

**PICUM is a non-governmental organisation that promotes respect for the human rights of undocumented migrants.**

## **PICUM submission for the European Commission's Communication on the Rights of the Child (2011-2014)**

**Brussels, August 2010**

### **I. Questions relating to previous initiatives taken by the Commission**

- 1. The 2006 Commission Communication "Towards an EU Strategy on the Rights of the Child" establishes a comprehensive EU Strategy to effectively promote and safeguard the Rights of the Child in the European Union's internal and external policies and to support Member States' efforts in this field. What is your overall assessment of the Communication?**

PICUM strongly welcomes the initiative represented in the 2006 Communication, and supports all of its aims and priorities. PICUM's largest concern about the Communication is its omission of direct discussion of the situation of undocumented migrant children in the EU. Undocumented migrant children constitute one of the most vulnerable groups of children in Europe. Undocumented children are in a position of triple vulnerability: as children above all; as migrants; and finally and this unfortunately is their major vulnerability, as undocumented migrants. The particular vulnerability of these children is daily reported by NGOs that strive to serve and protect them, and has been widely recognized on the European and international levels.<sup>1</sup>

*Status as children must take precedence over immigration status.*

PICUM welcomes the references in the Commission's 2006 Communication to the particular challenges of children who are members of ethnic minority groups, or who are victims of trafficking, and its call for full respect of the rights of children "as immigrants, asylum seekers, and refugees."<sup>2</sup> PICUM notes, however, that this discussion of particularly vulnerable groups of children still does not

<sup>1</sup> See e.g., *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, 2008, <http://www.picum.org/data/Undocumented%20Children%20in%20Europe%20EN.pdf>, p. 6 (quoting Council of Europe Human Rights Commissioner Thomas Hammarberg).

<sup>2</sup> European Commission, Communication from the Commission, Towards an EU Strategy on the Rights of the Child, COM(2006) 367 final, Brussels, 4 July 2006, p. 5.

confront undocumented status head-on. To a worrying and increasing degree, the control policies against irregular migration being pursued in the European Union have switched the attention of governments and public opinion from the need to protect young immigrants as children, to the repression of their rights based on their irregular status. It is critical that all children in the EU be viewed first and foremost as children, with corresponding needs and rights. PICUM therefore calls on the Commission to explicitly include the rights of undocumented children within the ambit of the 2011-2014 Communication.

*Emphases on the Eastern regions, poverty, communication and capacity building are welcome.*

Within the Communication, four stated priorities closely match PICUM's views developed in the course of its work concerning undocumented children. Respect for children's rights remains relatively low along the countries near the eastern borders of the EU. PICUM therefore welcomes the Communication's emphasis on monitoring and improving conditions on the Eastern borders, via the Neighbourhood Policy and similar programmes. Even more than children generally, undocumented children disproportionately suffer from poverty in the EU.<sup>3</sup> PICUM therefore welcomes the Communication's focus on anti-poverty efforts, as poverty poses tremendous challenges to children's development. Communication and capacity-building efforts are also crucial, and PICUM welcomes the 2006 Communication's emphasis on those priorities.<sup>4</sup>

*The rights of children within families must be upheld.*

PICUM's work over recent years has unfortunately indicated that awareness of the rights of undocumented children and families needs to be raised within the EU. This applies to the children and families themselves, as well as to government and social service actors who interact with them. Organisations working to support and secure the rights of undocumented children drastically lack capacity, especially in Member States that have joined the EU in the most recent rounds of enlargement. To the extent this is not yet done, the EU should extend training and material support to organisations specialising not only in serving and advancing children's rights, but to those dealing specifically with undocumented migrants, many of whom are children.

## **II. Questions relating to the situation on the ground**

### **Child-friendly justice**

- 3. What are the main obstacles and problems for children in relation to justice systems (civil law, criminal law, administrative law etc)? In particular, what are the challenges and problems faced by children when they have to take part in a court case, either in a civil case, a case pertaining to migration and asylum matters, or a criminal case as victim or defendant?**

Although acknowledging the importance of continuing to raise the level of respect for children's rights in EU justice generally, PICUM will confine its discussion to those aspects of justice that most disproportionately affect undocumented children. Greatest among these concerns is the ongoing practice of administrative detention of children and families for the purpose of removal. This practice

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<sup>3</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 7.

