

PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS (PICUM)

Comments on Draft General Recommendation No. 19: Violence against Women

To the Committee on the Elimination of Discrimination against Women (cedaw@ohchr.com)

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PICUM welcomes the Committee on the Elimination of Discrimination against Women (the “Committee”)’s update of General Recommendation No. 19, and in particular its clear recognition of women’s frequent experience of intersecting forms of discrimination, as well as the Committee’s concrete recommendation that protection and support measures be available to all women, regardless of their residence status. PICUM also welcomes the Committee’s invitation for broad input on the draft from all interested parties.

PICUM was founded in 2001 as an initiative of those providing humanitarian support and assistance to undocumented migrants, impelled by the need for a representative, informed and respective voice on their realities and rights. With over 158 members across 38 countries, PICUM’s work encompasses a range of issues related to the rights of people with an irregular status – including access to healthcare, housing, education and labour rights – as well as the specific human rights challenges confronting undocumented women, children and families. PICUM is a leading voice challenging the criminalisation of undocumented migrants and those who seek to assist them.

For its reference and consideration, PICUM would like to draw the Committee’s attention to two recent publications providing evidence and analysis of the challenges confronting people in an irregular situation in accessing justice in Europe, and in accessing basic services, including sexual and reproductive health care, both of which are relevant to women’s right to be free from gender-based violence:

- PICUM (2015), [GUIDE TO THE EU VICTIMS’ DIRECTIVE: ADVANCING ACCESS TO PROTECTION, SERVICES AND JUSTICE FOR UNDOCUMENTED MIGRANTS](#).
- PICUM (2016), [THE SEXUAL & REPRODUCTIVE HEALTH RIGHTS OF UNDOCUMENTED MIGRANTS: NARROWING THE GAP BETWEEN THEIR RIGHTS AND THE REALITY IN THE EU](#).

I. COMMENTS ON SCOPE

Paragraph 11

The draft General Recommendation rightly underlines the fact that some women experience intersecting forms of discrimination (see, e.g., paras. 11, 15). The enumerated factors that may exacerbate a woman’s experience of discrimination in para. 11 include her indigenous or minority status, colour, marital and/or maternal status, urban/rural location, disability, property ownership, and being lesbian, bisexual, transgender or intersex.

- **PICUM urges the Committee to explicitly include migration or residence status and nationality among the factors listed in the main text of para. 11 (and not only in the footnote) as a basis on which women experience discrimination.** Such discrimination is reflected in women’s exclusion, often as a matter of law or official policy, from public services including health care, law enforcement and the judiciary – to the detriment of their ability to access support, protection and justice, and broader efforts to eliminate gender-based violence.

II. COMMENTS ON STATES' GENERAL OBLIGATIONS UNDER CEDAW

Paragraph 13

Across the globe, women without proper documentation are deterred from turning to public authorities for assistance and redress because of their migration status and the prioritization of immigration enforcement over their rights and safety. When there is a justified belief that approaching public authorities will lead to being detained and deported, rather than to a remedy to one's situation, this creates a powerful disincentive for women to approach public authorities for help and results in chronic under-reporting of incidents of abuse and violence committed against them, as well as impunity for those who perpetrate these crimes. Such institutionalised discrimination perpetuates gender-based violence, disempowers women, and undermines law enforcement efforts and confidence among migrant communities in authorities' ability and willingness to protect them. In view of this, PICUM urges the Committee to:

- Make clear, in **para. 13.a)i.**, that **acts and omissions that constitute gender-based violence include those that, as a matter of legislation, official policy or practice prioritise objectives such as immigration control over women's safety**, and encompass related omissions such as the failure to duly investigate crimes committed against undocumented women, to provide them with access to shelter, protection or support services, either expressly or because they are deterred from approaching the authorities in the first place. **Positive actions by states and their agents, such as the apprehension of individuals near facilities providing basic services, such as health care, also have a strong deterrent effect that undermines women's right to be free of gender-based violence.** Various institutions have denounced these practices as being contrary to fundamental rights.¹ The Committee should make clear that they are also contrary to states' obligations under CEDAW.

Proposed language: States parties must ensure that laws, policies, programmes and procedures do not directly discriminate against women, and also that they do not indirectly discriminate against them by prioritizing other considerations, such as immigration enforcement, over women's safety. This means that women who have experienced violence must be able to readily access necessary support services as well as the full protection of law enforcement and the criminal justices process, without discrimination. It is required that laws, policies, programmes and procedures that have the effect of deterring women from seeking support, protection and redress be repealed.

- Clarify, in paragraph **13.a)ii.**, where the Committee notes states responsibility to prevent these acts and omissions through training and the adoption, implementation and monitoring of relevant legal or administrative frameworks, and codes of conduct, that **such norms should include express provisions prohibiting the sharing of information between relevant public authorities (law enforcement, the judiciary, prosecutors, providers of basic services, including health care, etc.) and immigration authorities.** The Committee should also emphasise the need for **training for law enforcement and other officials in how to build trust in diverse communities.**

¹ European Union Agency for Fundamental Rights (2013), "Apprehension of migrants in an irregular situation – fundamental rights considerations," https://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf; European Commission against Racism and Intolerance (March 2016), "ECRI General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination," <http://reliefweb.int/sites/reliefweb.int/files/resources/REC-16-2016-016-ENG.pdf>.

Proposed language: *Such rules should protect women’s privacy and confidentiality and expressly forbid the sharing of information between public authorities charged with guaranteeing their safety (law enforcement, the judiciary, prosecutors, etc.) and immigration authorities. Mandatory training should be provided to law enforcement officials on how to work with diverse communities, and on how to build trust both as a way to promote the community engagement and women’s rights and to address under-reporting, as well as to support law enforcement objectives.*

Paragraph 14

- Explicitly recognize, in paras. **14.a)-c)** that, **in view of the intersecting forms of inequality confronting women, eliminating violence against women requires not only that legislation be gender-sensitive but also that laws do not discriminate on any other basis – such as migration status.** Undocumented women, for instance, are routinely turned away from women’s shelters, whose funding is limited to servicing women who are nationals of that country. Women who report criminal acts committed against them have been deported before criminal proceedings could get properly underway. Women whose migration status depends on their spouse avoid leaving an abusive relationship for fear that they will lose their right to reside – particularly when children are involved.
- Proposed language: *Legislation, police or practice that has the effect of inhibiting or deterring women’s access to necessary services, support, protection and justice must similarly be repealed, because it creates a climate of impunity for perpetrators, increases women’s exposure to violence and denies their rights under the Convention.*

II. COMMENTS ON THE COMMITTEE’S RECOMMENDATIONS

Paragraph 15

Proposal for a new section

PICUM proposes that the Committee include a fourth section focusing on the importance of comprehensive policies, sufficient funding and the vital role of NGOs. The new section would recognise that a coordinated and comprehensive policy, based on the human rights of all women, is needed to properly address violence against women, and to ensure that relevant measures and legislation are sufficiently integrated and coordinated; as well as the question of funding, given the vital importance of investing in the engagement of women and girls and the organisations that support them. Women and girls need to be active agents of change to overcome violence against women and promote gender inequality.

Proposed language:

- *Ensure that policies on violence against women and girls are nation-wide, coordinated and long-term and follow an integrated and holistic approach based on the human rights and the safety of all women and girls, irrespective of their migration or other status.*
- *Establish one or more well-funded coordinating bodies for the effective implementation of such policies, including experts from women’s NGOs and other NGOs with experience working with particularly marginalised women, such as undocumented migrants, as well as academics working to eliminate violence against women and girls.*
- *Provide adequate, sustainable and long-term funding, based on secure funding streams, to implement the above policies.*
- *Promote and support women and girls, including survivors of violence, to organize and empower themselves and fund their activities.*
- *Recognize and strengthen the important role of women’s NGOs (particularly those specialist NGOs working with marginalised women such as undocumented women) in eliminating violence*

against women and girls and provide sufficient funding to them to run empowering women's support services in all regions and at all levels and to carry out prevention work and awareness raising.

Prevention

- On the specific question of prevention, **paragraph 15.a)** recommends that states repeal discriminatory laws. **It should be made clear that such laws include those that directly or indirectly hinder women's access to essential services, including health care, education, protection and justice, including on the basis of their migration status.** Indeed, in promoting women's empowerment and their right to be free from violence, health care is a critical component. Health care providers are often the first to become aware of a woman's experience of violence, and can play a critical role in connecting her to other sources of support and assistance. Women's ability to access to health care, particularly sexual and reproductive health services, is closely linked to their empowerment and women's ability to control their bodies and their privacy. Moreover, women need to be able to exercise social and economic rights to be able to live free from violence. This encompasses more than just access to services, protection and justice for survivors, but is indispensable if prevention is to be a serious objective.

Proposed language: Ensure that all women survivors of violence can exercise their economic and social rights, such as the right to financial support when they have no income of their own, the right to child care, to free health care and affordable housing, without discrimination. Education and quick access to the labour market and to employment, as well as free child care facilities, are also paramount to realize the right to live free from violence, and should be available to all women, without discrimination.

PICUM also urges the Committee to adopt several new recommendations under this heading:

- *Ensure prevention, protection and redress for violence by implementing clear, legal binding rules creating a **firewall** that precludes the sharing of data between public authorities charged with serving and protecting residents, as well as service providers, on the one hand, and immigration authorities, on the other hand.*
- *Ensure that women on **spouse dependent visas** have access to autonomous residence status so that they are not deterred from leaving abusive relationships.²*
- *Ensure that all women are able to obtain an **order of protection** for their and their children's safety, irrespective of their migration status.*

Protection and Redress

- With respect to protection and redress, **the availability of legal aid and specialized services, as described in 15.a)iii., should be without discrimination, including with respect to migration status.** And accessible information should include information about women's rights and existing services, and should be available not only through the authorities, but also by way of civil society organisations and service providers familiar to and trusted by survivors, including the most marginalised.

Proposed language: All survivors of violence should be able to access, without discrimination, low cost or free legal aid to obtain information and advice about their rights, as well as assistance in

² See, e.g., Article 59 of the Council of Europe Convention on preventing and combating violence against women and domestic violence,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>.

vindicating them when necessary. They should also have full access to specialized services, irrespective of their residence status, as well as ready access to information in a language they understand about the services to which they are entitled and how to obtain them.

- PICUM also asks that the Committee underscore the important role of women's support services by adding the following:
Proposed language: *States should provide specialized and gender-sensitive women's support services, such as 24-hour help-lines, and sufficient numbers of safe and adequately equipped women's crises and support services, as well as 24/7 immediately accessible women's shelters in sufficient numbers (minimum standard 1 place per 10,000 inhabitants) for women victims of violence and their children, and other family members as required and safe. These specialist women's support services should be available in the whole territory of the State party, accessible to all women, independent of their nationality, religion, residence status or any other status, in particular to those affected by intersecting forms of discrimination, such as women with different abilities, minority ethnic, refugee or undocumented migrant women. Specialist services need to take account of any rights and specific needs of women and their children. Specialist women's support services preferably in their own language should be providing support to women and children at the same premises, to strengthen them and to avoid additional burdens to the women and the children.*

Data Collection

- With respect to data collection and monitoring, **the evaluation of legislation, policies and programs should be done not only in consultation with women's organisations but also with specialist migrant women organisations and other organisations with experience working with minorities and marginalized populations.**

International Cooperation

- PICUM encourages the Committee to refer, in addition to Sustainable Development Goals 5 and 16, to other Goals relevant to the prevention and elimination of all violence against women, namely **Goal 3** (good health and well-being), which includes among its targets ensuring universal access to sexual and reproductive health services by 2030, which ought to include prevention of, information about, and assistance for survivors of, gender-based violence; and **Goal 10** (reducing inequality within and among countries), under which countries have committed to facilitating orderly, safe, regular and responsible migration and mobility for people. Gender affects every aspect of migration, from who migrates, to the reasons they migrate and their experiences and labour opportunities in the country to which they migrate. Migrant women are over-represented in under-regulated and under-valued sectors, and face heightened risk of exploitation and violence. **Ensuring the rights and protection of all women requires States to create mechanisms for migrant women and their families to avoid treacherous journeys, and legal avenues to obtain protection or employment in all relevant sectors.**

Proposed language: *Create mechanisms under national law for women of all skill levels and their families to migrate safely and regularly, and recognise, protect and fulfil the right of all women to protection and justice in every context, including in the workplace, whatever their residence status.*