



# LEGAL Committee

## Topic 2: Legal status and rights of illegal children

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### 1. Definition of key terms

**The Universal Declaration of Human Rights (UDHR):** This document emphasizes the protection of individuals, particularly children, from arbitrary actions such as expulsion or denial of essential services. Together, these conventions and declarations create a binding framework that imposes moral and legal obligations on governments to uphold children’s rights, regardless of their immigration status.

**Right to Education:** Access to education is one of the most contested areas for undocumented children. The CRC enshrines the right to free primary education for all children, yet many countries restrict access to higher education and other services for children without legal status. In some cases, undocumented children face fear and discrimination when attempting to access school systems, particularly if they fear detection by immigration authorities.

**Right to Healthcare:** Access to healthcare is another critical right under international law. However, in many countries, undocumented children encounter significant barriers to obtaining medical care due to their lack of legal status. This can lead to serious health consequences, as these children often delay or forgo treatment out of fear of deportation or detention.

**Right to Protection:** The principle of non-discrimination includes protecting children from abuse, exploitation, and trafficking. Unfortunately, undocumented children are particularly vulnerable to abuse because of their precarious legal standing. They are at heightened risk of being exploited in the labour market or trafficked across borders.

**Family Unity:** Undocumented children often live in fear of being separated from their families due to immigration enforcement actions, which can lead to detention or deportation. The right to family unity is enshrined in international law, but for undocumented families, this right is fragile and subject to the limitations of immigration policies.

## 2. Introduction

The issue of children without legal status represents a highly sensitive and multifaceted challenge within international law and human rights discourse. It pertains to children born or living in a country without proper documentation or legal authorization. These children are often the offspring of migrants or refugees who entered a country illegally or overstayed their visas, leaving their children in a precarious legal position.

Despite their lack of formal legal status, these children are fundamentally human and, as such, are entitled to universal rights and protections. International human rights frameworks, particularly the United Nations Convention on the Rights of the Child (CRC), assert that all children, regardless of their immigration status, must be granted rights to protection, care, education, and health. However, these rights are frequently undermined by national immigration policies, leading to significant disparities in the treatment of undocumented children across different countries.

The tension between a sovereign state's control over immigration and the fundamental human rights of children creates a legal and ethical dilemma. On one hand, nations have the right to enforce border control and regulate immigration; on the other, international law mandates that children are entitled to certain protections regardless of their legal or migratory status. This contradiction results in a complex web of policies, legal frameworks, and ethical considerations that must be navigated to address the status of undocumented children.

Historically, the plight of children without legal status has been exacerbated by the rise in global migration driven by economic, political, and environmental factors. Millions of children are born into families without legal status or are displaced from their home countries due to war, conflict, or persecution. These children often find themselves in limbo—denied access to basic services and subjected to harsh legal and social environments. For these children, access to education, healthcare, legal protection, and opportunities for a stable future is severely limited or outright denied.

While some countries recognize the rights of undocumented children, including their access to basic education and healthcare, others impose significant barriers or deny these services outright. The varying approaches to this issue highlight the complexity of balancing national security, immigration enforcement, and children's rights on the global stage.

## 3. Background information

### Legal Status and Rights of Children Without Legal Status

The issue of children without legal status represents a significant global challenge at the intersection of human rights, immigration law, and child protection. These children often face precarious situations due to their parents' undocumented status or their own unauthorized presence in a country. Whether their status arises from irregular migration, refugee displacement, or being born without legal documentation, these children are at heightened risk of discrimination, exploitation, and denial of fundamental rights—despite international recognition of their right to protection.

As of 2020, millions of children globally live without legal status, many of whom were either born in their host country or arrived at a young age. These children often live in constant fear of detention, deportation, and family separation while also encountering significant barriers to

essential services such as education, healthcare, and social protection. They frequently suffer from poverty, neglect, and psychological trauma, compounded by the uncertainty surrounding their legal status.

The United Nations (UN) and its specialized agencies have played a critical role in addressing the rights of undocumented children, ensuring they are included within the framework of international protection. Despite these efforts, national responses vary widely, often leading to human rights abuses that disproportionately affect these vulnerable children.

## **UN Response and Involvement**

The United Nations has long been committed to promoting and protecting the rights of all children, including those without legal status. This commitment is rooted in international human rights law, international refugee law, and international humanitarian law. Several key UN instruments and bodies advocate for and safeguard the rights of undocumented children:

### **1. United Nations Convention on the Rights of the Child (CRC)**

Adopted in 1989, the CRC is the most comprehensive international treaty dedicated to children's rights. It establishes a framework to ensure the protection of children's rights under all circumstances, including migration, refugee displacement, and undocumented status.

