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**Being children and
undocumented in the UK:
A background paper**

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Abstract

This background paper offers a critical review of key terms, concepts and evidence which will inform our ongoing qualitative study on the situation of undocumented migrant minors in the UK.

The paper first addresses issues related to the definition of the target group, considering in particular the dichotomy legal/illegal immigration and showing how it fails to acknowledge two important aspects: the layered nature of legal status and entitlements, and the mobility between different statuses over time. It then introduces the debate on children in migration and illustrates some of the tensions that the migration of children produces, both discursively and in policy terms. It goes on to consider the legal and policy context in which children and families without legal status are embedded in Britain. It discusses the complex and contradictory position of this group as revealed in policy documents and existing immigration and child-related legislation. It focuses in particular on issues such as access to health and education services, and employment of undocumented migrants under 18. Finally the paper outlines the main trends in the migration of children, providing a preliminary mapping of the numbers and locations of undocumented children in Britain.

The paper draws the contours of a three-dimensional approach to 'illegality' which investigate the relationship between legal status and migrants' everyday experiences; explore the multi-level governance of 'children' and 'illegal immigrants'; and locate 'illegal immigration' as an historical construction in current EU-wide debates on membership, security and belonging and the restructuring of the labour market and welfare state.

Keywords

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Introduction

This background paper completes the first stage of the UK component of a collaborative research project into the lives and experiences of undocumented migrant children in the United Kingdom and the US. The project, commissioned by the Barrow Cadbury Trust, is being carried out by a research team at COMPAS (University of Oxford) coordinated by Dr Nando Sigona, in collaboration with the Institute for the Study of International Migration (Georgetown University, Washington DC).

The interest in this project is prompted by significant levels of 'illegal' immigration being experienced in both the UK and the US. According to the UN's population division (1997: 27), undocumented migration is 'one of the fastest-growing forms of migration in the world today', a trend further reinforced by over a decade of policy and practice aimed at the securitization of legal migration routes (Castles and Miller 2009). A large proportion of these migrants are children (persons under the age of 18). Undocumented migrant children are a 'multifaceted and diverse group' (PICUM 2008; Dobson 2009). These children can be migrants who entered the country of destination independently or with their families, or were born to parents without legal status already residing in the country of migration. Their motives for migration also vary, and include family reunification, seeking protection from persecution, or searching for better living conditions, education and opportunities. And there are those who have been trafficked.

While there is broad recognition of the importance of protecting children in mainstream public policy, governments face the challenge of how to comply with their international and humanitarian obligations and address the protection needs of this specific group of children at a time when their overall concerns are shifting, instead, towards tougher immigration policies and stricter border control in particular against 'illegal' immigration, as captured by the following statement from the then UK Home Secretary, John Reid (Home Office 2007a): 'We need to make living and working here illegally even more uncomfortable and constrained.'

The tension between these two policy agendas – that is ensuring the protection of children vis-à-vis securitising migration – is producing a diverse range of policies and practices, and has significant implications for local authorities and service providers, particularly in relation to the provision of education and health, as well as on children's vulnerability in employment as a result of their non-status, aspects which will be investigated in the research project.

Our research will be looking at two categories of undocumented migrant children: those who accompany or live with close family members (including those who are born in the destination country to undocumented parents) and those who migrate alone for purposes of asylum, work or study. The main research focus will be on three policy areas: health, education and employment. It will examine the ways in which, in the experiences of undocumented migrant children, the

precariousness of legal status intersects with age, 'race', ethnicity, gender, religion, settlement strategies, entry routes and motives for migration, as well as the challenges faced by service providers, local authorities and local communities in relation to this group of children.

This background paper is divided into four sections:

Section 1 defines the target group of this research project, outlines the key terminology and considers definitional issues and their policy and practice implications. It considers in particular the dichotomy legal/illegal immigration, showing how it fails to acknowledge two important aspects: the layered nature of legal status and entitlements, and the mobility between different statuses over time. Section 2 introduces the debate on children in migration and illustrates some of the tensions that the migration of children produces, both discursively and in policy terms. Section 3 considers the legal and policy context in which children and families without legal status are embedded in Britain. It reviews policy documents and existing immigration and child-related legislation, and focuses in particular on issues such as access to health and education services, and employment of undocumented migrants under 18. The review of current academic and grey literature on undocumented child migration in the UK and Europe will illuminate key areas for further research. Section 4 outlines the main trends in the migration of children, providing a preliminary mapping of the numbers and locations of undocumented children in Britain.

This paper has informed the decisions on the fieldwork strategy and sites in the United Kingdom. The selection of sites has taken into account factors such as: the estimated size of the overall undocumented population, indications of significant numbers of undocumented children, diversity in entry routes, diversity as to whether sites are traditional gateways or new settlement areas, familiarity with the sites via other research, and local initiatives regarding undocumented migrants.

Definitional issues

Children and undocumented

Defining who is a child and who is an undocumented migrant is not straightforward. If we take the definition adopted by the United Nations Convention on the Rights of the Child (UNCRC) as a starting point, a child is 'every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier' (Art 1). This definition adopts biological age as the main, almost exclusive, criterion for the identification of a human being as a child. However, to ascertain the biological age of an individual is not always an easy task, not least because not everyone has their birth registered when they are born or a document to prove it. In the case of undocumented migrant children, this may be even more complicated because of the policy and practice implication that the recognition as a child may bring to the migrant. The significant number

of age disputes affecting in particular asylum seeking minors (Crawley 2007; PICUM 2008) exemplifies the politically-charged nature of this task.

The UNCRC definition itself reveals the constructed nature of this categorisation, first of all, by identifying a threshold (i.e. under 18 years old) below which every human being is a child, but also by admitting that by law it is possible to attain majority earlier. However, the legal and social construction of childhood is not limited to the definition of the target population, but also involves the construction and governance of systems of values, rights, entitlements, children's agency and their attached obligations, which are space and time specific. As a consequence, borrowing from Cunningham (1995:3), 'childhood cannot be studied in isolation from society as a whole' as it is situated in the broader social and economic context in which people grow up. Moreover, it has been pointed out that the representation of children as a bound and distinct category of persons, dominant in the work of agencies at all levels, locate them outside political and economic processes at the local, regional and global level, shielding them 'from the effects of societal processes' (Hart 2006: 7).

The tension between, on the one hand, a universal image of childhood embodied for example in the UNCRC and rooted in what Hart terms 'the project of saving the children' (Hart 2006) and, on the other hand, more contextualised, culturally-aware and localised accounts of childhood which challenge the 'seeming naturalness of a conceptual boundary between childhood and adulthood' (idem: 7) is recognised in the literature (see Boyden 1997; Baker and Hinton 2001; Punch 2003; James and Prout 1997; Heissler 2009; Das and Reynolds 2003). This is especially significant to children in migration as, through mobility, different discourses and constructions of childhood, youth and adulthood may be brought into collision (Rattansi and Phoenix 2005; Boyden and Hart 2007; Mai 2007).

To define 'undocumentedness' is equally difficult. The increasing scope and complexity of international migration has meant an expansion in the conceptual and policy vocabulary dealing with processes and patterns of migration (Carrera and Merlino 2009; Castles and Miller 2009; Zetter 2007). A thesaurus would include key terms such as 'undocumented', 'irregular', 'clandestine', 'illegal' and 'sans papiers' to describe people who cross borders without authorisation, or who reside or work without adequate documentation.

The most commonly understood and widely used term in public and political parlance is 'illegal immigration/illegal immigrant'. However, many scholars and activists object to its use (see for example Paspalanova 2008; Cohen 2003). For the members of the Platform for International Cooperation on Undocumented Migrants (PICUM) there are three main reasons for not using the term: 'a) due to its connotation with criminality, and most undocumented migrants are not criminal; b) defining people as 'illegal' can be regarded as denying them their humanity; c) labelling 'illegal'

asylum seekers who find themselves in an irregular situation may further jeopardise their asylum claim' (PICUM 2003; see also Black 2003).

The term 'undocumented', widely used among migrants' support groups and scholars, is preferred here because it is less negatively charged and because it puts an emphasis on the total or partial absence of adequate travel or residence documentation (according to the legislation in the country of residence) as a central feature in the experience of a group of immigrants who, arrived through a number of entry routes and for a variety of reasons, entered a country without authorisation or are not in possession of residence papers (see Bloch et al. 2009) or are in breach of the terms of their visa.

Beyond the dichotomy 'legal' or 'illegal' immigrant

Jordan and Düvell have defined undocumented immigration as 'crossing borders without proper authority, or violating conditions for entering another country' (2002:15). For the Home Office (Woodbridge 2005) there are three distinct categories of undocumented immigrants: (1) illegal entrants, (2) overstayers and (3) failed asylum seekers. Drawing on the work of Anderson (2005) and Koser (2005), ippr (2006) expanded these categories to the following: (1) entering by avoiding immigration restrictions; (2) entering using false documents; (3) overstaying visas or otherwise violating visa conditions; (4) failed asylum seekers who stay in the UK; (4) being without any ID documents; and (5) already having applied for asylum elsewhere.

A more recent Home Office study (2007a) has focused more on entry routes than the status once in the country and has thus identified the following four entry routes: (1) document fraud; (2) clandestine entry; (3) unfounded asylum claims; and (4) legal visitors overstaying.

