

**Submission to the UN Special Rapporteur on the Human Rights of Migrants**  
**GOOD PRACTICES AND INITIATIVES OF GENDER-RESPONSIVE MIGRATION**  
**LEGISLATION, POLICIES AND PRACTICES**

24 May 2019

PICUM welcomes the invitation by the Special Rapporteur on the Human Rights of Migrants for submissions on good practices and initiatives of gender-responsive migration legislation, policies and practices.

PICUM was founded in 2001 as an initiative of a small group of organisations providing support and assistance to undocumented migrants, impelled by the need for a representative, informed and respective voice on their realities and rights. With over 160 members more than 30 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 reference and consideration, PICUM would like to draw attention to two 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; as well as more recent publications further elaborating on their rights to specific audiences:

- 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](#).
- PICUM Explainer (2018): "[The Rights of Undocumented Victims: What to Know if You're a Women's Organisation, Shelter or Service Provider](#)".
- PICUM Explainer (2018): "[The Rights of Undocumented Victims: What to Know If You're a Police Officer](#)".
- PICUM Fact Sheet (2018): [Achieving a World Free from Violence against Women: Council of Europe Convention on Preventing on Preventing and Combating Violence against Women and Domestic Violence \("Istanbul Convention"\)](#).

PICUM is pleased to give input on the following questions. Due to limited time, a concise summary has been provided of some good practices. We remain available, however, to provide additional information in the future, should this be helpful.

- **How does your Government define "gender responsiveness"?**

According to the European Institute for Gender Equality (EIGE):

A gender-responsive policy ensures that the needs of all citizens, women and men, are equally addressed.

Traditionally, government policy and legislation have been viewed as gender-neutral instruments, on the assumption that a public policy benefits all members of the public equally. However, structural gender inequalities are still embedded in our society. Even if the laws treat women and men as equals, women still do not have equal access to and control over resources and assets.

Policies focused on the general public often impact women and men differently. If these different gender impacts are not taken into account, the policy will be gender blind. To avoid this, it is necessary to take into account the different needs and interests of women and men, to identify gender inequalities in access to and control of resources, to consider the impact of gender-based stereotypes and traditional gender roles, to anticipate different effects on women and men and to ensure gender equality.

A gender impact assessment is the first step towards avoiding policies that fail to take into account a gender perspective. Such an assessment analyses the impact of a new regulation, policy or programme on the advancement of gender equality and in turn foresees implications it might have on women's and men's lives.<sup>1</sup>

**Please provide information on any existing or forthcoming good practices or initiatives of gender-responsive migration legislation, policies or practices in your country. (Should you provide information on legislation or policy, kindly submit the original text, accompanied by an English translation if it is in a language other than the six official UN languages.)**

### *International Level*

#### Health

- World Health Organisation (WHO) Global Action Plan 2019-2023 on promoting the health of refugees and migrants. At the Seventy-Second World Health Assembly (20-28 May), the WHO secretariat will present a [draft global action plan on the health of refugees and migrants](#). With the action plan, WHO's secretariat explicitly takes up the issue of migrant health as a topic of its own work, in collaboration with other relevant stakeholders, including the International Organisation for Migration, recognising that "refugees and migrants are entitled to the same universal human rights and fundamental freedoms", and clearly stating the secretariat's intention to "focus on achieving universal health coverage and the highest attainable standard of health, as mandated in WHO's Constitution, for refugees, migrants and host populations". The draft global action plan includes several priorities, including the promotion of the health and wellbeing of refugee and migrant women, children and adolescents; and gender equality and empowerment of refugee and migrant women and girls. Additionally, the draft action plan explicitly states that its goal is "to assert health as an essential component of refugee assistance and good migration governance."

### *European Level*

#### Access to Justice

- EU and accession to the Istanbul Convention: On 4 March 2016, the European Commission proposed that the European Union become a party to the Istanbul Convention, to provide a mandate for better data collection at the EU level on the extent and nature of violence against women, and to bring greater accountability for the EU at the international level. In June 2017, the EU signed the Istanbul Convention, but on very narrow grounds, based on decisions by the Council of the EU limited only to articles of the Convention related to asylum, refugees and

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<sup>1</sup> EIGE (2016), What is gender mainstreaming?, at page 6.

refoulement, and judicial cooperation on criminal matters. Accession to the Convention has, however, been stalled in the Council, because of lack of unanimity among member states. However, a [majority of member states](#) are parties to the Convention, with very few having submitted reservations to Article 59, which concerns the issuing of residence permits to survivors of gender-based violence.

- EU Special Adviser for compensation of victims of crime issues recommendations addressing undocumented victims: In October 2017, European Commission President Jean-Claude Juncker appointed Joelle Milquet as his Special Adviser for compensation to victims of crime. Ms Milquet's report, [Strengthening victims' rights: from compensation to reparation](#), was published on 11 March. Recommendation no. 35 of the report specifically addresses undocumented migrants and the need for "firewalls":

"Access to redress mechanisms for all victims of crime must be guaranteed in practice as it is in law.

It is widely recognised that undocumented migrants, and those awaiting a decision regarding their residence status, are discouraged to report a crime due to beliefs that their information will be shared with immigration authorities, or due to negative experience with law enforcement agencies in the past.

The EU should recommend:

1. Acknowledging the particular vulnerabilities of migrants, it is essential that all EU Member States take immediate action to alleviate the obstacles for migrants to report crime and to seek protection. A clear firewall needs to be established between local police stations and immigration authorities. Member States must not create hierarchies of "illegality" which place the individual's residence status as a "more important crime" than the crime which they are reporting.
2. That Member States must also guarantee access to legal advice for undocumented migrants and access to victim support services.
3. Migrant who seek medical assistance following a crime should be offered protection and Member States should ensure that medical information and knowledge concerning the individual's presence in a medical service is not communicated to immigration authorities."

The following EU legislation recognises that precarious residence status (e.g., being undocumented or having spouse-dependent status) can create significant obstacles to accessing justice, with particular emphasis on domestic violence and gender-based violence.

- EU Victims' Directive: [Directive 2012/29/EU](#) establishes minimum standards for all victims of crime in the European Union. Under Article 1, the Directive must be applied in a non-discriminatory manner, "including with respect to residence status." The official [guidance](#) note that accompanies the Directive emphasises member states' obligation to ensure that the "rights set out in this Directive are not made conditional on the victim having legal residence status on their territory or on the victim's citizenship or nationality," highlighting the particular importance of equal application of these rights in the context of racist and xenophobic hate crime, and acts of gender-based violence committed against undocumented migrants. The guidance note also highlights that "[c]urrent practice from some Member States shows this can be achieved by adapting appropriate immigration rules, for example, by suspending deportation orders and/or issuing temporary residence permits in relation to ongoing criminal proceedings." The Directive recognises that victims who are not nationals of the country where they were victimised are "particularly vulnerable" or at "particularly high risk of harm" and might therefore

need specialist support and legal protection, which “could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination in the case of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims” (Recital 38). The Directive underscores the needs of victims of gender-based violence – which it recognises as a form of discrimination – and notes that women who are victims of such violence and their children often need special support and protection “because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence” (Recital 17). Under Article 9, specialist services that member states must provide include shelters or other safe accommodation to prevent retaliation, intimidation or repeat victimisation; and integrated support for victims of sexual violence, gender-based violence, or violence in close relationships, including trauma support and counselling.

- EU Family Reunification Directive: Directive 2003/86/EC establishes common rules for exercising the right to family reunification in the European Union. According to Article 15(3): “Member States shall lay down provisions ensuring the granting of autonomous residence permits in the event of particularly difficult circumstances.” The European Commission has clarified that “particularly difficult circumstances” refers to domestic violence.<sup>2</sup> Article 15(3) is an optional article but has been adopted by all member states.<sup>3</sup>
- EU Citizens Directive: Directive 2004/38/EC (sometimes also referred to as the Free Movement Directive) concerns the rights of citizens of the European Union and their family members (including third country nationals) to move and live freely within the European Union. Under Article 13(2)(c), “divorce, annulment of marriage or termination of the registered partnership ... shall not entail loss of the right of residence of a Union citizen’s family member who are not nationals of a Member State where [...] this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting.”

## ***National level***

### **Health**

- Access to health care for undocumented migrants in Europe: In most EU member states, undocumented migrants have extremely limited entitlements to health care under national law. A majority of member states do, however, to differing degrees, make it possible in principle for undocumented women to access some form of maternity care;<sup>4</sup> and 9 member states provide entitlements to care for undocumented children equal to those of children who are nationals.<sup>5</sup> Several member states have had laws in place for nearly two decades to facilitate access to health care for residents without status. For instance:
  - Belgium (22 years) – Urgent Medical Aid (AMU-DMH) – *Arrêté royal relatif à l’aide médicale urgente octroyée par les centres publics d’aide sociale aux étrangers qui séjournent illégalement dans le Royaume (Royal Decree, 12 December 1996)*

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<sup>2</sup> European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM (2014) 210 final, 03-04-2014, para 5.3.

<sup>3</sup> European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification*, COM (2019) 162 final, p 13.

<sup>4</sup> See PICUM (2016), [THE SEXUAL & REPRODUCTIVE HEALTH RIGHTS OF UNDOCUMENTED MIGRANTS: NARROWING THE GAP BETWEEN THEIR RIGHTS AND THE REALITY IN THE EU](#).

<sup>5</sup> See PICUM (2014), [PROTECTING UNDOCUMENTED CHILDREN: PROMISING POLICIES AND PRACTICES FROM GOVERNMENTS](#).

- Italy (20 years) – Urgent care, essential care – *art. 35, para. 4 of Legislative Decree no. 286/98*
- France (19 years) – State Medical Aid (AME) – *art. L.251-1 of the Social Action and Family Code Loi No. 99-641 of 27 July 1999*
- Portugal (18 years): migrants need to be resident for 90 days to register with local health centre (necessary to access most services). *Despacho do Ministério da Saúde No. 25/360/2001; Decreto Lei No. 135/99 (1999); Decreto-Lei nº 67/2004 de 25-03-2004* reiterates the equal right to health care for children until working age (which is 16) and establishes a specific register for them.
- Spain – new legislation (2018) restores universal health care to undocumented migrants, previously available under Law 16/2003 (modified by Royal Decree 16/2012)

### Access to Justice

- National legislation that makes available residence permits for victims of crime: In abusive relationships, residence permits that depend on the continuation of the marriage and the behaviour of the violent partner create further power imbalances. Usually, a certain period of time must elapse before someone with a spouse-dependent visa is eligible to receive an independent or a permanent residence permit. This compels victims of domestic violence to stay in the relationship until this period has passed, or else risk becoming undocumented. This legal construction is often used as an additional threat against the dependent partner, particularly when the couple has children together that the victim would risk losing. Nearly half of the EU Member States have ratified the Istanbul Convention, which contains an obligation to protect victims of domestic violence from deportation following a divorce. Some protection for victims of domestic violence can also be found in EU law (see above). Several European countries (including Belgium, France, Greece, Italy, Spain, and Switzerland, among others) have national legislation that makes it possible for a woman with spouse-dependent status to obtain at least a temporary visa if she has been the victim of domestic violence. In some countries, similar provisions are available for undocumented women. This legislation is important in recognising how insecure status creates obstacles to accessing justice and protection; however, there appear to be several difficulties in the implementation of this type of legislation and the extent to which it benefits the women it is intended to protect.<sup>6</sup>
- UK police adopt policy whereby they will not engage in immigration enforcement against victims of crime: In December 2018, the UK National Police Chiefs Council (NPCC) announced a [policy](#) to promote safe reporting, recognising the harmful effects of being seen to be working hand in glove with the Home Office. Under this policy, they will no longer engage in immigration enforcement towards victims, or immediately detain people with irregular status who report crime. However, under the policy they will continue to share information that they learn about a victim's status with immigration authorities. A coalition of women's and migrants' rights organisations<sup>7</sup> are working with local authorities to prioritise women's rights ahead of the enforcement of immigration policies in the UK and continue to work with the police and other actors to improve awareness and implementation of the new policy. Already in 2016, as part of efforts to implement the EU Victims' Directive, the Netherlands rolled out a national policy for law enforcement encouraging safe reporting (i.e., prioritising the rights and safety of victims ahead of immigration enforcement), based on a pilot run in the city of Amsterdam.

### Immigration detention

- Pilot projects on alternatives to detention: The European Alternatives to Detention (ATD) Network is a group of European NGOs working to reduce and end immigration detention by

<sup>6</sup> PICUM has forthcoming research on this issue that it would be pleased to share with the Special Rapporteur when it is finalized.

<sup>7</sup> "Step Up Migrant Women" campaign website: <https://stepupmigrantwomen.org/>



building evidence and momentum on engagement-based alternatives. The Network brings together NGOs running case management-based alternative to detention pilot projects in four European countries (Bulgaria, Cyprus, Poland and the UK) with regional-level organisations. Evaluation of the pilot projects showed that 65%, out of the 31 individual cases that were examined, had various levels of vulnerability (according to the UNHCR/IDC Vulnerability Screening Tool) including gender-related vulnerabilities.<sup>8</sup>

**Please indicate any challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies?**

- Heightened political priority at EU and national levels on deterring irregular migration, with a strong security orientation. At the EU level,<sup>9</sup> as well as in several member states,<sup>10</sup> there has been an increasing emphasis in recent years on the need to prioritise deterrence of irregular migration, with growing weight placed on the scaled-up use of immigration detention and increased return of people in an irregular situation. Most recently, this has been accompanied by new EU regulations<sup>11</sup> that increase the interoperability of existing (and new) EU information systems related to borders, visas, and asylum, increasing the capacity of law enforcement and other security authorities to identify, monitor and engage in enforcement actions against people suspected of immigration-related offences. These developments have significant and sweeping consequences for the fundamental rights of migrants,<sup>12</sup> and risk further undermining the situation and safety of women with insecure status in Europe.

**Based on the experience accumulated with these interventions so far; as well as the lessons learned, what would you have to do differently to maximise the gender responsive impact of these interventions?**

- Implementation of ‘firewalls.’ The Special Rapporteur has affirmed on many occasions that states should ensure there is a strict separation between public services and immigration authorities (“firewalls”).<sup>13</sup> There is a need for improved implementation of existing legal frameworks; and for increased understanding among actors in the immigration and security sectors of the gender-related impact of existing policies and practices that emphasise deterrence and enforcement.

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<sup>8</sup> Project website: <https://www.atdnetwork.org/>. Full evaluation report available [here](#).

<sup>9</sup> See, e.g., Communication from the Commission to the European Parliament and to the Council: [EU Action Plan on Return COM/2015/0453 final](#).

<sup>10</sup> See, e.g., Liberty (April 2018), [A Guide to the Hostile Environment](#); Russell Taylor, “Impact of the ‘hostile environment’ policy debate on 14 June 2018”, *House of Commons*, 11 June 2018; Hungarian Helsinki Committee (March 2017), “Hungary: [Law on automatic detention of all asylum seekers in border transit zones enters into force, despite breaching human rights and EU law](#)”; Steve Scherer, 9 May 2017, “[Italy builds new detention centers to speed up migrant deportations](#)”, *Reuters*; Global Detention Project, “[Belgium Immigration Detention](#).”

<sup>11</sup> [Regulation EU 2019/817](#) and [Regulation EU 2019/818](#).

<sup>12</sup> See e.g., FRA (July 2017), [Fundamental rights and the interoperability of EU information systems: borders and security](#); FRA (March 2018), [Under watchful eyes: biometrics, EU IT systems and fundamental rights](#); FRA (April 2018), [Interoperability and fundamental rights implications: Opinion of the European Union Agency for Fundamental Rights](#); EDPS (17 November 2017), [Reflection paper on the interoperability of information systems in the area of Freedom, Security and Justice](#); EDPS (16 April 2018), [Opinion 4/2018 on the Proposals of two Regulations establishing a framework for interoperability between EU large-scale information systems](#); Data Protection Authorities supervising SIS II VIS and Eurodac (17 June 2018), [Opinion of the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems](#); Meijers Committee (February 2018), [CM1802 Comments on the proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems](#).

<sup>13</sup> E.g., Report of the Special Rapporteur on the human rights of migrants, 15 April 2019 “[The impact of migration on migrant women and girls: a gender perspective](#).”

- Resisting and refuting the link between migration and threats to national security. In part, the prioritisation of immigration enforcement and deterrence of irregular migration is animated by the conflation of migration with threats to national security, which is used to justify measures against people in an irregular situation, as well as those who assist and support them, that would ordinarily be viewed as disproportionate and unjustified in a democratic society. This link is pernicious and unfounded. There must be systematic and concerted efforts to resist – by way of advocacy, communications, legal strategies, political mobilisation – against the ongoing securitisation of migration policy, including by demonstrating that and how such measures encroach on the rights of the broader population.
- Development and promotion of alternative models of migration governance that are pragmatic, humane and sustainable. There is a need to develop and to give visibility and energy to alternative models of migration governance that are comprehensive, responsible, human-rights centred and sustainable, and not purely driven by the imperatives of global trade or purported security concerns.

**What support could other stakeholders (other than your Government) provide to make your migration policies, legislation, and practices more gender responsive?**

- Closer collaboration between civil society (including migrants' rights and women's rights organisations) and researchers to better understand, measure and report on the situation as it exists in law and practice for people most harmed by the deficits in existing migration policies; but also, to develop together coherent, comprehensive alternative models of migration governance to stimulate action geared towards long-term reform of existing systems.