- **Article 2:** Enshrines the principle of non-discrimination, guaranteeing all children the rights outlined in the CRC, irrespective of race, nationality, ethnicity, or legal status.
- **Article 22:** Provides special protection and assistance for children in the context of migration and refugees.
- **Article 28:** Ensures the right to education, including free and compulsory primary education for all children, regardless of their legal status.
- **Article 24:** Guarantees the right to the highest attainable standard of health, applicable to all children.

While the CRC establishes a strong legal foundation for children's rights, its implementation depends on states' willingness to adhere to these principles. Unfortunately, some nations with strict immigration policies interpret or enforce these rights selectively.

### **2. The UN High Commissioner for Refugees (UNHCR)**

The UNHCR plays a pivotal role in protecting children who are refugees or asylum-seekers, including those lacking legal status due to displacement or irregular migration. The 1951 Refugee Convention and its 1967 Protocol, both led by the UNHCR, outline the rights of refugees, including children, and ensure protection against return to countries where they may face harm.

## **4. Timeline of events**

### **- 1868 – U.S.:**

The 14th Amendment to the U.S. Constitution established birthright citizenship, guaranteeing that

anyone born in the U.S. is a citizen, regardless of parental immigration status. This set a foundational precedent for recognizing the rights of children born to undocumented parents.

**- 1930 – League of Nations:**

The League of Nations recognized statelessness as a critical issue, paving the way for efforts to address the rights of undocumented and stateless children.

**- 1948 – Universal Declaration of Human Rights (UDHR):**

- **Article 15:** Declares that everyone has the right to a nationality.
- **Article 25:** Asserts the right of children to special care and assistance, laying the groundwork for recognizing the rights of undocumented children globally.

**- 1989 – UN Convention on the Rights of the Child (CRC):**

Ratified by nearly all UN member states, the CRC requires states to protect the rights of all children, regardless of their or their parents' legal status. Articles 7 and 8 emphasize every child's right to a nationality and legal identity.

**- 2001 – Inter-American Court of Human Rights (IACHR):**

The court ruled that the Dominican Republic violated the rights of children of Haitian descent by denying them citizenship. This landmark case reinforced the principle that a child's rights, such as nationality, education, and healthcare, must not depend on their parents' legal status.

**- 2010 – Germany:**

Germany amended its nationality law, allowing children born to undocumented immigrants to acquire conditional citizenship if their parents meet specific residency criteria.

**- 2014 – Thailand:**

Thailand implemented reforms granting citizenship to some children born to stateless parents, addressing a significant stateless population within its borders.

**- 2015 – Global Compact on Refugees (UNHCR):**

This framework emphasized preventing statelessness and ensuring legal protections for children born to undocumented or displaced families.

**- 2021 – India:**

The Supreme Court ruled that undocumented children cannot be denied access to education and healthcare, reinforcing constitutional protections.

## **5. Major countries involved**

### **United States of America (USA)**

The United States is one of the largest destinations for migrants worldwide, with millions of undocumented immigrants, many of whom are children. Its immigration policies have long been a focal point in global discussions on the treatment of undocumented children.

The U.S. has faced international criticism for its detention of migrant children, family separation policies, and approaches to asylum seekers and DACA (Deferred Action for Childhood Arrivals).

Under the Trump administration (2017–2021), strict immigration measures like the “zero-tolerance policy” led to family separations at the U.S.-Mexico border, sparking global

condemnation. The Biden administration has taken steps to reverse some of these policies, but significant challenges remain, particularly regarding the humane treatment of migrant children.

### **European Union (EU)**

The European Union (EU) is a major hub for migrants, with member states serving as both transit and destination countries, particularly for migrants from Africa, the Middle East, and South Asia. Consequently, the EU plays a critical role in addressing the issue of undocumented children. Italy, Greece, and Spain are especially affected due to their proximity to conflict zones and migratory routes across the Mediterranean Sea. Germany and France, as major destination countries, host significant numbers of undocumented children, many of whom seek asylum or live in precarious legal situations.

The EU has attempted to establish common standards for protecting migrant children. However, its policies have been criticized for inconsistencies and inadequate responses, particularly during the 2015 Refugee Crisis. This crisis exposed significant gaps in the EU's approach, including overcrowded refugee camps and lack of access to essential services for children.

### **Mexico**

As both a source and transit country for migrants—especially those from Central America—Mexico plays a critical role in addressing the rights and needs of undocumented children.

Mexico faces pressure to restrict migration from the Central American caravan, which consists of individuals fleeing violence, poverty, and political instability in countries such as Honduras, Guatemala, and El Salvador. While Mexico has implemented measures to support migrant children, challenges persist regarding access to education, healthcare, and protection from exploitation.

