

PICUM Submission to the UN Special Rapporteur on extreme poverty and human rights

Consultation on Unpaid Work, Poverty and Women's Human Rights

31 May 2013

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 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, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. 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.

I. INTRODUCTION

This submission highlights PICUM's main concerns regarding the unpaid work of migrant workers, with particular attention to the domains of domestic and care work and the impacts on poverty, human rights and migrant women's economic empowerment. A number of specific country examples are provided by way of further illustration and to indicate innovative civil society responses to empower migrant workers. Several recommendations to States to improve the protection of migrant care workers are also elaborated.

Migrant domestic workers and carers are mainly women, and thus specifically vulnerable to gender-based forms of discrimination and violence.¹ While many women migrate in a bid to achieve justice and equality, the discriminatory policies which govern the migration process can often disempower them. Working in one of the few economic sectors with limited regulation, migrants employed in the domestic sector are particularly exposed to exploitation, violence, discrimination and abuse, including frequent under-payment or non-payment of wages. Domestic households are not usually subject to labour inspections, and employers and domestic workers themselves are not necessarily aware of existing labour law standards that need to be respected. Further, as work and residence permits are largely tied to a single employer, migrant workers risk losing their right to work and reside if they challenge abusive conditions and claim their rights. Once workers are undocumented, they face insurmountable barriers to accessing justice. Although international labour law provisions formally protect undocumented migrants, in many national contexts, the irregularity of the work contract is considered to invalidate it, thus precluding redress for violations of the contract and workers' rights. Furthermore, undocumented workers risk detection and deportation as a result of challenging abuse and making themselves known to labour inspectors, police and other authorities.

PICUM is particularly concerned that the lack of adequate labour law standards addressed at ensuring equal protection for undocumented migrants, and particularly undocumented women, working in the domestic sector further exposes them to exploitation, discrimination and abuse, and presents a barrier to women's equality and empowerment.

II. CARE WORK AND DEMAND FOR WOMEN MIGRANT WORKERS

The labour market's structural demand for migrant workers to meet care needs

While the 'care economy' provides a vital support by rearing, feeding, and curing the labour required for economic production, such roles are generally carried out by women and girls and tend to be uncounted and undervalued in both social and economic terms; in 1995 this unpaid contribution was valued at \$11 trillion a year.² This lack of formalisation and remuneration is reflected in a lack of adequate recognition in labour laws, and an increase in the demand for migrant workers to carry out care and domestic roles as women's participation in the formal labour market in developed countries increases. Even though both men and women work as domestic workers, this remains a highly feminized sector. According to the ILO more than 80% of all domestic workers are women.³ Globally, domestic work accounts for 3.5 per cent of women's employment, and in some regions as many as one in five (Middle East) or one in six (Latin America and the Caribbean) female workers are domestic workers. Further, the ILO estimates that domestic service is the single largest source of employment (around 90%) for girls under 16 across the world.⁴ The fact that most domestic workers performing informal, poorly paid and unprotected work are female is an example of multiple discrimination, which should be consistently addressed by labour migration policies, and can serve to perpetuate the gendered division of domestic labour.

In the past two decades, women have become an important component of international migration flows. The most recent UN figures indicate that 49% of the 214 million international migrants worldwide are women.⁵ In 2000, the number of migrant women exceeded the number of migrant men in Latin America and the Caribbean, North America, Oceania, Europe and the former Soviet Union. According to a study conducted by the Pew Hispanic Research Center, women constitute 39.4% of the adult undocumented population in the US and 58% of undocumented women in the US are in the labour force.⁶ In Europe, in 2010, women averaged 18% of the migrants apprehended in the EU 27.⁷

Despite the increasing demand for female migrant 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 associate and organise with other workers.⁸

The lack of adequate regular channels for migration and secure labour conditions

The lack of formal recognition of domestic and care work is also reflected in a lack of regular migration channels to meet labour market demands. In many European Union countries, work permits for domestic work are highly restricted. Where they are available, they are usually tied to one employer, creating a power imbalance and dependency on the employer. This relationship exposes domestic workers to exploitation and abuse including under-payment and non-payment of wages, and can easily result in them losing their right to work and reside in the destination country, if the employer does not renew their employee's permit or ends the employment relationship. Under such conditions, access to redress and justice for violations of worker's rights are highly limited. Further, gender-based violence increases the likelihood that migrant women employed as domestic workers are exposed to systematic violence, abuse and discrimination by employers, and lose their regular status. The exclusionary and non-rights based systems that govern a highly feminised labour migration and the domestic work sector, mean that a significant number of female migrant domestic workers are at risk of becoming undocumented through workplace exploitation and administrative mismanagement by employers.⁹

While reliable estimates on the number of undocumented migrants employed in the domestic sector have not yet been developed, the European Union Fundamental Rights Agency (FRA) has noted that an estimate could be implied from data on recent regularisations in Spain and Italy, according to which about 500,000 irregular third-country nationals employed in domestic work have been regularised in those countries since 2002.¹⁰

A. No right to change employer: labour migration policies in Cyprus

Like in many other countries in the European Union, Cypriot labour migration policy ties migrant domestic workers' visas to a specific employer; however, if their employer fails to register them, either intentionally or due to 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!"*¹¹

A dependent status and denial of recourse is compounded by a recruitment mechanism which disadvantages migrant domestic workers even before arrival. Mandatory fees to private agents and registration charges mean that migrants amass debts of up to €5,000 in order to travel to and work in Cyprus. Until 2008, the minimum monthly wage for migrant domestic workers was fixed at €256, and it is currently only €326. The rate is significantly lower than the national minimum wage, as the government allows deduction of food and accommodation expenses. However, even this low wage is not guaranteed.

Even if an undocumented worker is not arrested on filing a complaint, the Labour Office will refuse to examine the complaint because the migrant is not in a "legal labour relationship". The NGO KISA reported that: *"domestic workers who report sexual harassment are caught and deported immediately because the employer denies he did anything. It is always the same in these cases. In one case, an employer found out that the domestic worker had cancer but instead of taking her to a hospital to get her treatment, he decided to terminate her contract to make her irregular so she would be deported"*.¹²

B. Concerns surrounding diplomatic impunity

Many PICUM members express concern about the impunity enjoyed by diplomatic staff that exploit 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"*.¹³

As part of the campaign to enable migrant domestic workers employed by diplomats to change employer in the United Kingdom (UK), members of the NGO Justice for Domestic Workers (J4DW), together with the advice centre Kalayaan, have met with representatives of the House of Parliament and House of Lords to describe their experiences of extreme labour exploitation. Data collected by Kalayaan on the employment conditions of domestic care workers, mostly women, show that migrant domestic workers are often exploited and abused by their employers. In 2012, all workers holding a migrant domestic workers visa reported that they were paid less than £100 per week, 62% of them were paid no salary at all, and 85% did not have their own room so slept with the children or in the kitchen.¹⁴ As explained by Kalayaan, *"the parliamentarians met workers that had become undocumented because of exploitation by diplomats"* and, shocked by the realities of the workers' lives, many were keen to help progress these individual cases and firm that the right to change employer had to be addressed. The delegation enabled Kalayaan to meet with the Immigration Minister on 24 November 2009 to discuss the issue. However, while the Minister agreed in principle the need to change the visa conditions so that domestic workers for diplomats could change employer, there have been no signs of change yet.¹⁵ Further, on 6 April 2012 the right that domestic workers in private households, not working for diplomats, had to change employer was removed, thereby tying all work permits for domestic work to a single employer.¹⁶

Although migrant domestic workers currently make an important social and economic contribution to European households and societies, insufficient regular migration channels to properly address labour demand contribute to further push undocumented migrant women to the margins of society, augmenting their exposure to gender discrimination and violence by limiting their autonomy and independence. Inflexible labour migration frameworks enable exploitative employers to deliberately undermine their domestic workers' residence status as a means of controlling and preventing them from reporting abuses to the police or labour authorities. Inflexible and restrictive visa regimes force migrants to choose between staying in exploitative situations or losing their status.¹⁷

In this context, while migration has great potential for economic emancipation and empowerment of women, the conditions in which many migrant women migrate and work place them in situations of increased vulnerability to exploitation and violence, restricted access to essential services and justice, and cycles of poverty, with serious impacts on undocumented women's human rights and economic empowerment.

III. KEY IMPACTS ON UNDOCUMENTED WOMEN'S HUMAN RIGHTS, POVERTY AND ECONOMIC EMPOWERMENT

Because of their irregular residence status and social isolation, undocumented migrants employed as domestic workers and carers, mostly women, are highly susceptible to violations of their human rights, including violations of labour rights and exploitation, violence, limited access to justice, and restricted access to social rights.

Labour rights violations and exploitation

The principle of safeguarding decent and fair working conditions, including fair remuneration, compensation for work accidents and rest periods for all workers, including domestic workers and undocumented workers, is well-established in international law instruments.¹⁸ However, although guarantees of fair working conditions may be provided for in national law, their applicability to domestic workers and undocumented migrants is often not expressly ensured within national legal frameworks.

As noted by the European Union Fundamental Rights Agency (FRA), the development of national legal frameworks that could be applicable to all domestic workers, including undocumented migrant workers, would establish "legal clarity on issues such as minimum pay, including a maximum ceiling for payments in kind for board and lodging; sick leave; compensation for work accidents and rest periods, as well as adequate accommodation standards".¹⁹

As a result, domestic workers with insecure or irregular migration status frequently experience violations of labour rights, including under-payment and non-payment of wages, long working hours without choice or compensation, very limited rest periods, degrading and poor working and living conditions, confiscation of identity documents and psychological, physical (including sexual) threats and violence.

Forced labour of domestic workers and the approach of national courts: *United States of America v. Mabelle de la Rosa Dann*

Due to the lack of a residence permit, risk of deportation by immigration authorities and social isolation, undocumented migrants employed as domestic workers are particularly subject to abusive conditions, exploitation and, in the worse cases, become victims of forced labour.

The first human trafficking trial in the Northern District of California, *United States v. Mabelle de la Rosa Dann*²⁰, concerned the case of Zoraida, an undocumented woman originally from Peru who had been forced to work as a domestic worker for nearly two years. Zoraida initially started working as a domestic worker for her exploiter, Mabelle de la Rosa Dann, under the promise of a well-paid job and good living conditions, but for almost two years, Zoraida was forced to cook, clean and provide childcare for Ms Dann's family without payment. Ms Dann initially kept Zoraida working by falsely promising future payment, but soon decided to confiscate Zoraida's passport and started to subject her to humiliating and degrading treatment that led Zoraida to believe that she would be falsely accused of theft and reported to the immigration authorities if she fled. Zoraida was never paid for her work and was forced to work more than 15 hours a day to care for Ms Dann's three children and household. Ms Dann barred Zoraida from watching television, listening to the radio, or communicating with her family and friends in Peru, and limited the amount of food she was allowed to eat. On 22 July 2011, the ninth circuit of the United States Court of Appeal sentenced Ms Dann to five years imprisonment and ordered her to pay \$123,740.34 restitution for forced labour.

Lack of access to justice

In line with the international obligations set out in the ILO Convention No. 189 Concerning Decent Law for Domestic Workers²¹ and in the Convention on the Elimination of All forms of Discrimination Against Women²², national governments shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, ensure fair working conditions, 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 international legislation can only be guaranteed with the availability of effective domestic remedies against labour exploitation, as legal rights are only meaningful if and when they can be asserted and enforced.

However, in EU member states, despite their increased exposure to ill-treatment, undocumented migrants are at significant risk of arrest and deportation if they seek assistance from the police and labour authorities, 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, be it for labour rights violations or criminal justice for acts of violence.

Undocumented migrant workers are also denied the right to free legal aid and often prevented from being party to labour law proceedings as they are deported to their countries of origin before legal action has got under way.

The structural barriers that prevent vulnerable migrant workers from pursuing legal remedies and bringing their perpetrators to justice contribute to a worrying culture of impunity for exploitation of undocumented migrants and especially against women in the European Union. Because they have nowhere to turn to for help, undocumented women remain disproportionately vulnerable to physical, sexual and labour-related abuse.

By removing undocumented migrants' access to justice and punishing those victims who report violence, national governments contribute to making undocumented migrant workers a "zero risk" victim whom perpetrators can coerce to engage in degrading or exploitative acts, or threaten to denounce if they seek police assistance. Often, the prohibition for migrants in an irregular situation to work appears to have priority over claims resulting from labour law, such as the right to compensation for withheld wages or compensation for work accidents.²³ Indeed, in some EU member states, there are explicit legal provisions that prevent migrant workers from seeking redress in labour courts if they are undocumented.²⁴ In others, without such legislation, the reality is much the same in practice. As undocumented migrants 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. Even when a contract has been signed, it is usually considered invalid, due to the irregular status of worker, and thus unenforceable. These factors increase undocumented workers' dependency on employers and diminish the likelihood that they will denounce incidents of violence, abuse or other labour or criminal law violations. In practice, the main obstacles to obtaining unpaid wages are the difficulty in proving a work relationship and conditions (such as the actual number of hours worked), and having the work relationship recognised in law despite the irregular status of the employee.

Lack of access to justice: <i>Hussein v The Labour Court & Anor</i>
--

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. ²⁵
--

Finally, a lack of knowledge about labour rights, immigration rules and the overall legal system hinders undocumented migrants' 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 migrants might be unaware of favourable legal provisions that would allow them to seek legal redress. Migrants' understanding and expectations of their legal rights can also depend upon effective and available translation services and access to legal aid, as migrants' lack of knowledge about their rights may be compounded by a lack of accessible information in their own language and low socio-economic status that prevents them from seeking private legal assistance.

Violence

The lack of workplace and labour rights protection and access to justice for domestic workers, alongside the dependent visa scheme, place domestic workers in a position of vulnerability to psychological and physical, including sexual, violence. Gender discrimination increases migrant women's likelihood of being subjected to violence, and when combined with an irregular status, contributes to a worrying culture of impunity within the European Union. In many countries undocumented women may face arrest, detention and deportation if they make contact with the police to report violence or abuse. The barriers facing undocumented women to access redress for abuses in the workplace increase their experiences of violence.

For some undocumented migrant women, their experience of life in Europe has led them to the conclusion that gender-based violence is an expected and socially tolerated consequence of their irregular status. Their daily struggle for survival is a major factor, particularly in countries where there is a high chance of detection. This situation coincides, especially in some EU member states, with increasingly worrying xenophobic public and political sentiment, which can in turn fuel violence by employers and discrimination by service providers, police and labour authorities.

Lack of access to social rights, poverty and disempowerment

In Europe, the increased linkage between migration control mechanisms and access to basic services means that undocumented migrants experience numerous barriers to empowerment. Despite their unprotected status and heightened exposure to ill-treatment and exploitation, numerous legal, administrative and financial barriers prevent undocumented workers from accessing basic social rights, such as healthcare or housing. For example, undocumented live-in domestic workers rely on their employers to provide them adequate and humane living accommodation, as well as sufficient and quality food. This situation significantly increases undocumented worker's status of dependency on their employers and their vulnerability to become homeless if they decide to leave an abusive employer. As discussed, undocumented migrant domestic workers, mostly women, also face increased risks of violence, including sexual violence. However, the popularity of measures that seek to control irregular migration through limiting access to essential services and social protection, and thereby encourage voluntary returns, mean that undocumented workers are frequently unable to access homeless shelters, obtain physical, including sexual and reproductive, health care or mental health care, or receive financial assistance.

This policy-driven exclusion and removal of social protection serves as a significant barrier to undocumented migrants' meaningful participation in society. Such policies risk compounding gender inequalities existing in our society and further marginalising migrant women employed as domestic workers. While European governments recognise health and education as fundamental standards to improve the situation of vulnerable women abroad, they implement policies which effectively strip these same women of their innate rights and entitlements should they become undocumented within EU borders.

Being denied access to social services and facing exploitative working conditions, undocumented migrant workers and their families face higher risks of poverty and social exclusion. The poor and exploitative working conditions they are often forced to accept can lead to disempowerment and impoverishment of undocumented migrant workers and their families. Domestic work is still characterised by widespread violations of human and labour rights, and by the close control that employers might be able to impose on undocumented migrants, who are forced to accept precarious and irregular employment relations and a life lived at or under the poverty threshold.

IV. CIVIL SOCIETY RESPONSES TO EMPOWER UNDOCUMENTED MIGRANT WORKERS

Ireland - Migrants Rights Centre in Ireland (MRCI) and the Domestic Workers Action Group (DWAG)

In response to the large number of domestic workers contacting MRCI with cases concerning the exploitation and poor working conditions of migrant domestic workers, in 2003, the Domestic Workers Action Group (DWAG) was established with the goal to affect positive policy change in respect to enhancing the terms and conditions of domestic work as a sector in Ireland. A long-term goal of the group is to establish a Joint Labour Committee for domestic work, which would regulate and set minimum rates of pay and standards in the sector. The group has developed a framework, but there are challenges in finding employer bodies to negotiate this tripartite agreement.

The DWAG is a group formed by migrant women employed as domestic workers who started a campaign to improve migrant domestic workers' rights and working conditions in this sector. In 2007, the group initiated a process to develop protections for domestic workers in Ireland. This process involved MRCI, DWAG, Irish Congress of Trade Unions (ICTU) and the Services, Industrial, Professional and Technical Union (SIPTU). In conjunction with the Labour Congress and SIPTU, a code of practice was developed to reflect the lived reality of migrant domestic workers in Ireland. The code is a voluntary set of recommendations that promotes best practice for employing persons in the private home sector. Although not legally binding, the code is evidence of migrant domestic workers engaging at policy level in processes that directly impact on their lives.²⁶

Czech Republic - Equal opportunities on the threshold of Czech homes

Domestic and care work has become an important labour sector for women migrant workers in the Czech Republic. However, reliable data about the number of migrant domestic workers are not yet available. The Czech Ministry of Labour and Social Affairs has only formally registered 49 domestic workers to date. Based on these statistics, the national government considered domestic work as marginal to the Czech labour market and therefore refused to ratify the ILO Convention No.189 in 2012.²⁷

However, according to ILO statistics, there are approximately 3,000 persons employed by private households in the Czech Republic. Academics estimate that there may be 12% of irregular migrants employed as domestic workers in the Czech Republic.²⁸ Even though paid domestic work is formally considered a job in the Czech Republic and therefore falls under the labour legislation, domestic workers still face numerous practical barriers for their labour rights to be recognised on an equal basis as workers employed in other sectors. Underpayment and long working times are a common experience of migrant women employed in domestic households. This is especially true for live-in domestic workers who lack privacy and time to rest and who also often face social isolation and physical and mental abuse.

With the aims of reducing the vulnerability of undocumented migrant women employed as domestic workers and raising public awareness about migrant domestic workers in the Czech Republic, the Association for Integration and Migration (NGO), People in Need, Migration Awareness Programme (NGO), the Economics Institute of the Academy of Sciences of the Czech Republic (Academics) and the advertising agency Ogilvy & Mather launched the project "*Equal opportunities on the threshold of Czech homes*".²⁹ The project will monitor and analyse the real situation and obstacles migrant domestic workers face through quantitative research, and will address the issue of underpaid work and other inequalities experienced by migrant workers through the provision of social and legal aid services.

The Netherlands - the RESPECT Network: Campaigning for the Rights of Migrant Domestic Workers in Europe and Internationally

The RESPECT Network, a European network of migrant domestic workers' self-organisations, trade unions, NGOs and supporters initially founded in 1998, actively campaigns for the rights of all migrant domestic workers

in private households, both women and men, regardless of immigration status. The RESPECT network facilitates the empowerment of migrant domestic workers and advocates for the recognition of work in the private household as proper work, for ensuring the protection of the rights of all migrant domestic workers as workers, and for migrant domestic workers to be granted an independent residence status based on their employment. RESPECT and its network members actively campaign for the ratification of the UN Convention for the Rights of All Migrant Workers and Members of their Families and for the ratification of ILO Convention No. 189.

In the Netherlands, research carried out by the RESPECT Network, in cooperation with TRUSTED Migrants and the Commission for Filipino Migrant Workers (CFMW) highlighted that national legislation does not recognise domestic work in the private household as proper work, and therefore is not strictly subject to labour law safeguards and not typically accessible to labour unions. The report highlights that undocumented migrants tend to engage in informal domestic work and that it is common for Filipino domestic workers to have a range of 5 to 11 employers at any one time.³⁰ The Commission for Filipino Migrant Workers also reports that most undocumented domestic workers are fearful to report violations of their rights or experiences of abuse and threats, as they fear the consequences of losing their jobs and eventually being deported.³¹

V. CONCLUSION AND RECOMMENDATIONS

Ensuring fair working conditions for undocumented migrants employed as domestic workers would be an effective way of reducing poverty for domestic workers, their families and communities. Domestic work is an important source of employment and income for millions of, largely, migrant women. Ensuring access to fair working conditions, services and justice for undocumented migrants would be a major step towards rooting out poverty and ensuring access to fundamental rights for all. The adoption of exclusive migration, labour and social policies, not only seriously undermines social cohesion, but can also entail enhanced human and social costs for undocumented women, such as long-term separation from their families, poverty, and abusive and exploitative work situations.

In light of the reasons detailed above, PICUM calls for the UN Special Rapporteur on extreme poverty and human rights to take into account and to give careful consideration to the following recommendations:

1. Promote regular channels for migration for domestic work.

National governments should develop, and make accessible, avenues for migrants to work in the domestic sector, with an independent residence status and right to change employer. The UN Special rapporteur on the human rights of migrants, François Crépeau, in his report on management of the external borders of the European Union and its impact on the human rights of migrants presented to the UN Human Rights Council on 27 May 2013, called on the European Union to promote more regular channels for low-skilled workers: *“Within EU institutional and policy structures, migration and border control have been increasingly integrated into security frameworks that emphasize policing, defence and criminality over a rights-based approach. [...] Opening up more regular migration channels, including for low-skilled workers, thus reflecting the real labour needs of the EU, would lead to fewer irregular border crossings and less smuggling of migrants”*.³²

2. Ratify ILO Convention No. 189 concerning decent work for domestic workers, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and apply international labour law standards to domestic work.

National government should ratify the International Labour Organisation 2011 Convention No. 189 and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³³ This is a crucial step towards the adequate protection of domestic workers' fundamental and labour rights as countries ratifying the ILO Convention and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are required to take measures to ensure fair and decent working conditions for all workers and to prevent abuse, exploitation and violence in

domestic employment. They must ensure equal treatment between all domestic workers and other workers as regards compensation and benefits, for example in the case of maternity.

3. Build a firewall between service provision and immigration enforcement.

A firewall between public service provision and justice and immigration control should be erected, in law and in practice, in line with the guidelines provided by the Fundamental Rights Agency of the European Union in relation to detection and apprehension of irregular migrants.³⁴ The sharing of personal data between service providers and immigration authorities should be prohibited, including in the context of access to justice and redress.

4. Ensure access to protection and redress for migrant domestic workers who have suffered exploitation and violence, regardless of migration status.

National governments must remove all legal, administrative and practical obstacles for undocumented migrant domestic workers to report abuse and seek protection and redress for violations of rights. Steps must be taken to ensure that justice is made safe, effective and accessible; protecting migrants when they report abuse, and facilitating prosecution of perpetrators regardless of the status of their victim. Relevant measures to be taken should include: prioritizing police and labour authorities roles in upholding rights and justice over immigration enforcement; recognizing the validity of work relationships and violations regardless of the status of the employee; guaranteeing the suspension of any expulsion proceeding or removal directions when seeking access to labour or criminal justice courts; and guaranteeing access to support services, such as secure accommodation and psychological and social support for domestic workers who have suffered abuse and exploitation. National governments should grant specific consideration to the unique barriers and obstacles faced by undocumented migrant women employed in the domestic sector when seeking access to justice and equality before the law.

5. Reform national law, policy and practice to ensure equal access to social rights regardless of immigration status.

International law guarantees equal access to rights such as health care services and homeless shelters regardless of migration status. National governments must review and reform law and policy that restricts access to basic rights and services on the basis of migration or residence status, and proactively address practical, administrative and financial obstacles to such access.

6. Undertake a gender-sensitive review of existing labour laws and policies at both EU and national level in order to ensure access to justice and legal redress before national labour courts.

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. This is particularly true in the domestic work sector, where undocumented migrant women who are subject to exploitation and abuse, due to their situation of dependency on their employer, face increased risks of becoming victims of violence on the workplace and face legal, administrative and practical barriers to access justice and seek legal redress before labour courts. A gender-sensitive review of existing laws and policies at both EU and national level must be undertaken in order to guarantee and protect the human rights of undocumented migrant women employed as domestic workers.

END NOTES

- ¹ International Labour Office (ILO), "Domestic workers across the world: Global and regional statistics and the extent of legal protection", Geneva 2013, p. 3, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.
- ² This is compared to a monetised output of \$23 trillion a year (United Nations Development Programme (UNDP), 1995 *Human Development Report*, c.f. Liepollo Lebohng Pheko, "Meeting the challenges of the Millennium Development Goals", Agenda, Vol. 26(1), 2012.
- ³ International Labour Office (ILO), "Domestic workers across the world: Global and regional statistics and the extent of legal protection", Geneva 2013, p. 3, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.
- ⁴ ITUC, "Action Guide: Decent work, decent life for domestic workers", 2010, available at: http://www.ituc-csi.org/IMG/pdf/ITUC_dwd_AnglaisWEB.pdf.
- ⁵ See: United Nations Department of Economic and Social Affairs, Population Division, International Migration 2009, available at: www.un.org/esa/population/publications/2009Migration_Chart/ittmig_wallchart09.pdf.
- ⁶ See: J. Passel, D. V. Cohn, "A Portrait of Unauthorized Immigrants in the United States", 14 April 2009. The report highlights that there were 6.3 million men, 4.1 million women and 1.5 million children under age 18 living in the United States as unauthorized immigrants in March 2008.
- ⁷ Eurostat, *Enforcement of Immigration Legislation Statistics*, 2011, available at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/population/introduction>.
- ⁸ See General Recommendation No. 26, "Recommendation on Women Migrant Workers", Committee on the Convention on the Elimination of All Forms of Discrimination Against Women, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.
- ⁹ For more information see: PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", March 2012, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ¹⁰ See: European Union Agency for Fundamental Rights (FRA), "Migrants in an irregular situation employed in the domestic work: Fundamental rights challenges for the European Union and its Member States", European Union Agency for Fundamental Rights (FRA), July 2011, available at: http://fra.europa.eu/sites/default/files/migrants_in_an_irregular_situation_employed_in_domestic_work_en.pdf. Note these figures may be higher due to recurring loss of status and temporary regularisation for the same individuals during the large-scale regularisation programmes that occurred periodically during this time.
- ¹¹ For further information see: PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", p. 50, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf> and "Migrants and the Right to Equal Treatment in Cyprus", PICUM, March 2013, available at: <http://picum.org/picum.org/uploads/publication/Migrants%20and%20the%20Right%20to%20Equal%20Treatment%20in%20Cyprus.pdf>.
- ¹² For more details on these and other cases see KISA, "Latest News", available at: <http://www.kisa.org.cy/EN/news/index.html>. See also: PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", March 2012, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ¹³ PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", p. 21, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ¹⁴ Kalayaan, "Justice for Migrant Domestic Workers", 2013, available at: <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>.
- ¹⁵ PICUM, "Strategies to End Double Violence Against Undocumented Women. Protecting Rights and Ensuring Justice", p. 93, available at: <http://picum.org/picum.org/uploads/publication/Double%20Violence%20Against%20Undocumented%20Women%20%20Protecting%20Rights%20and%20Ensuring%20Justice.pdf>.
- ¹⁶ See: UK Immigration Rules, Part 5, Rule 159A, Requirements for leave to enter as a domestic worker in a private household, available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/>
- ¹⁷ In March 2001, a 20 year old Russian dancer employed 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 of the European Convention on Human Rights which prohibits slavery, servitude and forced labour. See: *Rantsev v Cyprus and Russia* [2010] ECHR 25965/04 (7 January 2010).
- ¹⁸ See for example: International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention for the Protection of the Rights of All Migrant Workers (ICMW), ILO-Convention No.143.
- ¹⁹ See: European Union Agency for Fundamental Rights (FRA), "Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States", p. 9, available at: http://fra.europa.eu/sites/default/files/migrants_in_an_irregular_situation_employed_in_domestic_work_en.pdf.
- ²⁰ U.S. v. Dann, 652 F.3d 1160 (9th Cir. 2011), available at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2011/07/22/10-10191.pdf>.
- ²¹ ILO Convention No. 189 Concerning Decent Law for Domestic Workers, 16 June 2011, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:2551460.
- ²² See Article 2, Convention on the Elimination of All Forms of Discrimination Against Women, available at: <http://www.un.org/womenwatch/daw/cedaw/>.

-
- ²³ European Union Agency for Fundamental Rights (FRA), “*Fundamental rights of migrants in an irregular situation in the European Union*”, November 2011, p. 50
- ²⁴ The Czech Republic, Estonia, Lithuania and Slovakia do not recognise the right to compensation for withheld wages. See: European Union Agency for Fundamental Rights (FRA), “*Fundamental rights of migrants in an irregular situation in the European Union*”, November 2011, p. 50.
- ²⁵ 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>.
- ²⁶ For more information see: Migrant Rights Centre Ireland (MRCI), “*Working Paper: Who cares? The Experience of Migrant Care Workers in Ireland*”, November 2012, available at: <http://www.mrci.ie/wp-content/uploads/2012/12/Who-Cares-The-experience-of-Migrant-Care-Workers-in-Ireland-Nov-2012.pdf> and International Domestic Workers’ Network, “*Myths & Realities about Domestic Workers. What they say and what we say. Why domestic workers need strong regulation for our rights*”, Geneva, June 2011, available at: <http://www.mrci.ie/wp-content/uploads/2012/10/Myths-and-Realities-about-Domestic-Workers.pdf>.
- ²⁷ See: P. Redlová, Hemanová, “*Why did Czech government refuse to ratify ILO Convention on Decent Work for Domestic Workers?*”, 2010, available at: <http://migrationonline.cz/en/e-library/why-did-czech-government-refuse-to-ratify-ilo-convention-on-decent-work-for-domestic-workers>.
- ²⁸ D. Drbohlav, L. Lachmanová et al., “*Irregular Economic Activities of Migrants in the Czech Republic*”. Geneva: International Labour Organization, 2009, available at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178151.pdf.
- ²⁹ More information is available on the project’s website at: www.pracovnicevdomacnosti.cz.
- ³⁰ Feminist Participatory Action Research, “*Labour migration from a human rights perspective: The story of migrant domestic workers in The Netherlands*”, 2010, p. 19, available at: http://www.gaatw.org/FPAR_Series/FPAR_RESPECT.2010.pdf.
- ³¹ For more information see: Commission for Filipino Migrant Workers: <http://www.cfmw.org/>.
- ³² UN, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, “*Regional study: management of the external borders of the European Union and its impact on the human rights of migrants*”, p. 20, para. 84, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf.
- ³³ ILO Convention concerning decent work for domestic workers, C189 - Domestic Workers Convention, 2011 (No. 189), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:2551460. See also: UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 of 18 December 1990, available at: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>.
- ³⁴ European Union Agency for Fundamental Rights (FRA), “*Apprehension of migrants in an irregular situation – fundamental rights considerations*”, available at: http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf.