

# Platform for International Cooperation on Undocumented Migrants

## SUBMISSION

To the 54<sup>th</sup> Session of the Committee on the Elimination of Discrimination against Women  
**General Discussion on “Access to Justice”**

18 February 2013, Geneva

### **Undocumented Migrant Women’s Lack of Access to Justice in Europe** *“When justice discriminates, injustice dominates”*

**The Platform for International Cooperation on Undocumented Migrants (PICUM)** was founded as an initiative of grassroots organisations. Now representing a network of more than 140 organisations and 160 individual advocates working with undocumented migrants in more than 38 countries, primarily in Europe, as well as in other world regions. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level. PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level.

This submission gathers the concerns of our membership network regarding the obstacles and barriers faced by undocumented migrant women in accessing justice within the successive stages of the justice chain, in line with *Article 15* of the Convention on the Elimination of Discrimination against Women, and presents final recommendations on access to justice for undocumented migrant women based on the implementation of *Article 2* of the Convention.

#### **PICUM interview with organisation working with survivors of sexual violence in the UK (October 2011)**

“There was an Iranian lady whose asylum was refused by the UK authorities and she became destitute. She was sleeping at a bus shelter when she was picked up by two Iranian men in a vehicle. Because they spoke the same language, she thought that she would be safe. She was held for months and repeatedly and brutally raped. In the end they took her somewhere and dumped her. She was found wandering around in a park and taken to a police station by the person who found her and disclosed what happened to her. The case came to us by the police actually; we did the initial assessment. She was very disorientated and very frightened. There was a police investigation, but because of the lack of forensic evidence the case was thrown out, also, because the client was saying she was at such a place at such a time, but it didn’t match when the police went to follow up. It was clear she was really disorientated and confused. Because of this the police Constable in charge of the case at the time wanted to charge this woman with wasting police time and hand her over to immigration custody. It was dreadful. In the end (I’m not sure if I am allowed to tell you this) we had to hide her to stop the police from locking her up. We hid her. We had to hide her away from the police for a period of time to stop them from deporting her back to Iran.”

#### **PICUM interview with Infor-étrangers in Belgium (November 2011)**

“We received a call from the PMS Centre (*Centre psycho-médico-social*) about a girl who was highly disturbed at school. Her mother was an undocumented woman from Brazil who was living with a Belgian man, and that man was abusing her daughter. When the mother found out, she wanted to file a complaint to the police but the man threatened her and told her that if she denounced him, she would be deported. The PMS Centre contacted the Youth service of the police and explained the situation and asked if there would be any consequences with the Foreigners Office because of the mothers’ residence status. We can’t always ensure the police won’t denounce the undocumented woman to the authorities.”

## I. State Obligations to Actively Prevent Discrimination against all Women

### - Article 2

*PICUM is particularly concerned that discriminations in legislation and policies governing migration across the EU, particularly family reunification and labour migration, push women into irregularity. <sup>1</sup> Then, because of their residence status, Member States create a whole range of de jure and de facto discriminations preventing these women from accessing and maintaining protection from violence, exploitation and discrimination. Irregular migrant women face multiple legal and structural barriers which prevent their access to essential services such as health, education, housing, legal aid and workplace protection. The growing linkage between migration control mechanisms and access to basic services present a disproportionate barrier to women's equality and empowerment.*

In line with the obligations set out in Article 2 of the Convention on the Elimination of All forms of Discrimination Against Women, States parties to the Convention must: guarantee women's right to equality; prohibit discrimination against all women on grounds of their gender in laws and policies and protect all women's rights through effective mechanisms allowing for redress against violations.

Clearly, respect and protection of human rights as provided in Article 2 of CEDAW can only be guaranteed with the availability of effective domestic remedies, as legal rights are only meaningful if and when they can be asserted and enforced. As this submission will prove, access to justice is an essential component of the rule of law and a means for women to actively claim the entire range of rights provided for in the Convention.

In order for the fundamental right to access justice to be effective and enforceable, policies and practices in the EU member states that tend to push undocumented migrant women into the margins of society, augmenting their exposure to gender discrimination and violence by limiting their autonomy and independence, need to be addressed. In particular, member states must implement the guidelines provided by the Fundamental Rights Agency of the European Union.

## II. Equality Before the Law and Access to Justice for Undocumented Women

### -Article 15

*"When looking at access to justice, the focus should be on the crime and not the status of the victim"*  
-Jean Lambert, MEP (European Greens)<sup>2</sup>

PICUM has witnessed how undocumented women's fundamental right to access justice is regularly superseded by migration control interests. Undocumented women are often excluded from the general systems for accessing basic social rights, including health care services, housing support and violence against women shelters, and they face particularly disadvantageous terms when seeking access to justice and equality before the law. In seeking to provide appropriate and authoritative guidance to States Parties on the measures to be adopted to ensure full compliance with their obligation to protect, respect and fulfil women's human rights to access to justice, we urge the Committee to bear in mind that *"migration is not a gender-neutral phenomenon"* and that *"the integration of a gender perspective is, therefore, essential to the analysis of the position of female migrants and the development of policies to counter discrimination exploitation and abuse."*<sup>3</sup>

Unable to obtain social assistance, undocumented women may also face arrest, prosecution and deportation if they make contact with the police to report violent or exploitative treatment. In particular, an irregular status impacts upon undocumented women seeking access to justice in the following twelve ways;

## 1. Disempowerment of women due to their lack of an independent residence permit

The lack of an independent legal status is a very common challenge faced by women migrating to the European Union. The migration policies existing in Europe are often insensitive to the needs of women and, for those experiencing violence, exploitation or misinformation, may actually increase their chances of becoming undocumented. PICUM members on the ground report that an overwhelming number of migrant women who contact them are at risk of losing their status following workplace exploitation or the breakdown of a relationship including experiences of domestic violence at the hands of partner or spouse in a regular situation. The issues around dependent residence status also apply to children, and while not specifically discriminating against girls, may place them disproportionately in situations of vulnerability to violence, abuse and exploitation.

While some Member States have implemented protections for migrant women on dependent visas who find themselves in an abusive situation, NGOs operating in these countries have raised concerns regarding the difficulty for undocumented women who have been victims of violence to obtain an independent residence status in practice:

- In **Spain**, women who have been victims of gender or domestic violence may in theory access an individual residence permit, irrespective of the duration of the marriage or relationship.<sup>4</sup> Access to an individual residence permit in case of gender or domestic violence is however granted only after the Public Prosecution Service has issued an *ad hoc* report on the episode of violence, report that is difficult to obtain for undocumented women, who often lack proof of violence and fear deportation as a consequence of approaching the local authorities.
- In **France**, on 9<sup>th</sup> July 2010, the Law on Violence Against Women established a protection order (*ordonnance de protection*) which obliges the Prefect to provide a temporary resident card to undocumented women experiencing violence as soon as possible. However, the '*Collectif national pour les droits des femmes*' (CNUF) has reported significant delays, discretionary demands for evidence by prefectures and varying implementation between regions.<sup>5</sup>

## 2. Laws and policies existing across Europe enable employers to hold unilateral control of their migrant workers' immigration status.

Labour migration policies often permit employers to withhold their identity documents and can denounce them to the authorities if they choose to leave an exploitative situation. Despite the increasing demand for female migration labour to fulfil key sectors of the European economy, the needs of female migrant workers are often under addressed by existing laws and policies. Gender inequalities often limit migrant women to the low-wage and informal sectors; they are more frequently found in isolated work environments where they face additional barriers to access their workplace rights or find solidarity with other workers.<sup>6</sup> Even if they do try to seek justice for abuses risk arrest and deportation.

### i. No right to change employer

Like many countries of the EU, Cypriot labour migration policy ties migrant domestic workers visas to a specific family; however, if their employer fails to register them, either on purpose or because of ignorance, the domestic worker is considered to be working "illegally". As PICUM member KISA (Action for Equality Support and Antiracism in Cyprus), explained: "If they find their employer is purposely not registering them, and contact the authorities they can be deported. We've seen situations where migrant domestic workers have gone to file a complaint in the Labour Office and been arrested there on the spot!"<sup>7</sup>

### ii. Concerns surrounding diplomatic impunity

Many PICUM members also express concern about the impunity enjoyed by diplomatic staff exploiting female migrant domestic workers. As Ban Ying (House of Women) based in Berlin, Germany, explained: "We have come across several women working for diplomats who had been locked in the house over years".<sup>8</sup>

### **3. Policy-driven destitution compounds their experience of violence and abuse**

“Once undocumented woman becomes destitute they are just sleeping at bus shelters or wandering around on the streets. What we found then was that they were being sexually exploited, or ending up in violent relationships with men just preying on the vulnerability of these distraught women”.

- Rape and Sexual Violence Project RSVP in Birmingham, UK<sup>9</sup>

“Undocumented women stay in situations of violence until they’re beaten to death because they don’t dare to ask for help.” - Public Social Welfare Centre (CPAS/CAW) Belgium<sup>10</sup>

Despite their unprotected status and heightened exposure to ill-treatment, numerous administrative and financial barriers prevent undocumented women from accessing shelters and other support services for victims of violence. Measures seeking to control irregular migration through enforced destitution of undocumented migrants mean they are unable to access domestic violence shelters, obtain physical or mental health care or receive financial assistance. In Europe, undocumented women are frequently turned away from women’s shelters.<sup>11</sup> Because undocumented women are denied a legal income and lack access to state subsidies, many shelters in Europe do not have a guarantee that their stay will be reimbursed. As a result undocumented women are forced to choose between abusive living conditions or becoming homeless, a situation in which they are often exposed to further violence.

### **4. Difficulties to access and maintain secure housing create serious vulnerabilities for women**

Denied access to social housing, undocumented migrant women face a number of practical obstacles to secure rental accommodation in the majority of EU Member States. In countries such as the Czech Republic, Germany, Italy and Spain, police must be notified of the presence of foreigners in accommodation, which in practice makes it difficult to host, sublet or rent to migrants in an irregular situation.<sup>12</sup> Dutch law contains a provision which obliges persons who shelter irregular migrants to inform the authorities.<sup>13</sup> As a consequence, undocumented migrants within the private rental sector often face poor housing conditions, disproportionately high rents and exploitative contractual conditions. Overcrowded or unsuitable private lettings include the use of attics, shipping containers and garden sheds as accommodation; rooms are sometimes used in shifts and there can be a significant lack of privacy. In addition, tenancy agreements are often not provided, contain abusive contractual conditions or redress in cases of exploitation is difficult to access.<sup>14</sup> Restricted access to secure accommodation significantly increases the vulnerability of undocumented women to become homeless, or dependent on an abusive partner.

### **5. Criminalisation of unauthorised stay a significant barriers for women to access justice**

Unauthorised stay is considered a criminal offence in various EU countries. In Belgium, the police are required to report anyone they suspect being undocumented to the immigration authorities. The inadequate police response and arrest of women seeking protection because of immigration infractions, undermines confidence in the police and deters the reporting of violence.<sup>15</sup> In addition, the police often fail to take prompt action to protect undocumented migrant women who report violence and, instead, they initiate identification procedures and eventually serve undocumented women with removal directions.

### **6. Barriers to report violence to the police because of risk of apprehension and removal**

Despite their increased exposure to ill-treatment, undocumented migrant women are at significant risk of arrest and deportation if they seek assistance from the police as their irregular status frequently supersedes their need for protection. Their irregular status also serves as a serious barrier when trying to access the justice system. PICUM has documented cases in a number of EU member states in which migrant women who have telephoned the police when under attack in their home, or visited a police station to report a previous attack have been promptly arrested and deported without any action being taken against the abuser. Here are some

concrete cases in which highlight the worrying reality which exists across the European Union;

- In February 2010, 19 year old Najlae L. reported her brother for assault at a local police station in Loiret, France. Two days later, she was forcibly returned to Morocco, a country she had left over five years earlier.<sup>16</sup>
- On 28 May 2010, Noura B. was in custody at the police station in Orihuela, Spain where she was informed by a police officer that she could engage in sexual acts in order to secure her release. Taken from her cell to the toilets, she was partially undressed and then abused by the officer on several occasions. She only submitted a compliant following the intervention of a female police officer who witnessed the offence. Although a judge suspended her deportation to allow for an investigation, the order was ignored by the Secretary of State for Security and she was returned to Morocco on 13 July 2010.<sup>17</sup> Noura underwent an arduous 24-hour journey back to Morocco in handcuffs and was abandoned at the Moroccan-Spanish border in Ceuta. She has been unable to seek justice.
- In Greece, the systematic and increasing occurrence of physical attacks against migrants is orchestrated and perpetuated by the far right party Golden Dawn and tolerated or perpetrated by the police forces. The near-complete absence of accountability of the police for overt psychological and physical assaults against migrants on the streets and in police stations in Athens and other cities fuels further violence and impedes the reporting and investigation of such crimes. Although the majority of the victims are male, according to the Racist Violence Recording Network women migrants are highly vulnerable and female victims have specifically been targeted because they wore a hijab. Since the majority of the victims have no residence status, they have no possibility to report crimes against them as this will result in their immediate arrest in the police station.<sup>18</sup>

## **7. Denial of legal assistance and challenges to be party to criminal proceedings.**

Many undocumented women are denied the right to free legal aid and often prevented from being party to criminal proceedings as they are deported to their countries of origin before legal action has got under way. This case from Corsica, highlights the treatment of many undocumented women by the courts;

- In September 2011, the Corsican administrative Court of Bastia issued a decision to deport Farida Sou, an undocumented Moroccan woman who came to the attention of the police when reporting domestic violence. The 43 year-old woman had come to Corsica in October 2010 to marry her partner, but after the marriage was refused by the Mayor of the town, she became undocumented. While no action was taken with regard to the domestic violence claim she lodged, the victim herself was placed in administrative detention and called to appear before the correctional tribunal of Bastia in November to face sanctions for her refusal to transfer to a migrant detention centre in Marseille. Her lawyer called the case “an affront to French law”, as his client was “deprived of the right to defend herself before the court.”<sup>19</sup>

## **8. Inability to hold perpetrators accountable perpetuating violence against undocumented women who are now perceived as a “zero risk” victim in Europe.**

“I told him to stop, but he laughed and said ‘what will you do, call the police?’”

- Undocumented Woman in the UK<sup>20</sup>

The structural barriers which prevent vulnerable migrant women from pursuing legal remedies and bring their perpetrators to justice contribute to a worrying culture of impunity for violence against women in the European Union. By removing undocumented women’s access to justice and punishing those victims who report violence, State Parties have effectively made them a “zero risk” victim whom perpetrators can coerce to engage in degrading or exploitative acts, or threaten to denounce if they seek police assistance. Because they have nowhere to turn to for help, undocumented women remain disproportionately vulnerable to physical, sexual and labour-related abuse Ensuring undocumented migrant women’s right to report violence to the authorities without repercussions on grounds of their residence status is an urgent measure which must be undertaken in all EU member states to effectively tackle violence against women.

## 9. Specific barriers facing undocumented women in detention

The condition of isolation, inhumane and degrading treatment, and lack of reliable access to legal counsel and health care that often characterize immigration detention are particularly detrimental for women. Migrant detention centres are not designed to provide quality assistance to refused asylum seekers, victims of violence, or pregnant women, who might experience serious mental or medical health problems and special needs. For detained women, having access to a legal representative and legal aid may be the only link to the outside world and often provide the only safe opportunity to report complaints of past abuse or of sexual assault inside the detention centres. Women who do not have legal representation face significant hurdles to advocating affectively for their own human rights, medical needs, and safety while in custody.

- In January 2013, a pregnant migrant woman held in Cedars detention centre near Gatwick Airport in the UK, had her wheelchair tipped up and her feet held by security officers of G4S when she resisted the “substantial force” that officials applied to her.<sup>21</sup> In the UK, officials are currently refusing to delay the removal of detainees who allege assault during removal when the assault is backed by medical evidence. They say complaints can be investigated after the detainee has been deported. In practice such investigations are likely to be extremely difficult to conduct as detainees are removed and often unable to maintain phone or email contact with the UK.

Detained undocumented women who have no financial means rely on legal advice provided by a small number of NGOs. However, not all countries in Europe allow civil society access to detention centres.<sup>22</sup> There are serious concerns about the hurdles created by police authorities to lawyers providing legal assistance to detainees in Greece, irregular migrants held at the Ferres border have reported that police officers in charge ignored their pleas to be given access to a lawyer.<sup>23</sup>

## 10. Lack of access to legal aid

### TESTIMONY: Concern Among UK organisations about Legal Aid Cuts<sup>24</sup>

“The way the legal aid fund has been squeezed and restricted towards a certain client group over the years is creating a lot of concern. Most decent practitioners are now saying that they can’t actually do justice to someone’s case with five hours of legal aid funding... it is simply not possible, so they’re not taking on immigration work. So now practitioners who couldn’t care less think, *‘well, we can get five hours legal aid funding, easy, let’s do it!’*

Migrant women come to us with their refusal letters and you the lack of care that has gone into the initial representations is shocking. You see people’s files that have gone to the UKBA from these solicitors and the applicants’ gender, or country of origin changes midway through the file. No care has gone into it, and it’s not surprising that they get refused. Then, at the refusal, these solicitors will say they won’t take the case on appeal, as they don’t think it has sufficient merit therefore, they won’t get sufficient funding for it. Around 70% of all the people in this region who get a refusal will go to the tribunal without any representation at all. It is going to get worse. This is frightening.”

Undocumented migrant women experience numerous structural and practical barriers to pursuing legal remedies. Free legal assistance and **legal aid** services are often denied to undocumented women and they are prevented from being party to criminal proceedings, as they are generally deported to their countries of origin before court hearings take place. Access to legal aid is often denied to undocumented women who seek access to justice. Recent cuts to EU member states legal aid schemes severely disadvantage undocumented women who, because of their residence status, are denied a legal income. Furthermore, they lack knowledge of national legal systems, have little family support and can often face language barriers.

- In the UK, recent cuts to legal aid scheme have created serious barriers for undocumented women experiencing violence to access justice. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, only certain domestic violence related cases will still be funded under the legal aid scheme. Legal aid will be guaranteed to migrant victim’s whose immigration status is dependent a British citizen, a EU citizen or migrant with indefinite leave

to remain.<sup>25</sup> While some exceptions are allowed, the Government has indicated that this funding will not be available in immigration cases. Quality pro bono advice is now increasingly difficult to obtain and language barriers or lack of knowledge of complex legal issues prevent them from being able to represent themselves in Court.<sup>26</sup>

- In Greece, national legislation provides for the granting of legal aid only with regard to an application to annul a negative decision by the Council of State.<sup>27</sup> Fees charged by private lawyers are high, making legal advice inaccessible for undocumented women who lack financial means. Neither does national legislation provide legal aid for challenges to deportation and immigration detention (i.e. bail applications), as they are administrative proceedings.

## **11. Across Europe, numerous legal and contractual challenges prevent undocumented women workers from initiating legal proceedings against abusive employers.**

In the Czech Republic, Estonia, Lithuania, and Slovakia, the prohibition for migrants in an irregular situation to work appear to have priority over claims resulting from labour law, such as the right to compensation for withheld wages or compensation for work accidents and these countries do not recognise the right to compensation for withheld wages to undocumented women workers.<sup>28</sup> As undocumented women are limited to the informal sector, they often work without an employment contract meaning they have significant difficulties to prove labour-relations in a court of law. These factors increase undocumented women's dependency on employers and diminish the likelihood that they will denounce incidents of violence, abuse or other labour or criminal law violations. In practice, one of the main obstacles to obtaining unpaid wages is the difficulty in proving a work relationship or the actual number of hours worked.

- On 31 August 2012, the Irish High Court overturned a Labour Court ruling ordering the payment of €92,000 to an exploited migrant worker. The High Court ruled that Section 2 of the Employment Permits Act 2003 prevents an undocumented worker from seeking redress under labour law because the employment contract cannot be recognised "in the absence of the appropriate employment permit". Working for 77 hours a week for as little as €0.51 an hour, the claimant was not aware of his irregular status, as his employer failed to renew his work permit.<sup>29</sup>

## **12. Other practical barriers**

A lack of *knowledge about their legal rights*, family law and the overall legal system hinders undocumented migrant women's dealings with the legal system and often leads to less favourable outcomes. For example, due to a consistent lack of reliable information and *prompt referral* to legal aid and social services, undocumented migrant women are often not aware of favourable legal provisions that in some countries of the EU enable victims of domestic or gender-based to apply for an independent residence status. Women's understanding and expectations of their legal rights can also depend upon effective and available *translation services* and access to legal aid, as migrant women lack of knowledge about their rights may be compounded by lack of accessible information in their own language and low socio-economic status that prevent women from seeking private legal assistance.

*Procedural safeguards* normally provided by national law, as well as international conventions, such as interpretation, are not always respected. This applies in all cases, and there is increasing reliance on interpretation by phone although the quality is significantly reduced. This can impact people who have experienced violence, particularly sexual abuse and exploitation, as experiences may be very difficult to relate under such circumstances. Another area where procedural safeguards are not always respected is in family law, where parents are not always provided interpretation services including in court proceeding concerning separation, foster care, or adoption. Cases have been reported, for example, by lawyers in Italy.<sup>30</sup>

# UNDOCUMENTED MIGRANT WOMEN'S ACCESS TO JUSTICE IN EUROPE

## CONCLUSION AND RECOMMENDATIONS

Underlining State Parties obligation to ensure effective legal protection and the practical realisation of rights, we submit that policies and practices which sanction the removal of support, protection and justice for victims on grounds of their status marks a clear violation of CEDAW.

Across Europe, national governments and public institutions are actively fostering a culture of impunity, sending a clear message to perpetrators that undocumented migrant women warrant neither humane nor impartial treatment as their irregular status supersedes their most fundamental human rights. Such policies are incoherent with human rights principles and also risk undercutting positive initiatives existing elsewhere in society to combat discrimination and address gender-based violence and exploitation of women.

**1. Undocumented women are women, with entitlements under CEDAW.**

Undocumented women are entitled to the same treatment and rights as national or resident women, they should be granted effective and safe access to justice and should be treated as women first and foremost. The only concern of the state should always be the principle of equality and non-discrimination for *all women* as outlined in international human rights standards.

State parties should comply with their obligations under international human rights law and therefore guarantee undocumented women equal access to justice and protection as national women and men. State parties to CEDAW have committed to abolish all discriminatory laws and acts of discrimination against women residing in their territory regardless of status.

**2. Grant specific consideration to the unique barriers preventing migrant women from accessing justice and equality before the law.**

In light of the above, and in line with its General Recommendation No. 26 and previous reasoning, we recommend that the Committee should grant specific consideration to the unique barriers and obstacles faced by undocumented migrant women when seeking access to justice and equality before the law.

**3. States Parties must remove all practical obstacles for migrant women to obtain an independent status and seek protection.**

In addition to legislative provision providing an independent status for migrant women, it is essential that practical measures are taken, including: suspension of any expulsion proceeding; guaranteeing access to housing as well as psychological and social support, especially during the waiting period; willingness to accept broad range of evidence as a proof of violence,<sup>31</sup> general awareness raising campaigns addressing violence against women; and comprehensive trainings for lawyers, police officers, judiciary, social assistants and immigration officials. These steps are vital, as evidence shows that migrant women are inclined to endure abuse for longer periods as they are afraid of becoming undocumented, homeless and without means of support.

**4. Address the multiple legal and structural barriers which prevent vulnerable migrant women from accessing essential services and social justice to which they are entitled.**

The current impunity existing for violence and human rights abuses against undocumented migrant women and girls in the EU is incoherent with state obligations under international human rights law. Disproportionate exposure of women with an irregular migration status to violence constitutes discrimination and therefore, the barriers that prevent undocumented women's access to support services or legal proceedings are incompatible with human rights obligations and should promptly be removed.



**5. Guarantee effective protection for undocumented women experiencing violence and abuse.**

States Parties to the Convention must delink access to justice from immigration control mechanisms. to ensure undocumented women's dignity, security and privacy within the framework of legal proceedings. Member States of the European Union must take steps to ensure that justice is made safe, effective and accessible; protecting immigrant women when they report abuse, and facilitating prosecution of perpetrators regardless of the status of their victim.<sup>32</sup>

**6. Undertake a gender-sensitive review of existing laws and policies at both EU and national level.**

Situations of dependency reinforce the unequal gender balance that EU member states are fighting as part of their international commitment to gender equality and women's rights. A gender-sensitive review of existing laws and policies at both EU and national level must be undertaken so that discriminatory measures can be identified and removed.

**7. Ensure specific legal provisions to effectively address gender-related discriminations against migrant women in all domains.**

Gender-neutral does not mean gender blind and State Parties which do not provide a specific provision to address gender-discrimination across the full spectrum laws and policies pertaining to migrants of all status are compliant in the physical, sexual and psychological abuse of migrant women by employers or partners who take advantage of their vulnerable position. In particular, State Parties must:

- i. Actively address gender-related discrimination against migrant women labour market; including exploitative terms and conditions of employment and stay and overturn contracts which attempt to limit a woman's legal capacity.
- ii. Ensure laws regarding freedom of movement within the country and choice of residence treat men and women equally (this includes employment and family reunification laws).
- iii. Ensure migrant women have access to fair and unbiased legal advice and support, prevent intimidation by legal professionals and alienation in Court, and ensure access to legal procedures as well as support and protection measures before, during and after legal proceedings.

**8. Make undocumented migrant women visible in national legislation and strategies designed to address gender inequality, social exclusion and gender-based violence.**

It is especially important that national action plans on access to justice, social exclusion, sexual and reproductive health, gender-based violence and workplace rights identify undocumented migrant women as a target group as currently they are almost totally absent from these strategies. There is a need to accurately examine practices to determine in which circumstances undocumented women might be denied effective access to justice and to accordingly develop an **intersectional approach** to tackle the multiple forms of discrimination facing undocumented migrant women on grounds of their status, colour, religion, poverty etc.

**9. Stop the criminalisation of organisations and individuals providing legal, humanitarian and social assistance to undocumented migrants.**

International human rights law guarantees migrant women's entitlement to a comprehensive set of rights regardless of their administrative status. However, a significant number of signatories to these conventions deny undocumented migrant women their most basic level of human rights, such as ensuring access to justice through access to fair, free and unbiased legal advice and support. The burden has therefore fallen to civil society organisations to guarantee a decent and humane standard of living for migrants. Instead of supporting these organisations, a growing number of governments have actively criminalised the provision of humanitarian, legal and social assistance to undocumented migrants residing on their territory.

## END NOTES

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1 Migrant women may also become undocumented through irregular entry and unsuccessful asylum applications.

Irregular entry: As restrictive measures limiting the entry and employment of migrant women intensify, they may seek alternative and more dangerous routes to enter Europe through which they are particularly vulnerable to sexual abuse by border guards, other migrants and smugglers.

Unsuccessful asylum claims: women who migrate to seek protection are highly disadvantaged in the asylum system as claims on grounds of gender-based violence have a disproportionately high refusal rate in many of states. Women's roles in political resistance or experiences of state violence are often more difficult to prove and considered less significant than those of men. Consequently, a larger proportion of women than men who apply for refugee status are refused and either deported to their countries of origin or remain in Europe in an undocumented situation. Despite their vulnerable status as a survivor of severe violence, they are forced into destitution and criminalised and chased by states policies.

2 Jean Lambert MEP speaking at PICUM event "Access to Justice for Undocumented Women: A Reality in the EU?" held in European Parliament on 21 June 2012. Full report available online at: <http://picum.org/en/news/blog/35248/>

3. CEDAW General Recommendation no. 26 on women migrant workers, par. 5

4. According to Article 59.2 of the Royal Decree 557/2011, a spouse can obtain an independent residence and work permit after two years of residence in Spain and cohabitation with their partner. Victims of domestic and gender violence would be granted an independent residence and work permit valid for 5 years and applications under Article 59.2(b) of the Royal Decree 57/2011 would be given urgent consideration. Specific guidelines have been published on this issue by the Ministry of Employment and Social Security in June 2012: <http://extranjeros.empleo.gob.es/es/informacioninteres/informacionprocedimientos/documentos2/16.pdf>

5. LOI n° 2010-769 du 9 juillet 2010 relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants. Available at : <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022454032&categorieLien=id>

6. See General Recommendation No. 26, "Recommendation on Women Migrant Workers", Committee on the Convention on the Elimination of All Forms of Discrimination Against Women.

7 In March 2001, a 20 year old Russian dancer employed in Cyprus as an artiste, fell five floors to her death. Oxana Rantseva had met Cypriot police some days before, but they handed her back to her employer. Her family lodged a successful complaint against Cyprus under Article 4 ECHR (Rantsev v. Cyprus and Russia [2010] ECHR 25965/04, 7 January 2010). For further information see: PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", p. 50

8 PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", p. 21

9 As one service provider working with survivors of sexual violence explained, "What we also found much to our horror was that when women are refused asylum, because of the way our policies stand they are destitute until they reapply, and that can take from weeks to months. Once a woman becomes destitute they are just sleeping at bus shelters. They are just wandering around on the streets. What we found then was that they were being sexually exploited, or ending up in violent relationships with men just praying on the vulnerability of these distraught women", PICUM interview with RSVP in Birmingham, UK, November 2011.

10 PICUM interview with Public Social Welfare Centre (CPAS/CAW) in Middenkust, Belgium, November 2011.

11 See Chapter on "Access to Women's Shelters", in PICUM Report "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", March 2012, pp. 82 – 100.

12 See PICUM (2004) Report on "Housing Situation of Undocumented Migrants in Six European Countries: Austria, Belgium, Germany, Italy, the Netherlands and Spain", March 2004, p. 20, available at: [http://picum.org/picum.org/uploads/file\\_/PICUM\\_Report\\_on\\_Housing\\_and\\_Undocumented\\_Migrants\\_March\\_2004.pdf](http://picum.org/picum.org/uploads/file_/PICUM_Report_on_Housing_and_Undocumented_Migrants_March_2004.pdf)

13 See Article 4(40) of the Law "Vreemdelingenbesluit 2000", available at: <http://maxius.nl/vreemdelingenbesluit-2000/hoofdstuk4/afdeling3>

14 See John Perry, "UK migrants and the private rented sector. A policy and practice report from the Housing and Migration Network", February 2012, available online at: <http://www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf>

15 Human Rights Watch, "The Law Was Against Me", November 2012, p. 30-32, available at: <http://www.hrw.org/reports/2012/11/08/law-was-against-me>

16 After civil society mobilization enabled her case to gain national media attention, Najlae was granted exceptional permission to return to France. See PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", pp.76-77.

17 See PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", p.76.

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18 See: Racist Violence Recording Network at: <http://www.unhcr.gr/1againstracism/category/racist-violence-recording-network>

19 Several articles about this case are available online. Elle, Claire Estagnasié, "Victime des violences conjugales elle est menacée d'expulsion" and Corsematin, Fabrice Laurent, "Bastia: elle dépose plainte pour violences et se retrouve menacée d'expulsion", 17 September 2011, (c.f. PICUM Bulletin, 26 September 2011).

20 PICUM interview with undocumented woman in London, UK in October 2011.

21 The Guardian, Diane Taylor, "UK Border Agency rejects calls to stop using force on pregnant detainees", 11 January 2013 (c.f. PICUM Bulletin, 22 January 2013).

22 "Open Access Now" is a Paris based coalition demanding that civil society and journalists have access to detention centers. Their website and full information on their campaign is accessible here: <http://www.openaccessnow.eu/>

23 Amnesty International, "Greece: irregular migrants and asylum-seekers routinely detained in substandard conditions", pp. 25-26.  
[http://www.amnesty.dk/sites/default/files/mediafiles/113/Greece\\_Irregular\\_Migrants\\_report-1.pdf](http://www.amnesty.dk/sites/default/files/mediafiles/113/Greece_Irregular_Migrants_report-1.pdf)

24 PICUM interview in Birmingham in October 2011.

25 See Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, available at:  
[http://www.legislation.gov.uk/ukpga/2012/10/pdfs/ukpga\\_20120010\\_en.pdf](http://www.legislation.gov.uk/ukpga/2012/10/pdfs/ukpga_20120010_en.pdf)

26 A report in the Guardian newspaper highlighted the increasingly vulnerability of migrants following the closure of two legal aid organisations noting that, "Around 10,000 clients are now without a representative to guide them through the maze of complex immigration rules, and the notoriously poor decision-making of the UK Border Agency. Many of these clients have suffered torture, mistreatment and trafficking. Services for these people are being taken away month by month", see Steve Medley, "Legal aid cuts are leaving migrants lost in a maze", The Guardian, 13 July 2011.

27 See Article 11(1) of Council of State Presidential Decree 90/2008 on the Harmonisation of the Greek legislation with the provisions of the Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005). Available at:  
[http://emn.ypes.gr/media/17801/p.d.%2090-2008\\_en.pdf](http://emn.ypes.gr/media/17801/p.d.%2090-2008_en.pdf)

28 FRA, "Fundamental rights of migrants in an irregular situation in the European Union", November 2011, p. 50

29 On 31 August 2012, the ruling by the Irish High Court in the case Hussein v The Labour Court & Anor [2012] IEHC 364 has left undocumented workers in Ireland without any protection from exploitation under current labour laws. In this case the High Court, Justice Hogan ruled that Section 2 of the Employment Permits Act 2003 prevents an undocumented worker from seeking redress under labour law because the employment contract cannot be recognised "in the absence of the appropriate employment permit". The claimant, Mr Mohammad Younis, was not aware of his irregular status, as his employer failed to renew his work permit. Full judgment available at: <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/3f2a0cfd0d10ccd80257a6b004e2e1b?OpenDocument>

30 See: Elena Rozzi, "Undocumented migrant and Roma children in Italy: between rights protection and control" in: Jacqueline Bhabha (ed.) "Children without a State: a global human rights challenge", MIT Press, Cambridge, Massachusetts, 2011, p. 192.

31 In addition to police and medical reports which are not always attainable for women in situations of extreme violence and control, authorities should accept testimonies from witnesses, psychological assessments and NGO testimonies as official evidence.

32 It is crucial that all victims of crime regardless of migration status would have equal rights in terms of assistance and remedies. The EU recently passed a Directive on the rights of victims of crime (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012), which clearly refers to rights of all victims regardless of migration status. We submit that the Committee should consider clearly reinstating a similar position, as the scope of the Directive would be frustrated, should EU Member States fail in implementing the provisions of the Directive that ensure access to justice and protection before, during and after legal proceedings for undocumented women who have been victims of violence. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:FULL:EN:PDF>