<sup>4</sup> European Commission, *Towards an EU Strategy on the Rights of the Child*, supra note 2, p. 9.

remains routine in a number of Member States.<sup>5</sup> Under the CRC and other instruments, detention of children should only be applied as a measure of last resort, for the shortest time possible, and the best interests of the child must remain a paramount consideration. The European Convention on Human Rights also circumscribes administrative detention.<sup>6</sup>

*Detention remains a serious concern.*

PICUM's monitoring of detention in recent years indicates that unjustifiable detention of undocumented children remains a concern throughout the EU. In 2009, a UK parliamentary committee reported that nearly 1,000 children per year are detained pending removal, some for as long as two months.<sup>7</sup> Human Rights Watch criticised France for its detention of and denial of rights to unaccompanied migrant children in an airport transit zone, and for returning unaccompanied children to transit countries rather than countries of origin.<sup>8</sup> The Committee on the Rights of the Child and civil society organisations have criticised France's detention of undocumented children, including its practice of resolving the conflict between family unity and children's freedom from detention by detaining entire undocumented families.<sup>9</sup> In addition to the overuse of detention, conditions of detention continue to harm children. In 2008, reports raised specific concerns about poor conditions of detention of children in Greece, Spain and the UK.<sup>10</sup> A 2009 study by medical experts in the UK of children in detention found clear evidence they had developed mental and physical health problems.<sup>11</sup> PICUM emphasises that administrative detention of children violates their fundamental rights, and should never be practiced.

*Age assessment in asylum procedures carries grave risks.*

Age assessment practices are another serious concern. A 2007 report from the Immigration Law Practitioners' Association (ILPA) documented an increasing tendency on the part of UK authorities to dispute asylum seekers' assertions that they are under the age of 18 and thus entitled to consideration as children.<sup>12</sup> The report emphasised the importance of starting from the presumption that a person who claims to be a child is in fact a child.<sup>13</sup> Pointing out the wide margin of error inherent in standard age-assessment techniques,<sup>14</sup> it highlighted the dangers of mistakenly assessing

<sup>5</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 5.

<sup>6</sup> European Convention on Human Rights, article 5(1).

<sup>7</sup> "Migrant children held 'too long' in detention, MPs say", BBC News, 29 November 2009, [http://news.bbc.co.uk/2/hi/uk\\_news/8384860.stm](http://news.bbc.co.uk/2/hi/uk_news/8384860.stm). (Cf. PICUM newsletter, December 2009).

<sup>8</sup> "Lost in Transit: Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport," Human Rights Watch, 29 October 2009, available at <http://www.hrw.org/en/node/86211>. (Cf. PICUM newsletter, November 2009.)

<sup>9</sup> PICUM newsletter, July 2009, pp. 17-18.

<sup>10</sup> *PICUM's 2009 Main Concerns about the Fundamental Rights of Undocumented Migrants in Europe*, pp. 25.-26). [http://www.picum.org/sites/default/files/data/PICUM\\_AnnualConcerns\\_2009\\_EN.pdf](http://www.picum.org/sites/default/files/data/PICUM_AnnualConcerns_2009_EN.pdf).

<sup>11</sup> Karen McVeigh, "Children made 'sick with fear' in UK immigration detention centres," The Guardian, 13 October 2009, <http://www.guardian.co.uk/uk/2009/oct/13/children-immigration-detention-health>. (Cf. PICUM newsletter, November 2009.)

<sup>12</sup> Heaven Crowley, "When is a child not a child? Asylum, age disputes, and the process of age assessment", Immigration Law Practitioners' Association, May 2007, pp. 26-28, <http://www.ilpa.org.uk/publications/ILPA%20Age%20Dispute%20Report.pdf>.

<sup>13</sup> Heaven Crowley, "When is a child not a child? Asylum, age disputes, and the process of age assessment", Immigration Law Practitioners' Association, supra note 12, pp. 38-39.

<sup>14</sup> *Ibid.*, pp. viii-ix.

children to be adults,<sup>15</sup> and sharply criticised the practices of UK authorities, including multiple failures to follow their own guidelines.<sup>16</sup> The report concluded with a series of recommendations to improve age assessment practices, employing a holistic approach.<sup>17</sup> PICUM endorses those recommendations.

**5. Are you aware of good practices, initiatives, programmes (including training programmes) or tools that contribute to enable judicial systems to take into account the specific rights, interests and needs of children? Are you aware of cross border initiatives in this area (e.g. cooperation with, or participation to common projects, with organisations in other Member States, exchange of good practices, etc.)?**

*Good practice: non-custodial 'Return Houses' for families facing expulsion from Belgium.*

Under an experimental Belgian programme, modelled on practice in Sweden, undocumented families with children facing expulsion are no longer detained awaiting their expulsion. The families are brought to so-called 'Return Houses' where preparations are made for their return with the aid of an immigration officer ('coach').<sup>18</sup>

*Good practice: separation and safety of detained children.*

While maintaining its stance in opposition to any administrative detention of children, PICUM recognises the importance of improving detention conditions where detention does exist, to reduce the trauma and risk of long-term damage to children's development. In 2009 the French government proposed reforms aimed at unaccompanied children detained at the airport, such as providing trained guardians and creating a separate detention area for younger children.<sup>19</sup>

*Member States should institute children's rights ombudspersons.*

Beyond the specific issue of detention, PICUM believes each Member State should have a designated ombudsperson to monitor and handle concerns relating to children's rights. PICUM regrets the French government's decision, reported in 2009, to merge its ombudsperson into a general human rights monitoring office.<sup>20</sup> The EU should promote the establishment of children's ombudsmen in the Member States, or of other institutions with similar competences.

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<sup>15</sup> *Ibid.*, pp. 38-39.

<sup>16</sup> *Ibid.*, pp. 44-59.

<sup>17</sup> *Ibid.*, pp. 197-202.

<sup>18</sup> *PICUM's 2009 Main Concerns about the Fundamental Rights of Undocumented Migrants in Europe*, supra note 10, p. 25.

<sup>19</sup> "Eric Besson annonce les premières mesures pour l'accueil des mineurs étrangers isolés," Portail du Gouvernement, 19 November 2009, <http://www.gouvernement.fr/gouvernement/eric-besson-annonce-les-premieres-mesures-pour-l-accueil-des-mineurs-etrangers-isoles>. (Cf. PICUM newsletter, December 2009.)

<sup>20</sup> "Protestations après la suppression du Défenseur des enfants," *Le Figaro*, 16 September 2009, <http://www.lefigaro.fr/actualite-france/2009/09/16/01016-20090916ARTFIG00616-protestations-apres-la-suppression-du-defenseur-des-enfants-.php>. (Cf. PICUM newsletter, October 2009.)

## **Vulnerable groups of children**

### **14. In your experience, what are the groups of children in a situation of particular vulnerability? Do you have data and figures relating to these situations?**

*The gap between rights of unaccompanied children and children in families is unacceptable.*

As discussed above in response to question 1, undocumented children represent an especially vulnerable group of children in the EU. PICUM acknowledges and welcomes the considerable recent strides in policy and practice toward easing the tremendous vulnerability of unaccompanied migrant children in Europe, even those who are undocumented. At the same time, PICUM is gravely concerned about the development of a gap between respect in practice for the fundamental rights of undocumented, unaccompanied children, and those of undocumented children within families. This gap inevitably creates a tension between the rights of children and the principle of non-discrimination on the one hand,<sup>21</sup> and the fundamental rights of the family unit enshrined in the EU Charter of Fundamental Rights and the European Convention on Human Rights on the other.<sup>22</sup> The social rights guaranteed to one group of undocumented migrant children (those with families) should not fall short of the rights guaranteed for the other (the unaccompanied). This inequality could ultimately lead to parents seeing it necessary to separate from their children in order to secure higher protection guarantees, better reception standards and more social services for their children. PICUM's member organisations in Italy and Belgium have reported such cases, and are deeply concerned about the lack of visibility of undocumented children with families who frequently live in extremely precarious situations with no access to basic social rights.<sup>23</sup>

*Raise, do not lower, rights to achieve equality.*

It is important to emphasise that the 'lowest common denominator approach' should not be adopted when distributing social rights guarantees to vulnerable groups of migrant children. Equality should mean that all receive the highest level of protection and not that a right accessible to one group, such as unaccompanied children, is made inaccessible so they have the same lack of protection as those in an irregular status with their families.

### **15. What are the activities of your organisation relating to vulnerable groups of children? What are the difficulties and problems that you encounter on the ground when developing actions in favour of vulnerable groups of children?**

PICUM is a membership organisation aggregating over 100 European NGOs that focus on fulfilling the rights and needs of undocumented migrants. Many of those organisations deal primarily or exclusively with children. PICUM coordinates information exchange, disseminates good practices, promotes networking across the EU, and helps reflect its members' concerns regarding undocumented children into mainstream social policy debates. PICUM reports on issues occurring at local level, and monitors undocumented children's access to basic social rights in the EU, and instances of abuse and exploitation.

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<sup>21</sup> Convention on the Rights of the Child, article 2.

<sup>22</sup> EU Charter of Fundamental Rights, article 7; European Convention on Human Rights, article 8.

<sup>23</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 83.

Denunciation and attempted enforcement of immigration rules by service providers is improper.

The experiences of PICUM's members, and the research carried out by PICUM with partner organisations both inside and outside its network, have demonstrated a number of types of challenges facing efforts to develop actions in favour of undocumented children. In 2009, PICUM completed a two-year research project co-funded by the Daphne II program of DG Justice, Freedom and Security into the situation of undocumented children in nine EU member states<sup>24</sup> with respect to three key areas of fundamental social rights, each protected in the Convention on the Rights of the Child and other binding instruments: education, health care, and housing. Among the most serious challenges shared by these key areas are the persistent risk of denunciation, the perception of that risk by the migrants concerned, and lack of awareness on the part of service providers or local officials that their first duty is to fulfil the needs and rights of the child, not to attempt to enforce immigration policy. These impediments featured prominently in interviews concerning all aspects of undocumented children's access to social services that PICUM has studied.

Undocumented children lack sufficient practical access to education.

In the area of education, interviews conducted in the course of PICUM's research revealed a large gap between the entitlement of undocumented children to standard public education under Member State law, and their access to that education in practice. Lack of identification documents; misuse of administrative discretion to exclude particular children; exclusion from state aid in meeting secondary costs of education such as transportation and books; language difficulties; precarious living conditions; and refusal to issue diplomas, were identified by project participants as factors disproportionately impeding undocumented children's access to compulsory state education in the EU. Undocumented adolescents older than 16 have great difficulty accessing vocational educational, due in part to the expectation they would not be able to obtain a working permit thereafter.<sup>25</sup>

Undocumented children suffer from inadequate health care.

According to PICUM's 2007-2009 review, undocumented status impeded efforts to obtain health care for children, other than urgent care services. Individual undocumented children frequently risk being denied access to care due to the discretion afforded individual practitioners to determine what conditions require urgent care. Support for specialist services such as dental or vision care is rarely available to undocumented children. Complex administrative procedures and processes for funding or reimbursing doctors and hospitals that care for undocumented children represent a significant barrier to non-emergency health services. Undocumented families' lack of knowledge of how public health systems work is often matched by care providers' unawareness of their obligations to extend services to children regardless of immigration status. Undocumented children are particularly vulnerable to mental health issues, which risk being left unaddressed if a restrictive definition of urgent medical needs is applied.

Undocumented children within families cannot access adequate housing.

Undocumented children within families unjustifiably face even more severe barriers to exercising their rights to decent housing than do unaccompanied children. Public housing services are generally unavailable to irregular families, forcing a choice between separating families, and leaving children to live on the streets. For example, authorities in the Netherlands routinely expel families from reception

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<sup>24</sup> Belgium, France, Hungary, Italy, Malta, the Netherlands, Poland, Spain, and the UK.

<sup>25</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, pp. 23-42.

housing following the failure of an asylum application, even if it is impossible to repatriate those families to the country of origin.<sup>26</sup> Social housing is generally unavailable to undocumented families, including children, due to lack of residence permits. Undocumented families with the means to attempt to procure housing on the private market face serious risks of exclusion, overcharging, or abuse at the hands of racist or otherwise hostile or unscrupulous landlords.

**16. Are you aware of good practices, initiatives or programmes that contribute to a better protection of the most vulnerable groups of children? Are you aware of cross border initiatives in this area (e.g. cooperation, or participation in common projects, with organisations in other Member States, exchanges of good practice, etc.)?**

PICUM's report, *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*,<sup>27</sup> gathered and presented good practices for enhancing undocumented children's ability to access to education, health, and housing services. Examples were drawn from across the EU, a few of which are presented here, to highlight possibilities for improving practical respect for children's rights through both public policy, and independent efforts of civil society actors. PICUM recommends a full review of this report for practices that can beneficially be implemented at the European level.

*Spanish law could serve as a model for Europe.*

Spanish laws regarding children's access to education and health services are often cited as models of good practice deserving of emulation across the EU. The Law on the Protection of the Minor establishes the right of all migrant children present in Spain to receive education, and the 23 December Organic Act 10/2002 on the Quality of Education (LOCE) stipulates that foreign students have the same rights and duties as Spanish students and that their incorporation into the education system implies the acceptance of the generally established rules of co-existence that govern the educational establishments into which they are to be integrated.<sup>28</sup> Article 12 of the Act 4/2000 of 11 January 2000 on the Rights and Freedoms of Aliens in Spain entitles all children present in Spain to the same rights to access health services as Spanish children enjoy.<sup>29</sup>

*Local initiatives are upholding the right of all children to receive an education.*

In 2009, Hesse became the latest of several German states to modify its regulations to allow children to enrol in its schools without proof of local residence.<sup>30</sup> In 2010, the municipality of Florence, Italy acknowledged the right of undocumented children to attend nursery school, thus bypassing the national law on the issue that recognises the right to education only at primary level. Other municipalities have followed suit.<sup>31</sup> The Virtus association in Rome has a programme to provide

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<sup>26</sup> "Stop eviction of undocumented children in the Netherlands," No Child on the Street, <http://www.geenkindopstraat.nl/pages/gkos/English>.

<sup>27</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1.

<sup>28</sup> *Ibid.*, p. 19.

<sup>29</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 49.

<sup>30</sup> "Zur Schule ohne Angst for Abschiebung," Spiegel Online, 2 October 2009, <http://www.spiegel.de/schulspiegel/wissen/0,1518,652817,00.html>. (Cf. PICUM newsletter, October 2009.)

<sup>31</sup> "Materne Comunali per i baby clandestine," La Repubblica, 12 March 2010, <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2010/03/12/materne-comunali-per-baby-clandestini.html>. (Cf. PICUM newsletter, April 2010.)

education and housing support, as well as mentoring and monitoring, as undocumented children complete compulsory education and begin the transition toward independent adulthood.<sup>32</sup>

*Civil society initiatives improve access to health care.*

Médecins du Monde has demonstrated that informational efforts can make great strides toward the realisation of undocumented children's rights to health care, by disseminating information to irregular migrants, and through integrating discussion of their rights to health care into orientation programmes for medical professionals.<sup>33</sup> The British Medact Refugee Health Network helps to avoid the problem of arbitrary refusal to treat undocumented migrants, especially children and their mothers. It works to find doctors who will reliably treat children regardless of their immigration status, and to raise awareness of the rights and needs of undocumented children while at the same time promoting available "care first, pay later" regulations concerning necessary medical care.<sup>34</sup> The Belgian NGO Medimmigrant led successful lobbying efforts to change Belgian law such that unaccompanied undocumented children now are entitled to health insurance, which allows them to have the same rights to medical care as Belgian children. Previously, they were entitled only to urgent health care.<sup>35</sup>

*Confidential counselling expands access to housing.*

The UK NGO Shelter provides support and confidential help with housing problems to many thousands of disadvantaged people, including undocumented children and families. By lobbying local authorities for new policies and increased investment to improve the lives of poorly housed people, Shelter is able to both help individuals, and positively influence public policy over the long term.<sup>36</sup>

*A holistic, individuated, and multidisciplinary approach proves effective.*

An NGO in Marseilles, France, Jeunes Errants, ensures individual attention and a holistic approach to protecting undocumented migrant children. The association works with competent institutions such as the children's protection office, government representatives, juvenile courts, and the public prosecutor. Jeunes Errants ensures a specific approach for each child thanks to case-by-case treatment and a multidisciplinary and multicultural team. The association offers services dealing with legal measures, investigations, educational orientation measures, research, resources, and dissemination. It both serves trafficked and other unaccompanied children, and works with the families of undocumented children, when available.<sup>37</sup>

**17. What concrete initiatives do you consider necessary to better protect the rights and promote the best interests of vulnerable children? Do you consider that the EU can contribute to these initiatives and if so how?**

EU laws and agencies protecting children and their social rights should specify that children's rights and needs do not depend on their immigration status or family situation. The Open Method of

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<sup>32</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 39.

<sup>33</sup> *Ibid.*, p. 60.

<sup>34</sup> *Ibid.*, p. 56.

<sup>35</sup> *Ibid.*, p. 58.

<sup>36</sup> *Ibid.*, p. 79.

<sup>37</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 81.

Coordination should also integrate this principle, mainstreaming the particular needs of undocumented children and their families into ongoing efforts to fight poverty and discrimination in social service provision.

*The EU non-discrimination framework prohibits discrimination based on immigration status.*

Arguably, the EU's non-discrimination framework implicitly forbids discrimination based on immigration status, as it is a form of discrimination based on ethnic origin, and a distinction too arbitrary to support derogation from duties to fulfil core human rights. The framework should be updated to make this explicit, and implemented so as to ensure that undocumented children and their families are not denied their fundamental rights for lack of immigration status or residence papers.

*The rights of the child are paramount.*

Many instruments guiding immigration and social policies refer to the important principle of the best interests of the child. Those instruments, existing and new, should state that that priority must have paramount importance whenever it conflicts with other priorities. In particular, family unity must be respected.<sup>38</sup> Children's fundamental rights must take precedence over the strict letter of immigration regulations.<sup>39</sup>

*Education, and funding for education, must be decoupled from immigration status.*

PICUM's research indicated that in at least some Member States, funding is only provided to schools in proportion to the number of registered inhabitants of the local district they serve.<sup>40</sup> This creates an incentive for schools to decline to admit undocumented children. Though in some cases schools could draw on special funds for migrant children to cover such costs, in many cases school administrators are not aware of these funds or do not want to take advantage of them due to long bureaucratic procedures. In Hungary, for example, PICUM's review of the applicable law indicates that education is only available to children holding a residence permit.<sup>41</sup> In the UK and France, administrative discretion was cited as having prevented enrolment of unwanted students, including undocumented children. In the Netherlands, administrators inconsistently exercise discretion to allow undocumented children to access public funds available to support important education-related costs such as study materials and transportation. The new Communication should call on Member States to eliminate such linkages between education and immigration status.

*Undocumented children should be granted equal rights to non-compulsory education.*

Member States should include undocumented children in integration and language programmes, and undocumented children who successfully complete compulsory education should never be denied diplomas reflecting that accomplishment. Undocumented children outside the standard age range for compulsory schooling (6 to 16) should have access to state-supported kindergarten and preschool programmes, as well as to vocational and other preparatory education from ages 16 to 18. The

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<sup>38</sup> See Rodrigues da Silva and Hoogkamer v. The Netherlands, European Court of Human Rights, application no. 50435/99, 31 January 2006 (best interests of the child required the mother be permitted to stay in the Netherlands, despite her irregular immigration status).

<sup>39</sup> See Moser v. Austria, European Court of Human Rights, application no. 12643/02, 21 September 2006 (ECHR article 8 was violated when Austria separated mother and child due to the mother's irregular status).

<sup>40</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 19.

<sup>41</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 20.

Commission should encourage efforts to ensure that Member States extend all public educational programmes to all children regardless of their formal immigration status.

Undocumented children must have access to health care.

Many EU member states tie full national health care privileges to the possession of a residence permit. This can leave undocumented children without access to any but emergency health care. This restriction carries great risks for children's development, and varying definitions of urgently necessary treatment create inequality across similarly placed children across the EU.<sup>42</sup> The EU should encourage Member States to work with health care providers to make sure that all children have access in practice to a full range of health services.

Expand the definition of basic health care to which all children must be entitled.

In too many cases in several EU Member States, PICUM's research discovered that the decision whether or not to treat a particular undocumented child fell entirely upon the goodwill of individual medical or administrative personnel.<sup>43</sup> This creates a danger of arbitrary and discriminatory denial of access to services. The EU should work with civil society and health associations to expand the types of care defined as basic enough that they must be made available to all children regardless of immigration status.

The Commission should focus on children's mental health needs.

The precarious living conditions and other strains that accompany undocumented life bear disproportionately upon children's mental health. PICUM's work has detected little understanding of or support for the particular mental health needs of undocumented children. The Commission should address this issue in its 2011-2014 Communication, and should open a discussion with Member States and civil society actors about how best to provide for the mental health needs of children, particularly those who are especially vulnerable due to an irregular immigration status or other trauma-inducing circumstances.

Undocumented children must have equal housing rights.

Housing arose in PICUM's interviews in the course of its 2007-2009 research as possibly the single most common problem area facing undocumented children. Cramped, dilapidated, or dangerous housing has a serious impact on other aspects of children's development, notably on health and educational prospects. Even when they are fortunate enough to have housing at all, undocumented children disproportionately live in such inadequate conditions.

Notwithstanding the existence of international rights to decent housing, PICUM's investigations indicated that other than unaccompanied children, undocumented children in the EU lack rights to such housing under national law.<sup>44</sup> The Commission's Communication should make it an urgent priority to indicate to Member States that the basic right to housing extends to all children, regardless of family situation or immigration status. The European Committee of Social Rights recently declared

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<sup>42</sup> Ibid., pp. 53-55.

<sup>43</sup> Ibid., p. 55.

<sup>44</sup> *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, supra note 1, p. 74.

that the denial by the government of the Netherlands of shelter to rejected asylum seeking families with children violated rights guaranteed by the European Social Charter.<sup>45</sup>

*Accessing social services must not raise a risk of denunciation, nor the perception of such risk.*

The risk or fear of denunciation is an overarching concern affecting all access to social services for undocumented children. Even a small actual risk of denunciation can deter undocumented children and families from seeking support to which they are entitled. The Commission should encourage Member State governments to reform their policies to establish that providers of core social services to children should not denounce those without residence permission, or their families, to immigration or police authorities. Informational outreach should emphasise the importance of maintaining the trust that makes it possible to deliver those services. Merely by declaring a policy of refusal to act on such denunciations, Member State authorities can improve the education, health, and living standards of one of the EU's most vulnerable groups. Similarly, undocumented children and their families should be able to seek and obtain redress of grievances based on denial of core social rights, or other wrongs such as harassment or violence, without fear of detention, deportation, or other sanction.

*Raising awareness is key.*

Another common theme emerging from PICUM's research into the practical availability of social rights to undocumented migrants, including children, has been simple lack of awareness. The EU should encourage campaigns to inform advocates, migrant families, local officials, and service providers of the fundamental rights of undocumented children, and of the corresponding duties to provide social services to enable those rights. PICUM's members and project partners have experienced success through efforts to instigate dialogue between children's advocates, local officials, and service providers. The EU should support further such efforts at cooperation to actively help undocumented children overcome administrative barriers to realising their social rights, as well as practical impediments including but not limited to the lack of formal national identification or residence papers, language barriers, or lack of funds.

Please consult PICUM's report *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions* (attached to the cover email together with this questionnaire) for more information, full references and practice examples. A final conference report relating to undocumented children is also attached.

More publications and information on the situation of undocumented migrants in Europe is available at [www.picum.org](http://www.picum.org).

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<sup>45</sup> Council of Europe, European Committee of Social Rights, Defence for Children International (DCI) v. the Netherlands, Complaint no. 47/2008, 20 October 2009.