations of parents until the end of the school year, Mr. Sarkozy passed a bill in 2006 which could allow the regularization of nearly all school-going families. However, the organisations were disappointed when the number of families to be regularised was arbitrarily capped at 6,000. Although it had limited success, the campaign enabled RESF to improve societal perception of undocumented migrants and also reduce the number of families being deported.

The speakers provided a number of testimonies witnessed by their network which highlighted the inhumane suffering imposed on children when detained or deported.

“A woman from Congo was arrested in her home along with her 15-month old child. They were detained together even though the baby wasn’t mentioned in the police report. She had nothing for the baby, no nappies or bottles, but they were there for two weeks. The baby was sick and lost weight. They tried to expel her in the middle of the night and we had to react quickly and in cooperation with elected representatives to prevent her deportation. She now has her papers and the baby is doing fine. Another woman detained with her children told us she had a third child who had been in school at the time; they had separated her from this child who was abandoned in the school... We cannot permit this on our territory.”

CAROLINE BOUHANNE and NATHALIE FESSOL, RESF (Réseau Éducation Sans Frontières)

Aleksandra Chrzanowska of the **Polish Association for Legal Intervention**, stated that while her work mainly involves asylum seekers in Poland, she also assists undocumented migrants. There are an estimated 200,000 to 300,000 undocumented migrants in Poland but no figures exist in relation to undocumented children.

While no direct legal barriers exist to prevent children from accessing their rights in Poland, access to education and health care for undocumented children is very difficult, let alone housing, which is hardly accessible even to refugees granted status or subsidiary protection. According to Ms. Chrzanowska, workers in Polish detention centres where children are held as well as educational professionals are often unprepared to work with children from different cultures and funding for such training is nonexistent. As for health care, it is normally given to all children who attend school until the age of 18, however for undocumented children that do not attend school access to health care is very difficult.



Discussion

A representative from a Belgian NGO coalition actively working on economic, social and cultural rights asked the panel whether there was any cooperation between Italian authorities and sending countries within the EU concerning unaccompanied migrant children. Elena Rozzi replied by saying that there were agreements between the Romanian and Italian governments focusing on the return of Roma children. She also said that these agreements involved fewer safeguards for the children than other similar arrangements with non-EU countries. Undocumented children were not helped by the fact that no European observatory on children existed to monitor their situation and no EU text specifically guarantees the rights for migrant children.

A second participant asked the speaker from Poland if she knew why there were so many undocumented migrants in Poland from Vietnam and why they were not considered asylum seekers. Ms. Chrzanowska replied that Vietnamese migrants are not considered to fall within the category of asylum seekers in Poland and that those Vietnamese who migrate to Poland generally “choose to become undocumented”. There are so many undocumented Vietnamese in Poland because there is no scheme for them to regularise.

Another participant also directed a question to the panel, asking if they believed it was “good practice to allow undocumented children to remain undocumented” or if they thought it best to



recommend the regularisation of their status. One of the speakers from RESF replied that the obvious objective was to not have them be undocumented (perhaps through regularisations) but that the first aim is to make sure these children

enjoy their rights in the place where they live. Ms. Rozzi also agreed that regularisation was of course the main objective but recognised it was difficult to obtain due to the shifting political climate. Ms. Goeman said for governments there are two options: let them remain and regularise them or deport them. It is of course the best interest of the child to remain regularised.

Other participants took the opportunity to raise issues and ask peers and colleagues for their opinion. One example was a Spanish university student who asked if it would not be best if there was an EU regulation on immigration, one which was applied across the board in all member states and was reflective of the EU's role as "protector of human rights." Another participant replied by saying he had some reluctance with that suggestion, as there are different practices and legislation for different member states and he was unsure how effective the regulations would end up being.

Another participant raised the issue of the EU return directive, noting there would be difficulties with it as the EU had effectively backed itself into a corner. The directive forces member states to return children residing in an irregular status within their territory. One EU measure forces protection for trafficked children while another requires deportation in a limited time. She argued that we need to try to build on responses to the return directive and prompt the EU to bridge the gaps.

"All the directives passed in the EU do not solve the problems facing these children. The first step should be to have an observatory at the EU level and at the national level so that we can monitor the criteria to guarantee the best interests of the child. We need to do something to put an end to this phenomenon."

CONFERENCE PARTICIPANT

The final contribution closed the discussion by saying that everyone from sending and receiving countries have the responsibility to protect these children and that the only way to go about it is by working together.

Day II: The Protection of Undocumented Migrant Children: Exploring Solutions

Workshop I: Using the legal framework to uphold undocumented children's rights



George Joseph of **CARITAS Sweden** and a PICUM board member served as moderator of this workshop session. The meeting began with presentations from Jean-François Martini of Groupe d'information et de soutien des immigrés - GISTI (France) and Veerle Evenepoel of Medimmigrant (Belgium).

Following the presentations, participants were invited to focus on these main issues:

- Identify the strengths and weaknesses of legislation for the protection of undocumented children and in using the legal framework in different areas such as education, health care, housing.
- Possible similarities and differences among the different countries on the situation of undocumented children and the use of the legal framework.
- Recommendations on how to use the legal framework, addressed not only at policy makers but also to the civil society.
- Establishing and maintaining a communication strategy amongst participants hence building alliances among different civil society actors.

Contributions

Jean-François Martini of **GISTI (Groupe d'information et de soutien des immigrés)** provided an overview of the situation of undocumented children in France by describing the current French legal framework. He noted that in France it is not accurate to refer to children in irregular status. If on the one hand, a residence permit is not required until the age of 18, on the other hand, foreign minors are fully protected and cannot be expelled. Nevertheless, he pointed out that the guarantee of this principle is not fully implemented or applied in practice. While in fact minors are protected against any form of expulsion, their parents, who are undocumented, are not. For this reason, some minors are confined in the so called "waiting areas" (zones d'attente) and detention centres along with their parents; for the same reason, entire families are expelled. Furthermore, once arrived at the borders, separated or unaccompanied minors can be confined and sent back to their country of origin if they do not comply with the legal conditions required in order to enter French territory. Finally, a work permit is granted to those, aged 16 or over, who are currently living in France and complied, when they came, with all the legal necessary procedures.

He stressed that from a legal point of view, foreign minors are not considered "undocumented children" in several sectors of the administration. French institutions make a distinction between those who are entitled to stay on the territory and those who might not stay in France. Therefore, according to him, instead of defining them as undocumented children it would more appropriate to refer to children who entered the country irregularly (outside of legal procedures).

Mr. Martini said that many different practices could be challenged in law. Should it be the case, the parents and the minors would have to be aware of their rights, able to go to court and recur to justice in case their rights are violated.

He also provided a brief overview of the activities GISTI is involved in. This organisation has published a significant number of documents regarding the rights of young foreigners in France. Since these are technical publications, their content is rather addressed to activists and social workers rather than migrants. GISTI constantly tries to provide a chapter on minors within the framework of its publications. It holds legal trainings for social workers in order to make them aware of both national and international legal resources and framework, within which unaccompanied minors can be welcomed, protected, sent to school and obtain a residence permit at the age of 18. He reiterated GISTI's work in applying the Convention of the Right of the Child and bringing the government to court if it does not enforce its application. Finally Mr. Martini stressed the importance of being in partnerships with other associations not only to give more visibility to the legal framework and its application but also in order to modify it, if necessary. GISTI promotes the mobilization of the scholastic community to avoid the expulsion of children educated in France.

Veerle Evenepoel of Medimmigrant explained that her NGO took the lead in forming a working group that worked out a proposal to change Belgian law to obtain access to health insurance for undocumented minors. Unfortunately the government did not agree to give access to all undocumented minors and reduced the target group to unaccompanied minors. Success for these children came in December 2006, when a law was passed which stated that unaccompanied minors (both documented and undocumented) would be able to obtain insurance. The law took effect in May 2008. The result is that unaccompanied children are now treated at the same level and have the same (health care) rights as national children.

Ms. Evenepoel remarked the importance of both providing information about entitlements to access to health care and also mediating with authorities, institutions, and health care. It is important to change the existing measures and not to create another system that would be separate for migrants.

The moderator, George Joseph, reminded the audience to use the right terminology according to the different legal categories envisaged. He stressed that attention should be paid to it in order to make use of the legal framework for upholding children's rights accurately.

Discussion

A participant pointed out that children are still kept in waiting areas in France, while another suggested creating and developing a service for the rights of young people since access to law and information remains difficult. A researcher stressed the importance of producing and submitting reports with recommendations as tools to promote changes.

A participant from Save the Children Sweden said that no legal framework is provided in Sweden for undocumented children who can easily be denied the right to go to school and access to health care system. A member of an NGO from Morocco underlined that protection of undocumented children does not exist in her country; social services are not even conceived of nor in place since the police is the only authority which deals with migrants. Despite the fact that cooperation agreements have been set up, the government is not part of them neither is willing to be.

A number of participants described as problematic the existence of different legal categories regarding children. It was further noted that in some countries, notably France, there is a difference between undocumented children and unaccompanied minors whereas in others not.



Challenges

1. Make the application of the existing legal framework effective: The existing legal framework set up to uphold children's rights is often unclear, complex, even non-existent in some countries. Though EU member states implement national legislation they often do not make its application effective. Undocumented children therefore lack rights and their entitlements are at stake. There is a pressing need to monitor and make existing laws be realized in practice.
2. Dissemination of information amongst a wide range of stakeholders: Improving the level of information is crucial in order to raise awareness on the topic.
3. Proper application of the Convention of the Rights of the Child (e.g. to avoid children to fall into irregularity once they reach the age of 18): In order to properly use the legal framework, it is necessary to enforce the application of the Convention of the Rights of the Child.
4. Providing studies, reports and papers as tools in order to affect and produce concrete changes: Information along with effective dissemination could lead to a better understanding of the existent legal framework and make its application effective.

Recommendations

1. Children should never be detained.
2. Continuous education and information for social workers and authorities regarding the legal framework (national and international) in order to guarantee access to basic rights for children.
3. Proper application of the Convention of the Rights of the Child (e.g. to avoid children to fall into irregularity once they reach the age of 18).
4. According to the French law, all undocumented children are considered as regular children since there is no notion of undocumented. Thus every child is protected within the framework of French law.
5. Further cooperation among organizations, authorities and the civil society has to be strengthened in order to enhance partnerships at the European and international levels. The European level alone is not sufficient; lobbying should focus on and target different policy makers.

Workshop II: Partnerships amongst NGOs, professionals, local authorities, etc., to enhance protection measures for undocumented children



Edel McGinley of **Migrants Rights Centre Ireland (MRCI)** and a PICUM board member served as the moderator for this workshop. The session began with a presentation from Rian Ederveen of Stichting Los and an overview of the activities of the Belgian organization Kinderen zonder Papieren.

Following the presentations, participants were invited to consider these main issues:

- Map and identify challenges to building partnerships at local, national and European levels to protect undocumented children.
- Common problems and needs of organizations in a partnership approach.
- Recommended methods or activities to build effective partnerships and alliances among different civil society actors.
- Examples of partnerships which have worked well, as well as those that haven't and the lessons which can be learnt from these experiences.

Contributions

Rian Ederveen of **Stichting Los** provided an overview of her organization's joint projects relating to undocumented children and their experience of partnerships in the Netherlands. Numerous examples of cooperation were shown, both with NGOs and as well as other actors such as churches, refugee councils, local authorities and lawyers. Three partnership examples were presented:

- Campaign based partnerships: joint actions among two or more organizations to achieve a specific objective by coordinating their lobbying and advocacy activities on a key issue. Stichting Los has engaged in several successful campaign-based partnerships for undocumented children which have reduced the frequency of their detention and increased the avenues for regularization.
- Coalition partnerships, strategic alliances between a number of diverse organizations to increase public awareness or pursue a social-policy change. Stichting Los works in partnership with organizations from different sectors to improve knowledge and accountability of undocumented children's rights.
- Cooperative approach, a longer term supportive relationship between organizations.

Each of the five initiatives Stichting Los presented involved the Dutch branch of the international organization "Defense for Children International." The ongoing support of this larger organization on its initiatives relating to undocumented children has benefitted Stichting Los and enabled their messages to have a greater impact.

Cooperation is commonplace in the Netherlands, as organizations are often small and can benefit greatly by enriching their capacities and contacts. Ms. Ederveen noted the strategic opportunities in cooperating with other groups as well as the possible problems regarding conflicting ideals, competences and visibility among participating organizations.

The moderator, Edel McGinley, provided a brief overview of the activities of **Kinderen zonder Papieren** in the absence of their invited speaker. This organization was founded in 2005 in the Belgian region of Antwerp by concerned teachers, neighbors and activists and aimed to sensitize a change in public opinion on policy discourse on migration and children's rights. Its main activities are informing families, teachers, social workers and doctors about the situation and rights of undocumented children, providing support to local action groups and committees, and carrying out political lobbying, together with other NGOs. The network has also established an emergency telephone line and action plan for families with children who risk expulsion.

Discussion



In response to the presentation, one participant raised a query about the cooperative models existing in the Netherlands between NGOs and state authorities, particularly regarding access to detention and border areas. Ms. Ederveen replied that her organization did not have easy access to detention centers in general but had to be invited individually by inmates or relied on information from pastors, etc. Possible competition between organizations during partnerships with regards to visibility and fundraising was raised. Ms. Ederveen offered that while many organizations existed in the Netherlands, they were each unique and such competitiveness was rarely an issue.

NGOs working to protect undocumented children may also have fundamental differences in their ideologies and approach. One participant cited partnership with an organization which promoted the legalization of prostitution to which others were in strong disagreement. However, they managed to work successfully together on their common agreement that underage undocumented children should be taken off the street. Equally, groups from diverse sectors who share similar concerns can form excellent partnerships. For example, a teacher from an educational trade union expressed deep concern regarding the denial of education to migrant children. Another NGO spoke of a project they ran in cooperation with the UNHCR to raise awareness of the realities irregular migrants and their children faced in detention. It was described as a "natural partnership" as the UN agency had a high profile while the NGO was one of the few working with those in detention.

Exploring examples of interdisciplinary cooperation, a participant from Paris shared their experience of a partnership between NGOs, governments and the health service sector there. Beginning with a small complementary coalition of NGOs, some with access to detention centres and others working to protect children who were not in detention, the partnership expanded to governmental departments of social care and justice as well as a public hospital in the centre of Paris. Those organizations working in detention could inform others of the pending release of migrant children so they could be cared for while the hospital allowed NGOs to bring undocumented children for treatment free of charge. While it took almost three years to build this partnership, it now worked very well.

In Dublin, an interesting partnership was developed to prevent the involvement of children, including those whose families were undocumented, in street begging. The ISPCC (Irish Society for the Prevention of Cruelty to Children) had begun close cooperation with a number of NGOs, police, social workers and cultural mediators to address the issue. However, a French organization in contact with street children from Eastern Europe to facilitate their attendance in

school, expressed their inability to upgrade their cooperation with police to a “greater partnership” due to the culture of the police force and the political climate in France. “We cannot convince them that protection should take priority to investigation,” the participant noted. Patience was considered a key element in partnership building and many participants noted that results were not immediate. It was important that organizations provided a space to meet, such as monthly information sessions, to gain familiarity with other actors and to promote trust among them.

Many participants had experiences of partnerships involving research institutes. One representative who had travelled from Canada for the conference, introduced the CIARA model. Within this model, in order to obtain funding, Canadian universities must work with community organizations, which must not only participate in research initiatives but have a significant role in their development enabling “equal partnerships in active research.” In Belgium, there was a governmental effort to join an institute at the University of Ghent, which had completed a survey on young asylum seekers, with another at the University of Leuven which had done fieldwork with undocumented migrants. If linked, the institutes hope to facilitate cooperation between NGOs also active in this area, assuring that “we won’t tell them what to do, but will be the facilitator to make it possible.” FOMACS, a collaborative public media project initiated by academic researchers, was mentioned as a highly successful example in Ireland of collaboration between NGOs and the media on all areas of migration, producing film, photographic, digital storytelling, radio, animation and print stories including a series titled “Undocumented In Ireland: Our Stories.”

A Swiss member of PICUM spoke of a recent initiative bringing together NGOs and church groups in Zurich working with undocumented migrants in partnership with universities to raise awareness about undocumented children in Switzerland and promote the benefits of regularization through the medium of art. A participant from the University of

Washington stated that a common framework was important with regards to undocumented youth as they were often defined differently and groups then formed around these various definitions. While cooperation between these groups was not impossible, “framing the issue and framing the work is important to improve impact.” The university had recently finished a study on undocumented children’s transition to adulthood in which almost 100 individuals were interviewed. As such data is useful to inform policy and practice, it has been made accessible so that community based organizations can use it to influence their policies. A research initiative of the Dutch Ministry of Justice regarding unaccompanied minors between the ages of 5-15 was introduced by another participant as it involved cooperation with NGOs, church groups and also university researchers; students from various backgrounds used their own community networks to locate children for interviews.

In conclusion, it was noted that many successful partnerships discussed in this workshop had taken place in small countries, such as the Netherlands, Ireland and Malta, places where “everybody knew everybody.” Participants were urged to follow this “small country model” at national level and actively network with a diverse range of actors to foster the establishment of interdisciplinary partnerships to find innovative solutions which may benefit their aims of protecting undocumented children.



Challenges and Recommendations

1. Creating spaces to foster discussion and understanding

Organizations should hold regular dialogue with authorities or have inter-organizational meetings with other NGOs and networks who share their concern regarding the lack of protection for undocumented children.

Through the discussion it became evident that the different aims and ethos of NGOs, local authorities and other actors such as universities, media, etc, may be difficult to manage, proving a significant challenge to building interdisciplinary partnerships. Equally, sizable differences could exist between NGOs working on the ground to protect undocumented children. While sharing objectives, they often differed considerably when it came to approach and perceptions. Notably, those who shared positive partnership experiences each agreed on the need to create spaces to foster discussion and understanding to build synergies between organizations.

2. All parties should seek to build partnerships which are both effective and equal

It is important for NGOs to balance their strengths and limitations through partnerships and to keep an open mind regarding actors for possible cooperation.

Many participants had positive experiences of collaboration with authorities, and it was agreed that, where possible, it may prove a valuable and productive option for NGOs. Universities and research institutes should ensure that they engage in "true partnerships" with NGOs, allowing them an equal footing in the decision making process. NGOs need to ensure that they retain their financial and organizational independence when engaging in alliances. Patience is an important element in partnership building and organizations should remain receptive and accommodating as willingness to admit the limitations of one's organization is key to facilitating complementarity.

3. Recognize the importance of formalized structures and accountability

Organizations, however small, should ensure they maintain professional conduct throughout their partnership building.

Having a clear aim to help undocumented children and a professional approach in carrying out these activities increases organizational credibility more than any self-promotion could. Formalized partnership structures were seen as beneficial as issues of accountability, cooperation and documentation were important to enable an organization to move forward in a joint initiative, especially if they were cooperating with government departments or agencies subject to staff change. Good cooperation models maintained a record of agreement, retained data and used their resources to best achieve a partnership based on accountability and transparency to enable real dialogue.

Workshop III: Campaigns and actions to raise public awareness about the conditions faced by undocumented children.



Reyes Castillo of **ACCEM** and PICUM board member chaired this workshop. The session began with presentations by Benoit Van Keirsbilck of the Plate-forme “Mineurs en Exile” (Minors in Exile Platform) and José Miguel Morales from Andalucía Acoge.

Following the presentations, participants were invited to consider these main issues:

- Identifying main challenges, opportunities and good practices regarding campaigns and actions to raise public awareness.
- Encourage a discussion on possible similarities and differences among the different countries on the situation of undocumented children and how to raise awareness about it.
- Encourage a discussion on possible recommendations from the workshop for NGOs on how to raise awareness on the situation of the undocumented children.
- Establishing and maintaining a communications strategy amongst participants.

Contributions

Benoit Van Keirsbilck of the **Plate-forme “Mineurs en Exile” (Minors in Exile Platform)** spoke about the situation of unaccompanied minors in Belgium. During the late 1980s, between 1,000 to 1,500 minors were coming alone to Belgium every year. For many years, there were no legal provisions in place to protect these children and civil society had to try and manage the situation without any framework in place. At that time, Belgium was among the worst countries in Europe regarding the guarantee and protection of the rights of separated children. Things only began to change after NGOs began submitting alternate reports to the Convention on the Rights of the Child (CRC) and the Committee on the Rights of the Child began calling on the Belgian government to react. In 1995 and 2002, the Committee made requests to the Belgian government to set up a guardianship system for unaccompanied minors and to promote the right to family reunification.

Another catalyst for increased awareness about the rights of unaccompanied children was the death of two Guianese children while attempting to get into Europe in the hold of an airplane, as well as the case of Tabitha, a 5-year old girl of Congolese nationality who was separated from her guardian, detained and later deported alone by Belgian authorities. When Tabitha and her uncle arrived at the Brussels airport on 17 August 2002 without the proper residence documents, Tabitha was denied entry to Belgium and was taken alone to a detention centre because her uncle did not have parental authority. Tabitha remained alone in the detention centre for more than two months until she was finally deported alone to Congo on 17 October 2002. The European Court of Human Rights condemned the Belgian government for violating Article 3 of the European Convention of Human Rights relating to degrading and inhumane treatments, Article 8 on the right to respect of private and family life, and

Article 5, Paragraph 1 on the right to freedom and safety. The reaction to this case, from both the European court and outraged Belgian public, resulted in a legislative amendment passed by the national Parliament aimed at preventing such cases in future.

In 1999 the organization Plate-forme "Mineurs en Exile" was started to promote the rights, well being and best interest of unaccompanied children in Belgium, to facilitate the exchange of information between individuals and services dealing with them, and to advocate for a legal status for these children that respect the CRC. While change has been slow, there have been some very remarkable achievements and good progress made. One such achievement is the establishment of a guardianship program in Belgium, which is very good but not perfect. Through this system, an unaccompanied child who arrives in Belgium should receive a guardian as soon as they arrive.

Another achievement is the near end of detention of unaccompanied minors. This has involved a lot of public awareness and discussions with Parliament. Advocates have also benefited from the condemnation of Belgium by the European Court of Human Rights in the Tabitha case (see above). The platform's advocacy has also been successful in improving the reception system in Belgium, through the creation of specialised centres with specialized staff and a number of places for unaccompanied children that nearly matches demand.



A final accomplishment is the publications and practical guides issued by the platform. In 2000, the organization published a 187-page guide on laws

and legal provisions concerning unaccompanied minors in Belgium. When this guide was updated in 2007 it was a voluminous 786 pages. The platform has also led various sensitisation and training campaigns and has also coordinated a pool of pro-bono lawyers who are specialised in dealing unaccompanied minors, and even filed class action lawsuits against the Belgian government for returning separate children to their countries of origin without legal guarantees of where their parents might be.

In conclusion, Mr. Van Keirsbilck claimed that while substantial progress had been made in Belgium regarding the legal status of unaccompanied children, there was still much work to be done. Among the next challenges to overcome were the "majority dilemma": what happens to unaccompanied children once they are no longer "children" - after the age of 18? Another big challenge is to overcome the difference in protection of unaccompanied minors from within and outside the EU: surprisingly separated children from within the EU seem to be granted much less protection than those coming from outside the EU.

José Miguel Morales from **Andalucía Acoge** addressed the particular situation of undocumented minors in Spain. Mr. Morales stated that in order to truly understand the situation in which Spain is in it is important to first understand Spain's geographical location in the European context. The Morocco-Spain border has the widest socio-economic gap in the world. For many years, Andalucía was a first arrival point for many undocumented migrants coming into Europe. Images of "pateras" and "cayucos" (small wooden boats and dinghies) were constantly in Spanish media. Children and young adults aged 15 to 29 years represent the biggest of all age groups arriving both in Andalucía and Spain in general. Undocumented children together with their parents are much more numerous than unaccompanied minors, and generally face more problems in

accessing basic social rights. Mr. Morales' organization, Andalucía Acoge, was started in 1991 and their focus is essentially on undocumented migrants, who represent roughly 65% of the target group of the association.

Mr. Morales emphasized that the large presence of young immigrants in Spain will have great repercussions on Spanish society as a whole, particularly in terms of the issue of education. Access to the educational system for undocumented children largely depends on the age group that the child may be in: from 0-3 years, there are major problems in gaining access. From the ages of 3-16, education is guaranteed by law, but there remain problems due to the practical application of the law. From the ages of 16-18 there have been many legal problems in gaining access but a recent change in the law would allow children in this age group access to the professional training programs. As such programs are not paid (and these children would not require a work permit), undocumented children should theoretically be able to access such programs. However, the system varies from province to province, and Mr. Morales said that the practical application of the law may prevent effective access. Concerning access to health care services for undocumented children, there are generally no problems to access general medicine but some problems for accessing specialist care in some regions.

With regards to unaccompanied children, they tend to be much more protected than children who have emigrated with their families, as they receive housing support, linguistic and professional training, judicial defense and assistance with the documentation processes, psychological care, and integration assistance from NGOs and other civil society actors. Undocumented migrant children living with their families are not guaranteed access to as many of their rights as some of them depend on the parents' possibilities, making their situation in a sense more vulnerable than that of unaccompanied minors.

Mr. Morales ended his presentation by addressing the challenges that media pose to NGOs. He then gave an example of how media coverage of issues relating to undocumented migrants can be detrimental to how they are perceived by the public. According to him the first problem is the "ignorance" or lack of knowledge and training of reporters regarding undocumented migrants. For this reason he urges NGOs and others to not only monitor the language used by the media, but also to become a source of information, and lobby and advocate for change.

Discussion



A Ph.D candidate from the UK who said that in Britain roughly half of all asylum seeking children are being subjected to rigorous tests and challenges to prove they are children and are hence being treated as defacto adults. The UK government has taken the stance that these cannot be children because they been able to manage getting to the UK and they thereby challenge their claims.

Another participant asked Mr. Morales to elaborate on the new law passed in Spain concerning professional training programs for children aged 16-18: would these children need a work permit to access such programs? Mr. Morales said that regarding the application of national law, each autonomous region retained a lot leeway. In



Andalucía undocumented children between the ages of 16 and 18 can and do have access to post-required education, however that is not necessarily the case in the rest of Spain. He also said that regarding internships, undocumented children could participate in

them as long as they were unpaid. He went on to say that one of the biggest vulnerabilities of unaccompanied children was that they were “infantilised” by authorities which tends to cause more harm than good. These children, many of which have had to mature at an accelerated rate due to their experiences, are taken care of and treated as helpless when they are in reception centres and then are forced to act as adults as soon as they turn 18. Another participant brought up the inconsistencies even concerning compulsory education: sometimes undocumented children who have completed secondary education don't receive diplomas in Spain after they finish because are over 18 at that point and are considered adults.

Benoit Van Keirsbilck said that concerning the right to education, which is a fundamental right, there is no age limit and it is ridiculous to allow someone to study until 18 and then cut them off; they should be able to continue. He also addressed the issue of “considering a child as a child,” explaining that NGOs and civil society need to have a balanced view of what it means to be a child. To be able to recognise that while undocumented children are need of protection (some more than others), it is also necessary to appreciate their capacities. He also asked the group if they had any ideas on how to raise awareness and how to show or highlight the positive effects of migration.

A participant from France engaged the speakers with a few questions. Two of them were directed at Van Keirsbilck: 1) How did your organisation set up this “pool of lawyers?” 2) What has been your organisation's strategy on public awareness-raising? Mr. Van Keirsbilck said that when they first began working with lawyers none of these professionals really knew much about the complexities of dealing with unaccompanied children. His organization was sent from child rights lawyers to immigration lawyers and back again. There was a need for a new specialization of lawyers, and the platform simply took the next logical step and invited the two groups of lawyers to meet together. Thanks in great parts to these initial efforts, the Brussels Bar Association now has a group of lawyers specialized in unaccompanied minors in Belgium. The second question he responded to by arguing that while we can spend endless hours trying to sensitise the public about undocumented migrants, it is very difficult to overturn decades of prejudices. The most successful campaigns are those that give a face to the immigrant that humanises them in the eyes of the public. This is when particular examples of abuse or violations of human rights should be denounced, so that the public can see and realise what is happening.

Another participant talked about the media in Madrid, which has more or less criminalised the presence of unaccompanied children through their coverage. This is obviously an issue that needs to be addressed and their perspective changed. Today, media coverage in Madrid has improved and this has helped to sensitise the public.

Many other participants went on to address a variety of other issues. Some addressed issues regarding guardianship or tutor programs in their country. Others addressed the “no rights zone” at EU borders and how media and governments try to depict immigration as an “invasion”. A participant

from the Canary Islands highlighted that while recently there may have been fewer “pateras” arriving in their region, they have on the other hand arrived with more children than before. Many addressed the lack of visibility of undocumented children who emigrate with their families. It was important to raise awareness about undocumented children with their families. Perhaps advocates working with undocumented children with their families could learn from the various experiences and good practices developed by organizations working with unaccompanied children.

Challenges

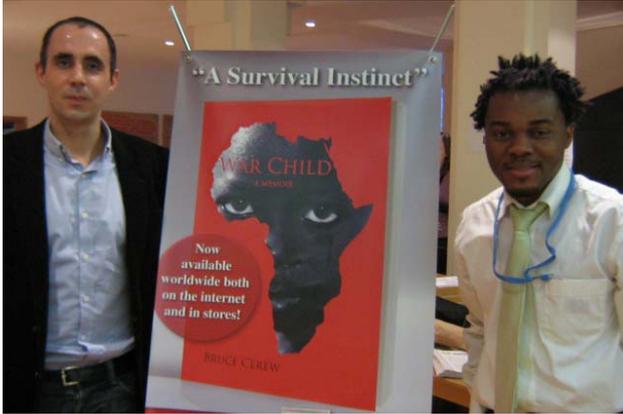
1. Need to clarify definitions and terminology when using “undocumented children.” As first step, the standards to define who can be considered a minor should be set up in view to get the same definition for all national systems. It has resulted from the workshop that there were some differences between several countries to define what a minor was.
2. Try to humanize the image of undocumented children in conjunction with the receiving communities. Undocumented children should be represented in a more appropriate manner, with the view to underline their needs as people and not just as victims.
3. What happens with undocumented children once they reach the age of 18? PICUM’s report on undocumented children could be a tool to start thinking about undocumented children as well about what happens to them when they would come of age.

Recommendations

1. When talking about undocumented children, both accompanied and unaccompanied children should be included, and lessons learned from working with unaccompanied children should be transferable to those working with undocumented children with their parents.
2. Encourage the standardization of the minor identification and referrals procedures at the European level in an effort to diminish the arbitrariness of “luck.”
3. Organizations and other members of civil society should cooperate with one another in order to enforce networks.



Concluding Remarks



Bruce Cerew, author of the book “War Child”, took the floor and shared with the auditorium his own experience as an unaccompanied minor in Europe.

Mr. Cerew left Nigeria as a minor in 1980 and following a dangerous voyage from West Africa, arrived in the Netherlands where he lived for eight years as an asylum seeker. Mr. Cerew said that he left his country because he believed that he would have found abroad better living conditions, regard for his ideas and respect for him as a person. Instead, he suffered from poverty, starvation, war, discrimination and finally detention. While in detention in the Netherlands, he witnessed friends committing suicide as they had lost all hope for the future. “War Child” was about his history as a migrant child fighting for freedom and he hoped to encourage politicians to reflect about the conditions in which migrant children are detained and the lack of respect for their fundamental right to life.

The conference was concluded by **PICUM’s Director, Michele LeVoy**, who thanked all the participants for their contributions, adding how important it was for PICUM to be aware of the numerous activities currently happening in Europe concerning undocumented children. Ms. LeVoy introduced PICUM’s newsletter, which was available in seven languages free of charge and offered a valuable means for participants to continue sharing their experiences, receive updates on developments at EU and national level and finally, to retain contact and promote networking on relevant initiatives. A special section of the newsletter focuses on undocumented children and PICUM welcomes contributions. At the European policy level, Ms. LeVoy announced that PICUM had recently been granted consultative status within the Council of Europe and will use that status to foster undocumented migrants’ rights. PICUM had also been recently granted a seat on the EU Platform on Children’s Rights. These avenues now provided an additional means for PICUM to continue its work on the promotion of undocumented migrants’ rights and highlight the heightened vulnerabilities experienced by undocumented children.

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PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS