

Undocumented children

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Book Chapter

Cite this chapter as:

Lundberg, A. Undocumented children, In Cook, Thomas D. (eds), The SAGE Encyclopedia of Children and Childhood Studies : Sage Publications; 2020. ISBN: 9781473942929

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UNDOCUMENTED CHILDREN

The term undocumented children springs from the French *sans papier* which is translated into “without papers” in English. The term is commonly understood as a situation or position where a person below the age of 18, often after seeking and being rejected residency, is residing in a state without proper authority, or when a migrant child breaches the conditions for entering a state. Children and adults in this group are also often referred to as irregular migrants or “the clandestine”. Whether alone or accompanied by their families, staying under the radar, *irregularity* implies that the concerned children’s status is *irregularised*, i.e. that their actions or residency are disapproved by authorities or through legislative measures. This way, irregularity as a legal position is produced through law or authorities’ individual decisions. In some contexts, undocumented people are referred to as “illegal migrants”. However, due to its connotation with criminality (most undocumented migrants are not criminal) and the risks of de-humanization, and of jeopardizing asylum claims, scholars and activists strongly oppose such terminology.

The group undocumented children is a large, diverse group of people. They are for example children who overstayed visas or were refused residency together with their families, children who entered the state irregularly – unaccompanied or as a family – or who have a regularised status themselves but live with undocumented caregivers. Since children’s residence status or other legal status is usually dependent on their parents’, they too become undocumented if the parents lack or lose their formal residence or work permit. Some undocumented children were born into the undocumented situation, because their mother or father (or both) were undocumented. Often the legal statuses of undocumented children vary during the course of their childhood and take different expressions in different parts of the world.

Numbers of undocumented children

Estimations of numbers of undocumented children globally are very difficult to make since many were born into irregularity whereas others are simply unknown. As noted by Jacqueline Bhabha, thirty-six percent of all births in the world are not registered, leaving more than forty-eight million children under the age of five with no formal position from which to make claims for protection from any government. As a result of international migration, millions of

children become undocumented. Further, undocumented children and their families are commonly under threat of detection and expulsion and therefore are not inclined to make themselves known. This means that it is even harder to estimate the extent of undocumentedness in the world. Furthermore, when estimates of number of undocumented migrants are done, it often is followed by states' migration management which depends on the values of society and the understanding of responsibility for refugees' human rights.

In 2002, the Council of Europe estimated that there were between 4-500 000 irregular migrants in the EU and in 2008 it was estimated that between 1.9 to 3.8 million migrants were staying as undocumented within the EU. Data about migration is sometimes over-estimated due to double counts. Other times the data instead underestimates its degree and volume with no reliable knowledge on the degree of under-enumeration. The difficulties of estimating the number of undocumented children applies especially to child migrants in families, as they have traditionally not been investigated as an independent group of migrants.

Research on the phenomena of irregular migration and undocumented children

In research about irregular migration and childhood, a distinction is made between scholars exploring the phenomenon of undocumented children in society, and scholars trying to focus on the children's physical and psychological health, everyday endeavours. Whereas the latter group of researchers try to understand the position (often the unstable and changing legal positions) of undocumentedness and its implications, producing knowledge about the children in this position is different. The distinction is important, because, depending on the definition and approach, children may be seen as more or less 'deportable' by authorities and, as De Genova noted, such information can bring all children under increased surveillance and scrutiny.

Another risk embedded in research about undocumentedness and undocumented children is that scholars may – in an effort to remain policy-relevant – relinquish the opportunity to develop more fundamental social criticism of existing immigration relations. In the following, three themes in research are presented, which are significant to understand the phenomenon of undocumented migrant children in the contemporary world.

Undocumented children as citizens, rights holders and 'deportables'

Undocumented children have rights as children irrespective of their legal status. This follows from the Convention on the Rights of the Child (UNCRC), which stipulates that 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). As noted by Hughes and Sigona, this definition is sometimes not as distinct with regard to undocumented migrant children, since age disputes affect, in particular, asylum-seeking minors. However, as noted, if the children are deemed to be children (often this is done through different tests, such as medical age assessments) they should have access to the rights established by the Convention’s provision on non-discrimination (Art 2).

The above principle of equality provide undocumented children with a strong rights-protection based on international law. In 2004, the Committee on the Rights of the Child also guided the States Parties to UNCRC to ensure the realisation of all rights in the UNCRC for all children under their jurisdiction. This obligation is not limited to children who are citizens of a State Party and the rights must therefore be accessible to all children including those who migrated and irrespective of nationality, statelessness or migration status.

In reality, there are immense challenges for undocumented children as rights holders. One general problem is a lack of implementation of the rights in the UNCRC and other human rights treaties. Other examples of impediments to the realization of rights include administrative obstacles, technicalities in the judicial systems, discrimination or lack of information. Another complication, from the children as right-holders’ perspective, is a fear of being reported to migration authorities. This entails that the children stay away from contacts with authorities. These problems from the perspective of the children make it very difficult for them to access those rights which virtually all states in the world are obliged to protect for all children under their jurisdiction. Furthermore, access to different rights are often interlinked and interdependent, i.e. whilst a state might provide for the right to school, absence of a right to accommodation may hinder access to that right.

Moreover, undocumented children’s rights are easily undermined in states’ migration management. This happens for example when states try to adopt effective strategies for self-return through harsh national policies, for the expulsion of undocumented people. In practice, it is difficult for the children or their families to make claims for rights or take any contact with states’ ‘welfare jurisdiction’, without also getting into a situation where they risk deportation.

Thus, whereas all children are acknowledged human rights in the UNCRC and other international treaties, predominant for the position of undocumentedness is the *opposite* of being a right-holder. Rightslessness is commonly understood as a central element of being excluded from the political community of a state. The political philosopher Hannah Arendt in

the 1950s famously pointed to the link between human rights and the state in her reflection over the universality of human rights, which she stated was enjoined only by citizens of the most prosperous and civilized countries. Human rights, she argued, are based on the idea of a human being as such. However, they broke down at the very moment when those who professed to believe in them were confronted with people who had lost all other qualities except they were still human. Arendt here warns that human rights are perishable and completely contingent on whether the individual, the right holder, is included in a political community constituted by the state.

As a formal member of a nation state – a citizen – one is entitled to a certain set of civic, political, and social rights which are generally unavailable to noncitizens. Resent theorisations have developed the notion of citizenship. It is sometimes explored as an active process of claiming rights as members rather than the passive acquisition of an arbitrary and limited set of rights. Struggling on behalf of undocumented children for example, or political work for open borders, have included new groups of ‘new citizens’ or political actors making claims for, not only full membership in society but also a restructuring of our common social world.

Since undocumented children reside without formal citizenship and without authorisation, they are essentially in a rightsless position which makes them exceptionally vulnerable. Many contemporary studies also confirm that undocumented children are subject to harassment, humiliation, detention and prevented from seeking health care. A central element of rightslessness in the contemporary world is *deportability*, i.e. the risk of being detected and expelled from the state of residency. The notion of ‘deportability’ was introduced by De Genova, to signify the constant threat under which undocumented children live, of being deported from the state where one resides, and how it makes itself felt in the everyday for many children who are undocumented.

Given that life as undocumented may continue for a long time, perhaps for life, and that some children are also born undocumented, resent theorizations of deportability have tried to understand how the threat of deportation is experienced by youth who may have thought their place in the state where they live was secure. Youths’ narratives of realising the implications of their legal status, and of removal, construct alternative measures of belonging and demonstrates how undocumented children perform agency. This brings us to the next theme in research about children and undocumentedness.

Undocumented children, agency and vulnerability

With respect to undocumented children, vulnerability and subordination are most relevant circumstances. As noted, research demonstrates how children living as undocumented are subject to discrimination, social exclusion and poverty. Whereas many of these problems are not unique to undocumented children, with undocumentedness follows an unceasing and often profound fear of forcible removal. There are many things undocumented children in most cases cannot do because of their legal status, such as obtain a driving license, visit places where identification is needed, or travel abroad.

The ways in which researchers, nation-states and international organisations understand and shape policies towards undocumented children also reflect particular assumptions about childhood and migration in general. In Western societies, childhood has been conceptualised in terms of vulnerability and dependence for decades. An underlying conviction has been that children are incessantly ‘adults-in-the-making’ rather than social beings in their own right. As these ideas are increasingly globalized, an inevitable consequence is that essential notions of the child have become widespread, and children’s own participation in research is marginalized. The children’s own narratives and experiences are – more or less explicitly, more or less consciously – condemned as irrelevant. The predominance of vulnerable groups – such as refugees, asylum-seekers or separated children – in research that has been conducted, also has led to denial of migrant children’s agency and subjectivities.

Needless to say, many undocumented children and their families are subordinated and easily fall through gaps in protection systems for vulnerable children – and stay under the radar due to threat of deportation. Yet, they are not without agency. Many undocumented children are active inhabitants who live fairly ordinary lives in their communities. School age children attend school and their parents are working, though usually without formal authorisation. Families as well as unaccompanied children are in contact with, and make claims for welfare services towards state and municipal authorities. They stay in contact for regularisation applications, social support, to make a life.

Nevertheless, and in spite of agency, from a state-oriented perspective, authorities essentially approach undocumented children from a migration and legal-status viewpoint, and not from the point of them being children. The position of undocumentedness is hence also a position of structural subordination. Undocumented children are vulnerable as migrants, as persons in an irregular situation and as children. Actions taken by the children themselves, or

on their behalf, is increasingly being explored in research. How initiatives and claims for rights emerge and what effects they have, as well as how transnational child protection systems that reaches beyond the deportation machinery are invented and re-invented, are still under-researched.

Undocumented children, the everyday, and political struggles

There is an emerging body of contemporary research highlighting the need for knowledge about undocumented children's experiences that is also carried out in collaboration with children. Although vulnerable migrant children's experiences have been silenced through adultist discourses about migration management and lack of agency, research *on* children has gradually been complemented with research in collaboration *with* children. This has contributed to a growing interest in questions on how children exert political agency. \

Whereas several studies illustrate coping strategies, resilience and agency of children, few scholars engage in a discussion about how their struggles can be understood as contesting the undocumented position and thus make an expression of political struggles. Studying actions by undocumented children and their support networks may contribute to an understanding of how political agency is enacted by children in the most vulnerable positions. This requests great responsiveness, since contemporary management of migration is characterised by a criminalisation of humanitarian support to undocumented migrants in general. In many parts of the world, politicians, activists and support groups defending irregular migrants and asylum seekers face threats of prosecution.

The children's claims of being right holders, and claims made on behalf of the children's own experiences and aspirations, may develop new understandings of children's agency and also constitute a potentially extended responsibility of the state/city when it comes to access to rights for undocumented migrant children.

In conclusion, undocumented children lack access to most rights and freedoms even though these are safeguarded in both international treaties between states and in states' constitutions. Undocumented children's lives take different shapes and forms depending on geographical space, the society as a whole including the broader social and economic context. This makes it important to explore undocumented children's lives and rights with a contextualised and localised accounts of childhood. As noted by several scholars in recent years, this is especially significant to child migrants, due to tensions arising between diverse childhoods, youths and adulthoods. A challenge for research, governments and other actors is that the representation of children as a distinct category of persons, dominant in the work of

agencies at all levels, locate the children outside political and economic processes at the local, regional and global level. This categorisation, in combination of the exclusion from political spheres, makes it immensely difficult for the children to appear as rights holders.

See also: Age Assessment, in Migration; Asylum, Children as Seekers of; Child Trafficking; Children's Rights, UNCRC; Unaccompanied Minors, Migration

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