### **Brazil**

Brazil is a key player in South America as both a source and destination country for migrants. The ongoing Venezuelan crisis has led to a significant influx of Venezuelan children crossing into Brazil and other neighbouring countries.

Brazil has adopted a humanitarian approach, welcoming many Venezuelan refugees. However, challenges remain in ensuring undocumented children's access to education, healthcare, and legal protections. Integrating these children into the local education system and addressing their healthcare needs are pressing concerns.

### **Turkey**

Turkey is a critical transit and destination country for migrants due to its geographic position at the crossroads of Europe and the Middle East. As one of the largest hosts of refugees globally, Turkey shelters over 3.6 million Syrian refugees, including a large number of children.

While Turkey has made progress in providing education and healthcare to refugee children, significant challenges remain. These include integration into society, combating child labour, and addressing the psychological trauma experienced by many migrant children.

## **6. UN involvement**

The United Nations (UN) has consistently worked to address the legal status and rights of children, including those considered "illegal." These efforts encompass children born to undocumented migrants, stateless children, and those lacking legal identity due to systemic or societal challenges. Through various initiatives, conventions, and programs, the UN strives to safeguard the rights of every child, regardless of legal or social status.

## **Key Areas of UN Involvement**

### **1. Convention on the Rights of the Child (CRC):**

- Adopted in 1989, the CRC is the cornerstone of the UN's work on children's rights. It emphasizes that all children, regardless of legal or immigration status, have the right to:
  - A name and nationality (Article 7).
  - Protection from discrimination (Article 2).
  - Access to education, healthcare, and social services.
- The CRC obligates states to ensure that all children under their jurisdiction enjoy these rights without discrimination.

### **2. Statelessness and Birth Registration:**

- The UN High Commissioner for Refugees (UNHCR) actively works to reduce statelessness, which often affects children born to undocumented parents or those in irregular migration contexts.
- The UN advocates for universal birth registration as a critical step to ensuring children's access to rights and legal identity.

### **3. Global Compact for Migration (2018):**

- The Compact emphasizes the protection of migrant children, including those in irregular situations, and calls for:
  - Access to education and healthcare irrespective of immigration status.
  - Alternatives to detention for children and their families.
  - Family reunification and prioritization of the child's best interests.

### **4. Human Rights Council (HRC) and Special Rapporteurs:**

- The HRC addresses the rights of children in vulnerable situations, including undocumented and stateless children.
- Special Rapporteurs on the rights of migrants and on racism have highlighted discriminatory policies that deny undocumented children access to basic rights.

### **5. UNICEF's Role:**

- UNICEF plays a pivotal role in advocating for the rights of undocumented and stateless children through:
  - Promoting access to education and healthcare.
  - Supporting policy reforms to eliminate barriers for undocumented children.

- Raising awareness of the negative impacts of discriminatory practices on children's well-being.

## 6. Sustainable Development Goals (SDGs):

- The SDGs, particularly Goal 4 (Quality Education) and Goal 10 (Reduced Inequalities), emphasize inclusivity and non-discrimination. These goals underpin UN efforts to ensure that children, regardless of legal status, are not left behind.

## 7. Advocacy Against Discrimination:

- The UN condemns discriminatory practices that exclude undocumented or stateless children from accessing their rights, focusing on addressing xenophobia, racism, and systemic inequalities.

## Challenges Addressed by the UN

- **Barriers to Education:** Many undocumented children face obstacles in accessing schools due to lack of documentation.
- **Healthcare Access:** Undocumented status often excludes children from public healthcare systems.
- **Detention of Migrant Children:** The UN advocates for alternatives to detention and calls for an end to the practice of detaining children based on immigration status.
- **Family Separation:** Efforts focus on reuniting children with their families and preventing separations caused by immigration enforcement.

The UN emphasizes that no child should face discrimination based on legal status. Through its conventions, agencies, and advocacy, the UN strives to uphold every child's rights, acknowledging that their legal status should not determine their access to basic rights and opportunities. However, implementation remains inconsistent across nations, requiring ongoing international pressure and support to align national policies with global standards.

## 7. Useful links and bibliography

- [An overview of the fundamental rights of migrant children | EMM2](#)
- [U.S. Citizen Children Impacted by Immigration Enforcement | American Immigration Council](#)
- [Undocumented children in Europe: between rights and barriers - PICUM](#)
- [Immigrant Youth | Immigrant Legal Resource Center | ILRC](#)
- [Laws Concerning Children of Undocumented Migrants](#)
- [nuncitizensen.pdf](#)