Setting aside the politically charged nature of the terms discussed earlier, what is evident, as Ruhs and Anderson (2006) argue, is that the partition of migrants into two mutually exclusive and jointly exhaustive parts - either 'legal' or 'illegal' - dominant in political and public discourse is neither clear in practice (given the more than 80 or so different routes of entry to the UK which they identify), nor conforms to migrants' own experiences and conceptions of their status. For Bloch et al. (2009), 'undocumentedness' should be approached not only as an end-status, thus privileging the institutional/state perspective on the phenomenon. Rather, they argue, migrants' agency and perspectives should be embedded in the analysis, thus recognising 'undocumentedness' as a social process and a strategy of migration. This perspective acknowledges two important facts: that migrants often move between different statuses, and that they can be regular in one sense and irregular in another. This latter insight is particularly relevant when focusing on children and their specific rights and entitlements.

For Düvell (2008), there are three aspects that contribute to determining an immigrant's status: entry, residence, and employment. 'Each aspect can be regular or irregular and various

combinations are possible' (2008: 487) determining different degrees of 'clandestinity' that the author locates along a spectrum which goes from total regularity to total irregularity. He explains (2008: 488-489):

> The extent of clandestinity can vary considerably and depends on the extent to which the threshold is violated. In practice there will be often some discretion found – underpinned by processes of prioritizing scarce resources of the enforcement service – between legally defined threshold and tolerated deviation from this norm.

The interplay between entry, residence and employment in determining the legal status of migrants is also at the centre of Ruhs and Anderson's work (2006). They suggest adopting the notion of 'compliance' to offer a more nuanced understanding of the condition of 'undocumentedness' as a tension between process and status. For this purpose, they identify three levels of 'compliance': compliant (i.e. fully legal in relation to residence and work entitlements as immigrants); semi-compliant (i.e. legally resident but working in violation of some/all conditions of immigration status); and non-compliant (i.e. without rights of residence, and therefore also without the right to work). Different degrees of 'compliance' or 'clandestinity' determine differential access to entitlements, rights and privileges as well as, we would argue adapting De Genova's concept (2002), different degrees of 'deportability'[1].

This conception of 'undocumentedness' as a non-homogeneous legal status is informed by a number of complementary perspectives which draw attention to status stratification through the lens of packages of rights attached to different immigration statuses. In Morris' work (2001, 2002; see also Kofman 2002; Spencer et al. 2007) stratified rights and controls are linked to clearly differentiated legal statutes as a tool of migration management.

Similarly, in the US, Aleinikoff (1997; see also Heyman 2001) has put forward a conceptualisation of US membership structure as a set of concentric circles – 'circles of membership'– with citizens at the centre and various categories of migrants associated to decreasing levels of rights and entitlements at the margins. The in-between status experienced by migrants, 'liminal legality' in Menjívar's terms (2006), shapes not only migrants' livelihoods but also their social networks and social relations (see Bloch et al. 2009; Sigona et al. 2010). In Canada, Goldring at el. (2009: 255; see also Kissoon 2009) have explored, through the concept of status precariousness, the multiple and 'varied forms of irregularity' produced by the Canadian policy and national context, highlighting the limits of the dichotomy legal/illegal to explain the experiences of migrants in the Canadian system.

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[1] For a more nuanced understanding of the fear of deportation and how it is experienced and understood by undocumented migrants in the UK see Bloch et al. (2009).

More generally, our approach reflects perspectives that have emerged in the ongoing debate on citizenship and the transformation of the meaning of national/state membership vis-à-vis migration, the obligations deriving from the international human rights regime, and the increasing role of supranational, transnational and global forms of governance (e.g. Brubaker 1989; Soysal 1994; Kymlicka 1995, 2007; Joppke 1998, 2010; Castles and Miller 2009). In particular, our approach will borrow from current work on the hierarchisation and segmentation of citizenship in the EU territory through the internalisation of borders and the multiplication of institutional and quasi-institutional gate keepers (see Balibar 2004; Isin and Nielsen 2008; Huysmans 2006; Andrijasevic 2010; Rigo, 2005).

The next section outlines the key tenets of the debate on child migration and locates undocumented migrant children within this discussion.

Children in migration

Framing children's mobility: eternal victims, precocious criminals and bogus children

Children have always been part of migration flows. However, like women, minors as a specific social group, by and large, have been off the migration agenda. If migrating as dependants, their experiences of migration has often been assimilated to those of their parents or guardians; if migrating alone, their mobility has been interpreted often as a threat, for the migrant children and/or for the country of destination. For Bhabha (2008: 2):

> Independent child migrants, as a matter of law, have generally been regarded as suspect, either passive victims of exploitation (trafficked), or undeserving illegals (petty thieves, beggars, domestic workers pretending to need asylum) or adults masquerading as children.

One can define independent child migrants as children who migrate across national borders separately from their families. Based primarily on their motives for migration, Bhabha (2008) suggests grouping them in four sub-categories: (a) Children who travel in search of opportunities, whether educational or employment related; (b) Children who travel to survive - to escape persecution or war, family abuse, dire poverty; (c) Children who travel for family reunion - to join documented or undocumented family members who have already migrated; (d) Children who travel in the context of exploitation (including trafficking). These groups are not mutually exclusive. Like adults, children travel independently for reasons which may overlap[2].

Despite such a variety of reasons and circumstances for migration, since the mid-1990s and in correlation with the Palermo Protocol independent child migration has been interpreted

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[2] For a discussion of the asylum/migration nexus, see Crisp (2008), Van Hear (2004), Papadopoulou (2005) and Feller (2005).

prevalently as the result of 'human trafficking'[3]. This perspective traces back its discursive roots to the 'universal' approach to childhood spelt out in the UNCRC (see Boyden 1997). The following statement in the introduction to 'The State of World's Children 2006' (UNICEF 2006: 1) offers an example of this approach, embracing a normative, Western-centric and class-biased definition of 'childhood' as baseline for assessing the 'meaningfulness' of the everyday experiences of millions of children worldwide:

> [Millions of children] risk missing out on their childhood – excluded from essential services such as hospitals and schools, lacking the protection of family and community, often at risk of exploitation and abuse. For these children, childhood as a time to grow, learn, play and feel safe is, in effect, meaningless.

The origin of this vision of 'childhood' as well as of the growing interest in children and child rights is debated in the literature (see Jenks 1996). For Zelizer (1994) the normative and 'sentimentalised' notion of childhood enshrined in the UNCRC is a product, *inter alia*, of the transformation that occurred in the twentieth century to western families, including the decline in family size and increase in child survival rates which brought a radical change in the organisation of family livelihoods. The 'unprecedented' rise in interest for children's issues has been traced back to a quest by certain governments for new forms of legitimacy for state intervention in the international arena (Hart 2006), turning in this way the international commitment to the protection of children's rights into a 'policing mechanism to bring governments and others to account' (Boyden 1997: 220). Pupavac (2001:97) explains:

> Of global appeal and seemingly inclusive, the issue of children is perceived as of critical value to the project of creating a new international ethical order.

The need for 'a new international ethical order' can be related to the emergence and consolidation, following the end of the Cold War and in parallel and intertwined with processes of neoliberalisation, of a 'post-political' and 'post-democratic' condition which reconfigures the political dialectic away from 'traditional' terrains such as class (see Žižek 1999; Mouffe 2005; Swyngedouw 2007)[4].

The discourses on 'human trafficking', while they may be based on real cases of abuse, also produce a distorted understanding of other forms of child migration, in particular independent child

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[3] Anderson urges caution when addressing the topic of trafficking in human beings and argues that 'loose definition of terms conceals both practical and philosophical problems with framing trafficking as an immigration issue' (Anderson 2007: 2).

[4] For Swyngendouw (2009: 6), 'this post-political frame is structured around the inevitability of capitalism and a market economy as the basic organizational structure of the social and economic order for which there is no alternative. The corresponding mode of governmentality is structured around dialogical forms of consensus formation, technocratic management and problem-focused governance, sustained by populist discursive regimes'.

migration, and overlook the fact that migration may bring benefits to the children involved[5]. Recent work mainly focused on the global South (e.g. Burkina Faso, Ghana, Bangladesh, India and Benin) has shown the complexity of independent child migration and the agency of the child in migration decision making and processes and raised important questions on the limitations of the 'child trafficking' lens (Hashim 2006; Thorsen 2007; Iversen 2002; Whitehead et al. 2007). A further limitation to the 'trafficking lens' in general is the almost exclusive focus on female migrants and sexual exploitation, which excludes other forms of trafficking. Moreover, the discourse on 'child trafficking', as O'Connell Davidson (2005) validly argues, ultimately 'serves to shore up a model of children as passive objects and eternal victims', and deflects attention from the structural factors that underpin the phenomenon[6], as well as ignoring the fact that 'children may have their own and legitimate reasons to migrate' (Huijsmans 2006: 3). It is noteworthy that the Palermo Protocol's definition of trafficking, which is built around three core elements (the movement or harbouring of a person; use of deception or coercion; and placement into situations of exploitation), regards children as special cases[7]. They are regarded as victims of trafficking whether or not there is evidence of coercion or deception (UNICEF 2003), and deemed unable to give informed consent in any circumstance (Dowling et al. 2007). The conflation of trafficking and smuggling further adds to the confusion. The basic difference being that when smuggled a person (or child) has usually voluntarily agreed to enter the relationship.

It has also been suggested (O'Connell Davidson and Farrow 2007) that the predominance of the 'trafficking' perspective serves other political agendas. It may be used as a justification to crack down on 'unwanted' migration (Joppke 1998; see also Sales 2002 for discussion on 'deserving' and 'undeserving' migrants), and contribute to the reproduction of racist stereotypes about particular groups of migrants, ultimately becoming counterproductive in the effort to secure human and child rights.

Exploring underlying ideas on what makes a 'meaningful' childhood can offer useful insights for understanding the different public attitudes to various forms of child migration – that is motivated prevalently by social (i.e. family reunification), political and economic reasons (see Bhabha 2008). Therefore, while child migration for social reasons is relatively unproblematic as it adheres to the basic assumption that 'children's needs are best met, their rights are best protected, and they are best prepared for adulthood within the institution of the family and under the direct protection

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[5] In 2000, Salt warned that the enormous interest and moral panic around trafficking and human smuggling was 'running ahead of theoretical understanding and factual evidence' (Salt 2000: 31)

[6] For Ennew (2000: 14), having to think about children 'who, just maybe, manage without them', it is 'threatening to adults' as it questions some of the dominant assumptions on childhood and children's development.

[7] The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, was adopted at the 2000 UN National Convention Against Transnational Organised Crime.

of their parents' (Huijsmans 2006: 4), and migration for political reasons adheres to feelings of protection underlying much action concerned with children's issues[8], considering children as economic migrants upsets the way children and 'a good childhood' (UNICEF 2005) are conventionally seen, making them either 'innocent victims' or 'pathological threats', in any case, 'children out of place' (White 2003 cited in Huijsmans 2006).

Opening up research to other forms of child migration, beyond 'trafficked children' and 'unaccompanied asylum seekers', would enable the situation of other migrant children who may also be vulnerable to extensive and often serious violations of their rights as set out in the Convention on the Rights of the Child (CRC) to be brought to the fore. It would also reveal, as O'Connell Davidson and Farrow point out (2007: 10), that:

> States more generally play a crucial role in constructing the vulnerability of certain groups of children who migrate through the immigration regimes they set in place and the immigration controls they enact.

This echoes findings in a number of UK and EU-focused projects on undocumented migrants which found that the lack of status is an obstacle to accessing basic social rights and entitlements and a cause of vulnerability in the labour market (PICUM 2007; PICUM 2003; McKay et al. 2009; EMN 2010).

Children in undocumented migration

Our research will focus primarily on the everyday experiences of undocumented migrant children in Britain and issues of access to rights and protection. However, in order to understand these experiences, we will have to locate them in the broader legal and policy context defined by specific and historically constructed configurations of 'childhood' and 'illegality' and their interaction. In turn, the analysis of the narratives of migrant children will provide 'thick' ethnographic material to explore how the tension between different and at times opposing policy agendas is experienced and negotiated in the everyday lives of migrant children and the role played by various institutional and non-institutional actors in this process (see Willen 2007).

Two concepts provide insightful entry points into our investigation of undocumented children in the UK: the idea of 'undocumentedness' as a non-homogeneous status to which different levels of access to rights and entitlements can be attached, as well as obligations and levels of 'deportability'; and the idea of mobility of status (see Schuster 2005) which emphasises not only the variability in configurations of 'undocumentedness', but also the possibility of movement (sometimes

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[8] For a detailed discussion on the challenges faced by displaced children and the role of institutions in creating and mediating these challenges see the special issue of 'Children & Society' edited by Boyden and Hart (2007) on 'the statelessness of the world's children'.

as a result of migrants' agency, but also because of change in policy and practice) between such configurations over time.

Time is an important variable in the lives of undocumented children, not least because age constitutes one of the main criteria, if not the main, which defines the position of this group of (undocumented) migrants within the UK legal system and thus their rights and opportunities. Consequently, coming to age represents a crucial threshold which can produce the relocation of the individual in the UK legal system as well as his/her physical removal from the country. Inevitably, anxieties and expectations are attached to this transition.

'Precariousness of status' (Goldring et al. 2009) seems to describe the condition of this group of young migrants well. However, while Goldring et al. (2009: 240) characterise it as the product of 'specific state policies, regulations, practices of policy implementation, activism, discourses, and so forth', we would argue that in the case of undocumented migrant children, status precariousness is a product of the link between biological aging and rights and entitlements attached to it. It is, therefore, to some extent an inescapable and structural condition of precariousness that undocumented migrant children face which, in turn, produces precariousness both as a socio-economic condition and an experiential one (see Willen 2007).

Looking at the institutional side, the fast and almost unanimous ratification of the UNCRC marked an important change of pace in the process of the 'globalisation of childhood' (Boyden 1997) in the 1990s, raising children's rights on political and social agendas at the national and international level. Since then, the Convention has rapidly become an important tool of global governance, making the treatment of children a benchmark for assessing and ranking the political and social condition of whole societies (Hart 2006).

Western democracies, which are largely responsible for the vision of 'childhood' embedded in the UNCRC, tend to position themselves as the monitors and sometimes enforcers of the international standards claiming the moral high ground. The case of undocumented migrant children in such democracies, especially if from 'lower ranking' states, poses difficult questions to Western policy makers, and can ultimately call into question the legitimacy of this moral claim, as well as their vision of childhood.

Not surprisingly the issue of undocumented migrant children is perceived as a difficult territory to govern. It is, indeed, a complex territory where different legal and policy frameworks operate, where international obligations and national priorities not always coincide, where agendas and discourses constructed for different audiences (i.e. domestic and international) encounter and sometimes clash. For the Council of Europe Human Rights Commissioner:

> Decision-making politicians appear sometimes to be confused about how to treat migrant children. On the one hand, they state their full support of the idea that children do have

rights [...]. On the other hand a number of them appear not to be able to draw the necessary conclusions [about the rights of migrant children] (Hammarberg 2007).

As mentioned earlier, policy makers prefer to address the issue of child migration in terms of 'human trafficking' as this frame provides, O'Connell Davidson and Farrow (2007) argue, a convenient perspective for destination countries for two main reasons. Firstly, it directs attention towards traffickers (very often foreigners themselves) and creates the impression that 'independent migration by children invariably entails rights violations' (idem: 20). This, in turn, legitimises repressive policy measures to curb 'illegal' migration. Secondly, it deflects attention away from those vulnerabilities which are produced by the immigration regime and specific policy measures taken to combat 'illegal' migration, instead addressing trafficking as a crime and within the area of responsibility of the Serious Organised Crime Agency (SOCA) and the police.

The following extract from the recently published UK Border Agency's five year strategic plan (UKBA 2010: 15) is emblematic of this approach to child migration as inherently threatening to children, where prevention of abuse and neglect can be achieved by curbing 'human trafficking':

> The UK Border Agency has an important role in identifying children suffering or likely to suffer significant harm. By tackling the criminality behind child cruelty, such as human trafficking, we can help prevent abuse and neglect.

The legal and policy context

Children or migrants? - An unresolved policy dilemma

> Today marks a turning point in the way we protect, nurture and support children. In the past there has been a piecemeal approach to reform that has papered over the cracks but left children at risk... The Green Paper is titled 'Every Child Matters'. This is no hollow slogan. It is a commitment that is driving all my work and that of all of us involved in working with and for children (Charles Clarke, former UK Education Secretary, 8 September 2003[9]).
> I want to say at the outset that this is difficult territory for us all... (Beverley Hughes, former UK Minister for Citizenship and Immigration, 15 January 2004[10]).

Whether arriving in the country alone or accompanying their family, 'undocumented migrants under 18 have represented a challenge to liberal-democratic states' attempts to securitize migration' (Giner, 2009). The 'difficult territory' in Beverley Hughes' quotation specifically concerns policy making on asylum-seeking children in families. Nonetheless it can be extended to capture a more general difficulty in the UK over governing child migration. In fact, as migrants and as children, this group stands at the intersection of two policy fields in which state intervention differs considerably:

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[9] http://www.guardian.co.uk/society/2003/sep/08/childrensservices.politics
[10] http://www.publications.parliament.uk/pa/cm200304/cmstand/b/st040115/pm/40115s01.htm

migration and asylum policy, on the one hand, and child protection, on the other. The unresolved tension between commitments to protect children and children's rights, on the one hand, and to limit 'unwanted' migration (Joppke, 1998) and secure borders (UKBA 2010), on the other hand, is embedded in the governance of undocumented migrant children.

This tension affects undocumented children who, PICUM (2008: 6) argues, 'are in a position of triple vulnerability: as children above all, as migrants, and [...] as undocumented migrants.' This particular vulnerability makes them 'one of the most vulnerable groups in Europe today' according to the Council of Europe Human Rights Commissioner Thomas Hammarberg (2007).

One of the aims of our research will be to explore the complex intersection between: the UK's 'politics of childhood' (Boyden 1997; Lister 2006) anchored, it has been argued, in an idea of children as 'citizen-workers of the future' (Lister et al. 2003) and crystallised in the 'Every Child Matters' Green Paper (2003), the global discourse on childhood translated into the UNCRC and the legal obligations deriving from it (Boyden 1997)[11], and the migration regime increasingly co-opted, in the UK as much as in the EU, within the security agenda (Geddes 2003; Carrera 2005; Guild et al. 2008). And, most importantly, our aim is to explore how the tension between these three discursive and policy regimes impacts on lived experiences of undocumented migrant children in Britain.

This section maps the legal and policy framework that applies to undocumented migrant children in the UK. National legislation on immigration, children, education and human rights, as well as a number of international conventions, is made up of a complex, often contradictory, patchwork of rights and entitlements that are relevant to undocumented migrant children in the UK. The main aims of this section are to outline the legal entitlements of undocumented children, especially, in terms of education, health and employment; and highlight issues of access to these entitlements emerging in the literature.

According to international law all people are holders of rights, including 'undocumented' migrants. A number of civil, political, social and economic rights apply to individuals irrespective of their legal or administrative status, which are formally guaranteed under legal instruments such as the European Convention on Human Rights, the Universal Declaration of Human Rights or the International Covenant of Economic, Social and Cultural Rights. Children's rights in particular are internationally enshrined in the Convention on the Rights of the Child (1989).

International instruments, such as the Convention on the Rights of the Child (UNCRC), formally offer considerable protection to migrant children regardless of their status (CRC General Comment No. 6). However, the enforcement of such international instruments depends significantly

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[11] For a discussion on the relationship between migration policy and international obligations towards migrants from a human rights perspective see Scott (2004).

on their incorporation into domestic law. In the UK, the UNCRC was ratified in 1991, but has yet to be incorporated into national law, despite recent efforts to do so[12].

The UK Government's strategy for children is set out in the Children Act (2004b) and the 'Every Child Matters' (ECM) framework which over the last decade have considerably transformed child welfare policies in the UK, marking a change in the way local and national government, and other organisations, work with children and families[13]. The Children Act (2004) introduced the duty of regard for the welfare of children to almost all state agencies. It also set out a statutory framework for local co-operation to protect children. According to the ECM framework, all organisations with responsibility for services to children must make arrangements to ensure that in discharging their functions they safeguard and promote the welfare of children. '*Working Together to Safeguard Children - A guide to inter-agency working to safeguard and promote the welfare of children*' (2010) details 'how organisations and individuals should work together to safeguard and promote the welfare of children' (DfCSF 2010: 7). Safeguarding and promoting the welfare of children is primarily the responsibility of the local authority, working in partnership with other public agencies, the voluntary sector, children and young people, parents and carers, and the wider community. Local Safeguarding Children Boards (LSCs) (also currently under review) are responsible for agreeing how the relevant organisations in each local area will co-operate to safeguard and promote the welfare of children, and for ensuring the effectiveness of their action. Different arrangements may exist in Scotland, Wales and Northern Ireland as a result of the power devolution initiated by the Labour Government in 1997.

However, despite this general commitment to children's well-being, Giner (2007, 2009) has argued that British Governments have consistently adopted, until very recently and to an extent still nowadays, a different orientation with regard to asylum-seeking and migrant children and their families, taking concrete steps to prevent child-protection safeguards interfering with their asylum and migration agendas. Policy-making for this group of migrants has been marked by a constant back and forth between greater restrictions – in line with the overall trend in asylum (Zetter et al. 2003) and migration policy-making (Geddes 2003) – and targeted policy concessions to accommodate raising internal and international concerns relating to the treatment of minors. Looking at the treatment of unaccompanied and separated asylum seeking children, Bhabha and Finch (2006) found a complex pattern of concern, neglect, and suspicion towards children claiming asylum, which, they

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[12] Lady Joan Walmsley has recently put forward the Children's Rights Bill, but since its introduction on 19 November 2009 it has only gone through the first reading in the House of Lords.
[13] The recently formed Department of Education (12 May 2010) has replaced the Department for Children, Schools and Families, and with this change the Every Child Matters framework is also being reviewed by the new Government.

argue, is reflected in various aspects of the asylum procedure, not least in the notable difference between adult and child asylum grant rates.

The primary example of this attitude is the reservation on the ground of immigration and nationality to Art 22 of the UNCRC which was introduced by the Conservative Government at the time of ratification of the UNCRC in December 1991. According to this reservation,

> The United Kingdom reserves the right to apply such legislation [the UNCRC], insofar as it relates to the entry into, stay in, and departure from the UK of those who do not have the right under the law of the UK to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time (16 December 1991).

Similarly, a few years later the Labour Government discharged the then Border and Immigration Agency from the duty of safeguarding the welfare of children in accordance with the Children Act (2004). This has only recently been amended in the Borders, Citizenship and Immigration Act of 2009, as a result of the successful campaign for the lift of the above reservation in 2008. According to Section 55 of the 2009 Borders, Citizenship and Immigration Act, the UK Border Agency has now a duty to safeguard and promote the welfare of children when carrying out its duties.

However, to date this has not led to significant changes in one of the areas of main concern for child rights advocates, namely detention practices (see Children's Commissioner for England 2010)[14] and it remains to be seen how this duty will be fulfilled by UK Border Agency officers more generally in the future.

A total of 1,271 children were held in detention in 2009 (Home Office 2010)[15]. The extended and extensive use of detention of children has raised serious concerns about the treatment of (migrant) children subject to immigration control. Many non-governmental organizations and human/child rights agencies have criticised the UK Government's use of detention for violating children's rights under international conventions. In particular, it has been argued that the detention of migrant children contradicts Art 37(b) of the UNCRC which requires that detention is used only as a measure of last resort and for the shortest appropriate period of time. Moreover, detention by causing significant adverse effects on children's development, health and mental health has been criticised for breaching the overall spirit of the UNCRC and the Government's own commitment to children's health and safety (see Crawley 2006; Refugee and

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[14] The Coalition Government are currently reviewing the practice of child detention.

[15] This figure does not include detained children with British citizenship who accompany an undocumented parent through the enforcement process 'as guests' (Liam Byrne, 4 June 2008). For a thorough discussion of this case see Sawyer 2006.

Migrant Justice 2009; Save the Children UK 2005)[16]. For the Children's Commissioner, 'arrest and detention are inherently damaging to children' (2010: 13) and 'therefore never likely to be in their best interests' (2010: 6). Moreover, the Committee on the Rights of the Child, has stated that 'Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof' (CRC General Comment No. 6 §61).

Another example of the tension between controlling migration and protecting children and their rights was the introduction of Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 (which amends Schedule 3 of the Nationality, Immigration and Asylum Act 2002) (Cunningham and Tomlinson 2005). Although Section 9 has been used only sparingly since its introduction, as it did not prove successful as an incentive for return, its introduction illustrates these tensions. This case also provides an example of how local authorities negotiated their role in this area of conflicting policy obligations. Section 9 gave the Home Office the power to withdraw all welfare support form failed asylum seekers and their families, if they are deemed to be in a position to leave the UK, using destitution as a deterrent to settlement and an incentive to departure (JRCT, 2007). Prohibited from using Section 17 of the Children Act (1989), which aims at accommodating children *and their families*, Local Authorities were made to use Section 20 which states that they must provide accommodation for children in need where 'the person who has been caring for them [is] being prevented from providing him with suitable accommodation and care'. In this instance, the prevention to provide care would be the direct result of the withdrawal of support due to the parent's immigration status. As the enforcement of this rule would have resulted in the separation of the child from the family, it is directly against the principle of right to respect for family life under the European Convention on Human Rights (Article 8.1), and thus also against the principle of the best interest of the child (UNCRC). This principle was further challenged as it used the separation of children from their parents as a threat or deterrent for parents to comply with the authorities.

The example of Section 9 also highlights the contradictions between national legislation. In this case, Section 9 directly contradicts various principles set out in the Green Paper *Every Child Matters* and later enshrined in the Children Act (2004) (for example the importance of family life).

A further example is the exclusion of immigration officials from section 11 of the Children Act, exempting them from the arrangements to safeguard and promote the welfare of children. Although this has been rectified to a certain extent in section 55[17] of the Borders, Citizenship and Immigration Act (2009), it does not formally amend section 11 of the Children Act, where

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[16] A recent ruling by the European Court of Human Rights (ECHR) condemned Belgium for detaining a Chechen family of four children and their mother in a closed reception centre as violating Article 3 of the European Convention on Human Rights (see Muskhadzhiyeva and others v. Belgium, No. 41442/07).

[17] This states that immigration authorities now have to follow the code of practice to safeguard the welfare of children.

immigration authorities remain excluded. The UKBA code of practice has been criticised from organizations such as ILPA (ILPA 2009) for being incompatible and for having lower standards than the provisions in the Children Act. In addition, it has been argued by practitioners that the provisions made under Section 55 are less robust and harder to monitor the performance of officials.

Furthermore, 'undocumented' migrant children have not been included in the Child Poverty Bill as a target group for eradicating child poverty, again illustrating children's legislation existing in contradiction with immigration legislation and excluding migrant children from the child rights agenda.

Another trend that can be observed is the use of local actors and service providers to enforce the securitisation agenda of the national government at the local level. This is illustrated by the responsibility placed on health professionals in establishing a patient's residency status, by asking social workers to assess failed asylum seekers entitlements to access support (which might lead to the breakup of the family) (Cunningham and Tomlinson 2005), and by asking schools to cooperate with the UKBA on parents who do not comply with immigration controls (UKBA 2010). In these situations national bodies such as the UKBA effectively transfer their responsibility of 'border control' to health professionals, schools and social workers.

The above examples show that children in the immigration system are treated firstly as migrants, similarly to adult migrants if independent or as extensions of their parents if accompanied, and secondly as children with particular rights and needs (see for example Crawley 2006) and although the reservation to the UNCRC has recently (2008) been lifted and a code of practice for safeguarding the welfare of children in the immigration system has been developed, treatment of undocumented migrant children remains largely separated and different from the treatment of *all* children.

Even when legal provisions exist, research findings from the UK and other European countries show that access to these rights in practice is often far from successful (PICUM 2008; Whitehead and Hashim 2005; Smith 2006; PICUM 2007; Carrera and Merlino 2009). In her examination of the impact of changes in asylum and immigration law, policy and practice on children subject to immigration control, Crawley points out that

> many of those working in asylum and immigration law are unaware of the broader context of children's law and policy' and 'at the same time there is considerable confusion and misunderstanding across the social care profession about what recent changes to immigration policy and practice mean for delivery of services and support to children and young people who are subject to immigration control' (Crawley 2006: 2).

Similarly, Hek (2005: 55) notices 'the lack of knowledge and accessible information across agencies about the rights and entitlements of young refugees'.

Evidence from Europe-wide studies suggests that barriers to access can be practical, institutional and societal (PICUM 2008). Research found that lack of access to social rights and services is often due to a confusion among the service providers on what the rights of 'undocumented' migrants are (Hewett et al., 2005). This confusion is partly the result of conflicting legislation, partly due to the frequent change of policies which result in service providers being outdated and in constant need of retraining.

More recently an increasing number of policy documents, initiatives and other safeguards at the European and national level have been put in place to protect the rights of unaccompanied or separated asylum seeking and trafficked children, adopting a harmonized rights-based approach. The European Commission Action Plan on unaccompanied minors entering the EU launched on 6 May 2010 'proposes a EU approach based on three main strands for action: prevention of unsafe migration and trafficking, reception and procedural guarantees in the EU and identification of durable solutions' (EU Commission IP/10/534, see also European Migration Network 2010). However, there are a large number of 'undocumented' migrant children that do not fall into these categories, leaving them less visible to those who are responsible for ensuring their access to rights. As such the protection of their rights is seriously hindered.

Undocumented migrant children and the right to education in the UK

The right to education for undocumented migrant children is protected by several international legal instruments (see Table 1) which have all been ratified by the UK (with the exception of the ICRMW). Yet, no national legislation on education explicitly mentions the right to education of undocumented children, significantly preventing its enforcement.

International legal instruments:
- the Universal Declaration of Human Rights (UDHR) (Art. 26 (1)
- the Convention on the Rights of the Child (CRC) (Art. 28 (1), 29 (1)
- the International Convention on Economic, Social and Cultural Rights (ICESCR) (Art. 13 (1)(2) and 14)
- the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (Art. 5 (e.(v))
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Art. 30)
- the European Social Charter (ESC) (Art. 17 (2)
- the European Convention on Human Rights (ECHR) (Art. 14)

UK legislation:
- Education Act (1996): Section 14 obliges English LEAs to provide full-time education to all children resident within the LEA.

Table 1: Right to education

The Education Act (1996) states that *all* children are entitled to free education and obliges Local Education Authorities to provide it to all children resident in their area, which implicitly includes undocumented children. However, it also implies that residency must be proven, which is likely to pose significant difficulties to undocumented migrants. Further, the UK Border Agency explicitly states that all children of compulsory education age (5-16) *regardless of their immigration status* are entitled to full-time education, and adds that it is the responsibility of the parents to ensure that their children receive this[18]. Such a statement leaves little ambiguity in determining the rights and entitlements of undocumented migrant children in the UK. Stating that it is the parent's responsibility for children to receive education furthermore illustrates another trend of the UKBA: transferring its responsibility for provision of services to parents, who are often so incapable of doing so. This can further lead to the criminalisation of the parents, who are subsequently blamed for their children's lack of provisions of education and healthcare, which in turn is likely to have significant impacts on the children and often forcing undocumented families further into a hidden world.

Comparative research in EU member states has found that this legislation is more aspirational than reality (PICUM 2008; Carrera and Merlino 2009) with findings repeatedly showing that significant gaps remain between legislation and 'undocumented' migrant children's experiences. Obstacles can be very broad and often vary significantly between different local authorities, even to the extent where access is dependent on a particular head teacher. Practical barriers that are experienced by 'undocumented' migrants include problems of showing some form of identification; the level of discretion enjoyed by schools at the local level whether to accept undocumented children or not; the undocumented migrants' fear of being detected; problems with extracurricular expenses; language problems; no diplomas being issued for them upon completion of the qualification; and precarious living conditions[19] (see also Arnot and Pinson 2005). Although it might not be the Local Authority's intention (Gordon et al. 2009) to withhold children from schools, such practical barriers will nonetheless mean that a child will not receive the full education that it is entitled to. Once children are placed in detention the importance of and right to education seem to be altogether ignored, as the Children Commissioner reports (2010), with education being voluntary, some school aged children not attending, difficulties due to the temporariness of the

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[18] http://www.ukba.homeoffice.gov.uk/while-in-uk/rightsandresponsibilities/education/

[19] An example of the ambiguity embedded in UK discourse and policy on illegal migration control and children protection, as well as of the construction of children vulnerability through the immigration regime (O'Connell Davidson and Farrow 2007), is provided in the recently published UKBA 5-year plan (UKBA 2010). In a box on 'Joint Enforcement Operations', under the heading 'Children protection', the UKBA refers to some joint projects 'on the exchange of data and intelligence with schools and truancy watch teams in order to aid consistent support to migrant children whose families abscond or avoid immigration compliance controls' (UKBA 2010: 18).

children's stay and most feeling uncomfortable about receiving tuition in such a setting. These findings echo an earlier report by Save the Children UK (2005). The recent Children, Schools and Families Bill further illustrates the current non-commitment to *explicitly* embracing the rights of *all* children, regardless of their legal/residency status. The Bill has been criticized by the Joint Committee on Human Rights (Joint Committee on Human Rights, 2010) for not sufficiently reflecting international human rights standards as not enough detail on who will be entitled to education is given. For Arnot et al. (2009: 251),

> Central government's priorities to reduce immigration are seriously disruptive of educational agendas such as helping every child to achieve their potential, to achieve a sense of well being and security.

This has produced a 'two-tier system, one tier of children for whom their best interests are the paramount consideration, and another for those whose best interests are a secondary consideration' (Refugee Council 2003: 4). However, Arnot et al. (2009) also highlight another important tension within the education system, namely between those advocating for a 'children first, migrants second' approach (Crawley 2006) which, the authors argue, may lead to a humanitarian yet patronising response to migrant children demands vis-à-vis a more 'compassionate' response rooted in the principles of 'well-being' enshrined in the Every Child Matters framework (see also Boyden 2009). This reveals a more general dialectical tension between a vision and an agenda on childhood which is rooted in ideas on citizenship and belonging to the imagined UK community and the global 'childhood' agenda enshrined in the UNCRC and embedded in the expanding global governance regime, which is often perceived as a challenge to the state sovereignty[20].

Undocumented migrant children and the right to healthcare in the UK

As with education there are a significant number of international legal instruments that set out the right to health and healthcare as a basic human right to be enjoyed by all people irrespective of their legal status (see table 2). The 'enjoyment of the highest attainable standard of health' has been recognised as a 'fundamental right' since the adoption of the World Health Organisation (WHO) Constitution in 1946 and since it has been recognised by various international human rights treaties, many of which have been widely ratified.

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[20] The accusation to the Labour government of giving up national interest in the name of the 1998 Human Rights Act was an important issue in the Conservative party electoral campaigns in 2005 and 2010. Michael Howard, the then Conservative leader stated the time has come 'to liberate the nation from the avalanche of political correctness, costly litigation, feeble justice, and culture of compensation running riot in Britain today and warning that the politically correct regime ushered in by Labour's enthusiastic adoption of human rights legislation has turned the age-old principle of fairness on its head' (Michael Howard reported in *Daily Mail*, 24 Feb 2010). The 2010 Conservative Manifesto reiterated similar concerns.

International legal instruments:
- UDHR (Art. 25)
- ICERD (Art. 5 (e-iv))
- CRC (Art. 24 (1), 25, 39)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Art. 14 (2b)
- ICRMW (Art. 28)
- ICESCR (Art. 12 (1)
- ESC (Art. 13)
- ECHR (Art. 13)

UK legislation:
- Department of Health Statutory instrument Charges to Overseas Visitors (2004): Groups that are not considered 'lawfully' resident in the UK are liable for NHS hospital and secondary care charges.
- Department of Health Table of Entitlements (2009): Gives undocumented migrant children access to primary care without charge.

Table 2: Right to healthcare for undocumented children in the UK

Most of these international human rights instruments apply to all persons within the territorial boundaries of a state party and do not initially make distinctions between legal and 'illegal' third country nationals (PICUM 2003:16; Scott 2004). The UNCRC in particular identifies the right to health as 'the highest attainable standard of health and [for State Parties] to facilities for the treatment of illness and rehabilitation of health…no child [should be] deprived of his or her right to access to such health care services' (Article 24).

Despite having ratified all these conventions, the right to health is not guaranteed by UK domestic law and, while national and supra-state protective mechanisms are in place, access to healthcare has become more and more restricted to undocumented residents (PICUM 2007). In the UK the current NHS rules state that failed asylum-seekers are entitled to free primary care, emergencies and any care that is deemed immediately necessary. This rule is generally applied to all those not 'lawfully or ordinarily resident' in the UK. However, it remains at the GP's discretion to accept them as registered NHS patients. Secondary care, which includes hospital treatment, will have to be paid for by parents or guardians of 'undocumented' migrant children, where health professionals are responsible for establishing whether the patient is 'lawfully resident' in the UK. This arrangement has recently been questioned for failed asylum-seekers in the case R (YA) v Secretary for Health, where the failed asylum-seeker had been resident in the UK for over 12 months. The Court of Appeal though ruled that failed asylum-seekers cannot be considered as ordinarily resident in the UK and are therefore not exempt from charges. The fact that the individual had resided in the UK for 12 months before was irrelevant, as it was not considered lawful. The regulations on health make a clear distinction between which individuals are entitled to what care *according to their status*.

Although primary and 'necessary' care is provided, secondary care is not [21]. This can be considered as a contradiction with the UNCRC, which sees healthcare as more than making basic provisions.

Moreover, research found that the interpretation of 'urgent care' can vary from doctor to doctor; that access to specialist services (dental or eye care) can be particularly problematic; and that hospitals and GPs have strong discretionary powers, where access to health care often depends on the good will of a doctor rather than the law (Scott 2004; HUMA 2009; Newdick 2009; Hargreaves et a. 2005; Williams 2004; Singer 2004)[22]. Principal barriers include complex procedures, migrant's lack of knowledge concerning their entitlements (PICUM 2007), the fear of being detected and lack of language.

Finally, in detention centres, migrant children legally have the same entitlements to healthcare as adults. Physical and mental health care is provided free of charge only if care is provided by the detention centre's health care team. Every detainee shall be given a physical and mental examination within 24 hours of admission. The medical practitioner shall report to the manager any detained person whose health is likely to be affected by continued detention or any conditions of detention. In practice, given the limited financial and human resources, healthcare in detention is very restricted and medical services 'rarely have the capacity or expertise to deal with the wide range of serious mental and physical conditions presented by detainees' (HUMA 2009: 14).

Undocumented migrant children and employment

The international legal framework clearly emphasises the protection of children and their human rights within the labour market, regardless of their legal status, and that they should be treated equally to national children (CRC General Comment No. 6). UK National regulations on the employment of children (DfCSF, 2009) are set out in the Children and Young Persons Act (1933), as amended (2008). The regulations vary for those under and those over the minimum school leaving age (MSLA). Once children are over the MSLA but under the age of 18 they are considered as young workers (Advice guide, 2010) and there are less restrictions on the type of work they are allowed to do. Young workers are allowed to work a maximum of 8 hours per day, 40 hours per week and are entitled to the National Minimum Wage.

However, Home Office policies and regulations are strict with regards to which migrants are allowed to work and impose sanctions on those who employ migrants who do not have permission to work (see McKay et al. 2009). Asylum-seekers also are not usually allowed to work while their claim is being assessed. This creates a significant potential group of those considered semi-compliant,

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[21] Access to secondary care for foreign national is currently under review by the Department of Health.

[22] About the discretion of General Practitioners see Schedule 6§ 17 of the NHS (GMS Contracts) Regulation 2004 http://www.opsi.gov.uk/si/si2004/20040291.htm#16c; in cases where a GP refuses to register a person the Primary Care Trust (PCT) has a responsibility to ensure access.

i.e. migrants that have a legal residency status but work in breach of their visa or asylum application. These groups include among others unaccompanied asylum seeking children and young persons who are in the UK for training but also work potentially long hours to subsidise their studies and stay.

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International Legal Instruments
- Universal Declaration of Human Rights (1948): Article 23 sets out employment rights, which includes free choice of employment, just conditions and the right to equal pay.
- ILO C105 Abolition of Forced Labour Convention (1957): abolishes any form of forced or compulsory labour.
- ILO C138 Minimum Age Convention (1973): members agree to ensure effective abolition of child labour and to raise the minimum age for admission to employment or work.
- ILO C143 Migrant Workers Convention (1975): members agree to respect basic human rights of all migrant workers.
- UN Convention on the Rights of the Child (1990): Article 32 recognises the right of the child to be protected from economic exploitation and from performing work that is considered hazardous or to interfere with the child's education, health or development.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), not ratified by the UK: protects the human rights of all migrant workers regardless of any 'irregularity on their stay of employment'.
- ILO C182 Worst Forms of Child Labour Convention (1999): members agree to take measures on the prohibition and elimination of the worst forms of child labour, where a child is anyone under the age of 18 and worst forms of labour comprise slaver, child prostitution, illicit activates and work which is likely to harm the child.
- UN Convention against transnational organised crime and the protocols thereto (2004): made trafficking in persons an international criminal offence in 2000.
- Committee on the Rights of the Child, General Comment No 6 (2005): states that all separated or unaccompanied children should have the same access to employment rights as national children.

UK legal instruments
- Employment of Women, Young Persons and Children Act (1920): states that 'no child shall be employed in any industrial undertaking'.
- Children and Young Persons Act (1933) as amended: Section 18 sets out the restrictions on the employment of children, specifying at what age and how many hours children are allowed to work. It gives Local Authorities the power to make byelaws for more specific arrangement.
- Sexual Offences Act (2003): Sections 57 – 59 set out the offences of trafficking into, within and out of the UK for sexual exploitation.
- Asylum and Immigration (Treatment of Claimants, etc.) Act (2004): gives a legal definition of trafficking, which implicitly implies that it is for the purpose of forced labour (see Anderson and Rogaly 2005).
- Gangmasters (Licensing) Act (2004): creates a compulsory licensing system for gangmasters and employment agencies who supply, or use, workers involved in agricultural activities and has the purpose to curb its exploitative activities.

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Table 3: Legal instruments on undocumented migrant children and employment in the UK

The employment of migrant children in the UK also raises issues of forced labour and trafficking, which has become a prevalent debate in policy and the public. Legislation (see Table 3) and initiatives targeting trafficking and in particular sexual exploitation of children exists. Organisations such as ECPAT UK have contributed to a high visibility of these issues, although actual

data is scarce (ECPAT UK 2007). This has further led to the creation of the UK Human Trafficking Centre[23] and the development of the London Safeguarding Trafficked Children Toolkit (2009).

Qualitative research shows that the combination of factors such as the fear of detection and deportation and stricter regulations on employment have made access to 'illegal' employment and the working conditions of undocumented migrants even more precarious and potentially exploitative treatment by employers possible in other sectors (Bloch et al. 2009). Anderson and Rogaly (2005) identify construction, agriculture/horticulture, contract cleaning and residential care as the main sectors with migrant workers and that are suspect to exploitative labour conditions. Despite the formal legal recognition of the protection of human rights of all children in employment, the enforcement of this among undocumented children is difficult.

Undocumented migrant children in the UK: counting the uncountable

Counting an hidden population

Increased interest in research on undocumented migration is partly based on the premise that Western Europe and North America has seen a significant increase in the numbers of migrants residing in these countries 'illegally' or using 'illegal' entry channels. Despite the difficulties in estimating the undocumented migrant population in the UK, Black (2003:36) gives two main reasons to believe that such migration is on the increase. Firstly, as the UK and Europe have enjoyed a prolonged economic boom and have maintained, if not increased, strong immigration controls, illegal routes are likely to be used to 'support much needed skilled and unskilled labour to keep this economy buoyant'. Secondly, the persistence of causes of forced migration vis-à-vis the restriction of entry routes to apply for asylum compels migrants into 'illegal' channels.

Significant numbers of these are assumed to be individuals under 18. However, little rigorous and systematic data exists. In the United Kingdom, estimating the numbers of undocumented migrants is difficult and rarely includes disaggregated data on children. The methods used are also much debated (Lukes et al. 2009). Problems arise in particular from the very nature of the target population that is hidden and mostly wants to remain as such (Bloch et al. 2007). The different definitions of 'illegality' adopted in the studies also pose a significant challenge to the comparability of the data. Furthermore, data on children in migration, whether documented or not, has been particularly limited. Few estimates are available on 'how many other children are moving, for what reasons and, of course, the relation between hazardous child migration and more benign forms' (Whitehead and Hashim 2005: 8). This is partly due to the fact that children's movements are often not recorded separately from their parents. For Smith (2006)

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[23] http://www.soca.gov.uk/about-soca/about-the-ukhtc

It is difficult to get an overview regarding migrating children and families in Europe. Data are few and practices on collecting data vary from country to country. There is a rich documentation available on migration in general but information on children is very meagre, except with regard to asylum seeking children.

Given the combination of these factors estimating the numbers of undocumented children in the UK is extremely difficult. To overcome the absence of reliable estimates on the population of undocumented migrant children in the UK, other data can be used to provide some indication of their numbers, locations and countries of origin. This includes estimates for the number of undocumented migrants (Ruiz-Casares et al. 2010) and child migrants (UNICEF 2009) globally, and of the 'unauthorised' population in the UK (Woodbrigde 2005; Gordon et al. 2009). Data used includes enforcement and regularisation data, estimates by groups who work with undocumented migrants and census data. In the UK, the Home Office collects data on unaccompanied asylum seeking children, age-disputed cases, and data on the number of children in detention and children going missing from care.

Globally, the number of undocumented migrants is estimated at between 20 and 30 million people (Ruiz-Casares et al. 2010), however this does not give any indication of the number of children within this group. A recent UNICEF study (2009) estimates that children make up 12 per cent of the total migrant population in developed countries (including the UK). However, it is not possible to draw any conclusions regarding undocumented migrant children from this data. Estimates of irregular foreign residents in the EU 27 oscillate between 1.9 and 3.8 million in 2008 (HWWI 2008). Research from other European countries suggests that the percentage of undocumented migrants is not disproportionately high in the UK (Lukes et al. 2009). The United States have been able to produce relatively reliable estimates of the undocumented migrant population. The Pew Hispanic Centre recently estimated that 11.9 million unauthorized immigrants lived in the United States in 2008 and that they made up 4% of the nation's population. The same report counted 1.5 million unauthorized immigrant children in the US and 4 million U.S.-born children in mixed-status families (i.e. unauthorized immigrant parents and citizen children) (Passel and Cohn 2009).

Undocumented migrant children in the UK: an estimate

There are few studies on the undocumented population in the UK, of which only a few have put forward an estimate on the size of the population. Recently, the Clandestino project (HWWI 2009) has compiled and evaluated the various estimates of irregular migrants in the UK. The estimates vary greatly, ranging from 120,000 to 1,000,000. The two estimates that are generally accepted as being more rigorous are those of Woodbridge (2005) and Gordon et al. (2009). Woodbridge uses a 'residual' method that compares the total *de facto* foreign-born population derived from the 2001 Census with estimates of 'the lawfully resident' foreign-born population and takes the total foreign-

born population minus the number of the regularly residing foreign-born population to estimate the 'unauthorised (illegal)' population of the UK. Pinkerton et al. (2004) had previously concluded that this method was the most appropriate for the UK, as there was not enough disaggregated and centralised data to use a direct method. Woodbridge's estimates of the irregular population of the UK in 2001 are given in Table 4.

Lower Estimate	310,000
Central Estimate	430,000
High Estimate	570,000

Table 4: Estimate on the unauthorised migrant population at 2001 by Woodbridge (2005)

However, this estimate only examined the *unauthorised* population, using a limited definition of 'unauthorised (illegal)' that does not reflect the complex nature of 'undocumentedness' (ippr 2006). Moreover, based on 2001 Census data, this estimate is now outdated (Bloch et al. 2007; ippr 2006) as it does not cover important events such as the impact of EU enlargement and the dramatic decrease in asylum applications. Others have rejected the study as being a significant underestimate (Migration Watch UK 2005) or as something that cannot be achieved and should not be attempted (Dorling 2007). The absence of children born in the UK to undocumented migrants is a significant limitation of the study. However, despite its limitations, Vollmer (2008) concludes that this estimate reduces the guesswork and assumptions to a minimum, when compared to other estimates in the UK.

More recently, a study carried out by the London School of Economics (Gordon et al. 2009) estimated the *irregular* population of the UK by updating the Woodbridge estimate according to the following categories:

1. Illegal entrants (those who evade migration controls and those who present false papers)
2. Migrants who have been lawfully present in the country but remain after the end of the permitted period. This includes failed asylum seekers and overstayers.
3. Children born in the UK to irregular migrants.

Furthermore, it takes into account other factors not included in Woodridge's estimate: the continued arrival of asylum seekers, the clearance of asylum applications' backlog, further illegal migrants entering and leaving the country, more migrants overstaying, regularisation (in particular those from EU accession countries) and increased efforts to clear the backlog of asylum applications through UKBA's case resolution scheme. The most significant change in this estimate is however the inclusion of children born in the UK to irregular migrants. The estimates are displayed in table 5.

	Central Estimate	Lower Estimate	Higher Estimate
			Thousands
Woodridge: 2001 estimate of irregular migrants	430	310	570
2001-7 change in numbers of:			
resident failed asylum seekers	+219	+219	+219
overstayers / illegal entrants	+50	+21	+79
Regularised 2003-07 (inc. from EU accession countries)	-166	-177	-149
Total irregular migrants at end-2007	533	373	719
UK-born children	85	44	144
Total irregular resident population at end-2007	618	417	863

Table 5: Updated estimate on the undocumented migrants population 2001- end 2007 by Gordon et al. (2009)

Based on Labour Force Survey 2008, Gordon et al. (2009) also construct an age breakdown for the central estimate (including UK-born children), which estimates that children make up 25% of the undocumented population, as shown in the figure 1 and table 6[24].
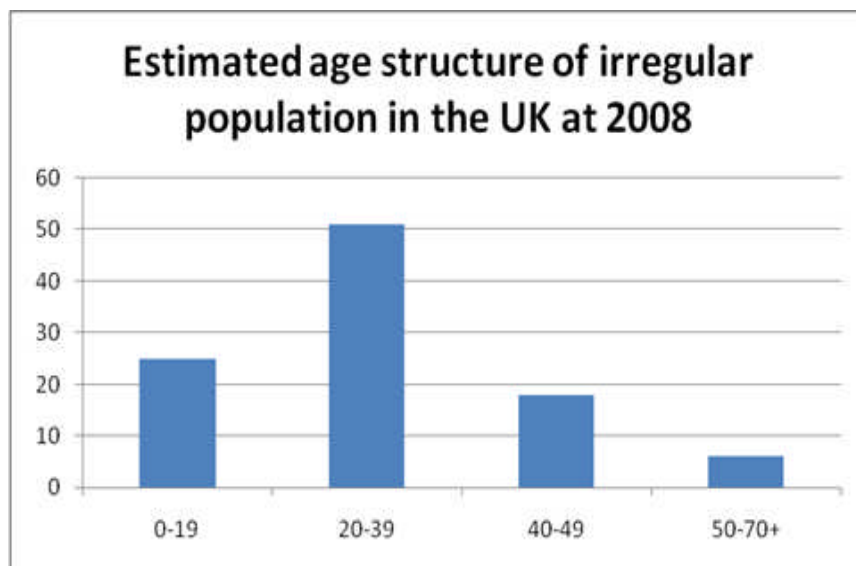

Figure 1: Age structure of undocumented population in the UK, our elaboration based on Gordon et al. (2009)

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[24] However, it should also be noticed that Gordon et al. do not include legal residents who may be working illegally, such as students or asylum-seekers who are working or working more hours than in the terms of their visa in their estimate (ippr 2009).

	Central Estimate	Lower Estimate	Higher Estimate
Undocumented population under 19 in the UK	155,000 (of whom 85,000 UK-born)	104,000	216,000

Table 6: Undocumented children in the UK at end-2007, our elaboration based on Gordon et al. (2009)

Based on our elaboration on Gordon et al. (2009), in table 6 we calculate an estimate of the undocumented migrant children population in the UK. Of a total of 155,000 migrant children (central estimate), over 85,000 are estimated to be UK-born. The remaining 70,000 migrant children entered the country either as dependent or independently, through a number of different routes. Importantly, among this group of undocumented migrants, especially independent child migrants, the asylum route is likely to be much less significant than among adults. As illustrated in table 7, data on unaccompanied (or separated) asylum seeking children shows that the asylum route cannot be expected to be the main entry route to 'undocumentedness' for independent migrant children as the large majority of asylum applicants under 17 receive some kind of leave to remain – most often 'discretionary leave to remain'.

Year	Total applications received	Total issued*	Total Refused**
2002	6200	5180	1040
2003	3180	1785	565
2004	2990	2585	470
2005	2965	2120	440
2006	3245	2115	435
2007	3525	2150	630
2008	4285	2090	585
2009	2990	2255	415

Source: Home Office, Control of Immigration and Asylum Statistics 2005-2009

* Initial decisions made on applicants aged 17 and under at time of decision to be granted asylum, humanitarian protection or discretionary leave
** Refusal decisions made on applicants aged 17 and under at time of decision

Table 7: Asylum applications, positive decisions and refusals concerning unaccompanied asylum seeking children, 2005-2009

It is, therefore, important to return to the earlier discussion regarding the overexposure of some categories of migrant children in the political and policy discourse – e.g. trafficked children and unaccompanied asylum seekers – and reflect upon the wider implications of specific framing strategies. Furthermore, it also raises important questions regarding those groups of undocumented

migrants who stay invisible, uncounted and to largely outside the policy agenda, if not to the public eye *tout court*. 'The lack of available information about the range of children in the UK who are subject to immigration control' – as noted by the Commission for Social Care Inspection (CSCI 2005: 87) – 'itself raises considerable concern about safeguarding arrangements'.

The Home Office collects data on asylum applications, decisions and refusals as well as on the number of age-disputes. Table 7 shows the number of asylum applications that were received from unaccompanied children, the number of initial decisions to grant asylum, humanitarian protection or discretionary leave to remain, and the number of applications that were refused. The main nationalities of unaccompanied asylum-seeking children in 2009 were Afghanistan (by far the largest with 1525 applications), Iraq, Iran, Eritrea and Somalia.

Table 8 shows the number of age-disputed cases over a period of four years. These are cases where a young person makes an asylum claim as an unaccompanied child (under 18) and the Home Office questions whether the person is under the age of 18. Despite the numbers of age-disputes having decreased over the past years, the numbers remain significant. Interestingly, among this age group, there are significantly more age-disputes than refusal, confirming our earlier point on the importance of age alone in determining the status of young migrants, and the attached precariousness of such status which expires when migrants reach or are deemed to have reached the 18 year old threshold.

Year	Age-disputed cases	Applied in country	Applied at port
2009*	1005[25]	925	80
2008	1400	1265	135
2007	1915	1690	225
2006	2270	2055	215

Based on Home Office, Control of Immigration and Asylum Statistics 2006-2009
* Provisional figures
** Figures exclude age-disputed cases

Table 8: Asylum-claims by unaccompanied children logged as age-disputed by the Home Office

Nationalities

Available data cannot provide a definitive picture of the main countries of origin of undocumented migrant children or where they are located in the UK. However, they can offer some indication as to what may be the most significant nation/ethnic groups. Vollmer (2008) suggests using the nationalities of migrants in detention to gain some insight into the likely countries of origin of undocumented migrants in the UK. According to this source, the main countries of origin would be Jamaica, Nigeria, Pakistan, China and Turkey. For undocumented migrant children, data by nationality

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[25] The large majority of age-disputed cases concerns individuals who have applied in country.

in detention for immigration related crimes was released for the first time in 2009. This data shows that among minors Nigeria, Pakistan, other Africa, Turkey, Iran and Afghanistan are the main countries of origin of detainees (Table 9).

Country of Origin	Children Detainees	Of whom asylum detainees
Nigeria	185	120
Pakistan	145	135
Other Africa	75	65
Turkey	40	30
Iran	35	35
Afghanistan	35	35
Jamaica	30	10
Cameroon	30	10
China	30	10
Sri Lanka	30	30
Uganda	30	20
Top-11 Total	**665**	**500 (75%)**
Overall Total	**1065**	**715 (67%)**

Based on UKBA, Control of Immigration: Quarterly Statistical Supplementary Tables, 2009

Table 9: Children held in detention solely on Immigration Act powers, by nationality, 2009

Compared to the two previous years, the number of children in detention increased from around 600 individuals to over 1000 in 2009 (Home Office 2010; 2009; 2008). Unfortunately, this data do not take into account cases of re-detention and does not provide disaggregated data on whether the children are unaccompanied or in a family unit.

There are two important caveats to the representativeness of this data as an indication of the composition of the overall undocumented children population: firstly, the role of 'racial profiling' in policing immigration which is likely to determine an over-representation of some ethnic/national groups in detention (e.g. Welch and Schuster 2005; Vollmer 2008); secondly, the significant number of young detainees (over 75% among the top-11 countries of origin) who have, at some stage, sought asylum independently or as dependants, seems to partially contradict data presented earlier regarding the likely entry routes of undocumented migrant children in Britain[26]. Arguably, this data seems to indicate that by having engaged at some stage with the state authorities migrants become more 'visible' to its policing powers and more vulnerable to arrest and detention. The risk of

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[26] Unfortunately no disaggregate data are available on the independent or dependent condition of asylum detainees under 18.

'visibility' associated with engaging with public authorities, for example by applying for asylum or registering with a GP, emerges also in the narratives of young undocumented migrants collected by Bloch et al. (2009).

Data on countries of origin of failed asylum seekers, on non-asylum removals and voluntary repatriations have also been used to gain some insight into the likely nationalities of undocumented migrants in the UK (Table 10). The main countries of origin of failed asylum seekers between 1987 and 2006 are sub-Saharan Africa, India, Pakistan, Sri Lanka, Iran, Iraq, Afghanistan, China and Serbia-Montenegro (Gordon et al. 2009: 44).

Data on removals and voluntary repatriation for 2009, both for asylum and non-asylum cases, show India, Brazil and Afghanistan as the main countries of origin of deportees and returnees. Noteworthy, US citizens are the fifth largest group of returnees. This data is particularly relevant as it includes also dependants and independent minors.

Country of origin	Total of asylum and non-asylum removals and voluntary returns	Asylum Cases	Non-asylum cases	Refused entry at port
India	5740	645	5100	1660
Brazil	5735	30	5705	2280
Afghanistan	5340	1455	3885	2340
China	3280	1095	2185	405
USA	3130	15	3115	2870
Pakistan	2990	715	2275	650
Nigeria	2890	570	2320	710
Iraq	2100	1100	1000	915

Source: Control of Immigration: Quarterly Statistical Suplementary Tables – Q4 2009

Table 10: Asylum and non-asylum removals and voluntary returns by country of origin, 2009

Another useful source of information on the nationalities of migrant children in the UK is data on the nationality of dependants of asylum seekers by age (Dobson 2009). These figures show that the main continuous countries of nationality for 0 – 20 year old dependants are Somalia, Zimbabwe and Pakistan, with high numbers from countries such as Turkey and Iran in a particular year (Home Office 2007b; 2006).

To conclude, while there are no definitive figures on the countries of origins of undocumented migrant children in the UK, and even less evidence on different patterns of migration, i.e. which nationalities are more likely to have children in the UK or migrate as a family, nonetheless, some useful indications seem to come from the combination of data on removals, repatriation, detention and failed asylum applications.

Location in the UK

To identify where undocumented migrants are located faces similar difficulties as identifying their countries of origin. Gordon et al. (2009) estimate that over two thirds of the undocumented migrant population are based in London, including 61,000 UK-born children (Table 11). London has a population of 7.56 million (12% of the UK population) with around 20% under the age of 18 years (about 1.5 million)[27], based on Gordon et al.'s estimate the undocumented migrant children account approximately for 10 per cent of all children in London.

	Central Estimate	Lower Estimate	Higher Estimate
Overall undocumented population in London	442,000	281,000	630,000
Undocumented population under 19 in London	111,000 (of whom 61,000 UK-born)	70,000	158,000

Table 11: Undocumented migrants in London, based on Gordon et al. (2009)

However, this estimate does not provide any indication of the distribution of migrant children within London. Partial data on unaccompanied asylum seeking children supported by local authorities collected by the National Register for Unaccompanied Children (NRUC)[28] shows that in July 2007 the boroughs that supported the most children were Croydon, Hillingdon, Haringey, Lambeth and Newham.

More generally, undocumented migrant children are likely to follow, to some extent at least, the settlement patterns of 'documented' migrants from the same country or ethnic group. Co-ethnic networks provide important support to individuals who can only rely on limited, if any, forms of institutional assistance. Similarly, community organisations and 'sympathetic' local authorities and social services are likely to play a role in the settlement strategies of undocumented migrant children (see Bloch et al. 2009). Outside of London, large urban areas like Birmingham and Manchester, which have played an important role in the asylum dispersal programme (Home Office, 2009, 2008, 2007b, 2006) and host a large and diverse migrant population, are likely to host also a significant population of undocumented migrants, including children.

Conclusion

This background paper completes the first phase of the UK case study in the collaborative research project into the lives and experiences of undocumented migrant children in the United Kingdom and

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[27] Office for National Statistics (ONS) in Mayor of London Publications
http://www.london.gov.uk/mayor/strategies/children/intro.jsp
[28] http://www.nruc.gov.uk/index.html; it should be noted that not all LAs use this system to record UASC who receive Local Authority support

the US. The main aim of the paper was to review key terms, concepts and evidence that will provide the background and context for the examination of the situation of undocumented migrant minors in the UK.

To begin with, we found out that literature specifically addressing the experiences of this group of children in Britain is extremely limited. This seems due to two main factors.

Firstly, the fluidity and heterogeneity of the category 'undocumented' that encompasses a diverse and non-homogeneous set of migrants who, according to their entry routes to Britain, their motivations, and in the case of children their condition as dependent or independent migrants, encounter different institutional arrangements in the country. To overcome the dearth of specific literature, we have looked more broadly both in scope, including studies carried out in other countries, and in terms of legal status, looking also at research on unaccompanied asylum seekers, refugees and low paid migrant workers, and age, most of the literature on 'undocumented migrants' does not address the situation of children. A significant consequence of the fluidity of the undocumented migrant children population was the lack of reliable data on the size, location and country of origin of this population.

Second, the very nature of this non-status provides an incentive for many children to stay out of the gaze of the state, as well as of other institutional and quasi-institutional actors (including researchers). Understanding motivations and consequences of visibility and invisibility is important for understanding the way child migration, and in particular undocumented child migration, is governed. However, children are not simply legally and socially constructed, but rather they 'inhabit a world of meaning created by themselves and their interaction with adults' (James et al. 1997: 28). Therefore, echoing the spirit of the Art. 12 of the UNCRC ensuring the right of the child to express his/her views and for these views to be given the due weight, it is important not only to recognise their agency, but, as researchers, to engage directly with them in the research process. Through children's voices, we aim to investigate the dominant representations of migrant children and locate this narratives in the broader picture in order to avoid the risk of reproducing a partial, and often distorted, representation of this group of migrants by extending findings which are based on much smaller and specific sets of migrants – namely trafficked children and unaccompanied asylum seekers - to a population that, based on Gordon et al. (2009), we estimate at about 155,000 children, the majority of whom are in Britain with their family or close relatives. Their stories are among the least visible in the academic and policy literature.

The paper offers a preliminary (and tentative) map of this group of migrants, with some indications on size, country of origin and location in the UK. Most undocumented migrants are based in London, with the largest concentrations expected in 'traditional' migrants' neighbourhoods (Keith 2008). London, with its 'super diverse' population (Vertovec 2006), provides not only employment

opportunity and established support networks (Zetter et al. 2005), but it also allows 'invisibility' (Bloch et al. 2009). It can also be expected that there are significant numbers of undocumented migrants in other urban areas with higher numbers of immigrants such as Birmingham or Manchester.

Governing undocumented migrant children is a 'difficult territory' in the words of a former Labour minister. In fact, as migrants, children and 'undocumented', this group stands at the intersection of different policy agendas in which state intervention differs considerably. In particular, we stressed how the unresolved tension between commitments to protect children and children's rights, on the one hand, and securing borders, on the other hand, is the dominant factor that shape the governance of undocumented migrant children, as well as their experiences in Britain.

The local dimension plays a crucial role. Local authorities are responsible for providing assistance and support to migrant children living in their area and to coordinate other local service providers. Local authorities, together with schools, GPs and other local agencies have the difficult task in their everyday practices to mediate between conflicting policy frameworks and agendas. They are left to manage 'the micro-social costs of immigration policy' (Arnot et al. 2009: 251). The local level is also a place of conflict, where different visions of childhood shape modalities of action and motivations, where the national 'politics of childhood' grounded in state-centred policies and visions of citizenship and belonging encounter the global 'politics of childhood', centred on the individual as rights bearer and constructed within the international human rights discourse and its expanding system of global governance.

Finally, by opening up research to other forms of child migration, beyond 'trafficked children' and 'unaccompanied asylum seekers', and to children's voices, while methodologically challenging for our research, it will enable us to increase the visibility of the situation of other migrant children who are vulnerable to extensive and often serious violations of the rights set out in the Convention on the Rights of the Child (CRC).

Acknowledgments

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