

PICUM is a non-governmental organisation that promotes respect for the human rights of undocumented migrants.

PICUM's response to the Consultation on an EU Strategy to combat violence against women

9th June 2010

1. Challenges

1.1 What in your view are the main challenges (medium and long term) that a new strategy for violence against women should address?

Medium term:

- Addressing and effectively combating the high-level of impunity for violence against Europe's most vulnerable group of migrant women and girls who, because of their precarious migration status, are disproportionately exposed to violence and for whom, the barriers which prevent their access support services and pursue legal proceedings serve to compound their experience of gender-based violence.
- Addressing the multiple legal and structural barriers across the EU which prevent vulnerable migrant women from accessing to essential services and protections.

Long term:

- Ensure all units, directorates and member states of the European Union maintain coherence with established priorities to combat violence against women. Ensuring the physical and mental welfare of the victim, bringing perpetrators to justice and publically denouncing violence against *all* women, regardless of their residence status, is essential if gender-based violence is to be seriously combated in Europe. Sanctioning the removal of support, protection and justice for victims on grounds of their status will foster a culture of impunity and undercut any positive developments in combating violence against women in the EU.
- Ensure inclusion of women that are disproportionately exposed to violence yet who are largely underrepresented within traditional women's rights organisations and therefore, whose situation is largely hidden from policy makers. There is an urgent need to overcome the barriers which prevent the direct participation of particularly vulnerable groups of women subjected to violence in the policy debate on the issue. Those who are highly vulnerable to physical and sexual abuse due to their inability to seek justice against the perpetrator because of their status also have immense difficulty to be politically engaged and active, both at national and European levels.

1.2 What in your opinion, are the main causes of violence against women and how should they be addressed?

○ Disempowerment of women within the existing migration regime

The lack of an independent legal status is a very common challenge faced by women migrating to the EU. The migration policies existing in Europe are often insensitive to the needs of women and, for those experiencing violence may actually increase their chances of becoming undocumented. Many women migrating to Europe find that control of their legal status is generally in the hands of an employer or spouse.

This dependency factor puts migrant women in an especially vulnerable position, creating a power-imbalance which very often amalgamates into violence. Furthermore, claims for asylum on grounds of gender-based violence have a disproportionately high refusal rate in many of the member states. Across Europe, PICUM members report that an overwhelming number of migrant women who contact them are at risk of losing their status following the breakdown of a relationship, experiences of domestic violence at the hands of partner or spouse in a regular situation or due to workplace exploitation.

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. Gender-neutral does not mean gender blind and member states which do not provide a 'domestic violence concession' within their immigration legislation or enable workers to change employers in cases of exploitation are compliant in the physical, sexual and psychological abuse of migrant women by employers or partners who take advantage of their vulnerable position.

○ Barriers to report violence to the police

Despite their increased exposure to ill-treatment, migrant women who become undocumented risk arrest and deportation if they contact the police. PICUM has documented cases in a number of 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. Such developments have fostered perception of undocumented migrant women as a 'zero risk victim', subsequently increasing their exposure to gender-based violence. Because they have nowhere to turn to for help, undocumented women remain disproportionately vulnerable to physical and sexual abuse, 'honour' killings and trafficking for forced labour or sex.

Delinking criminal procedures from immigration control mechanisms and protecting migrant women's right to report violence to the authorities is an urgent measure which must be undertaken in all EU member states to effectively tackle violence against women.

○ Barriers to seek legal assistance

The structural barriers which prevent vulnerable migrant women from pursuing legal remedies and bring their perpetrators to justice contributes to a worrying culture of impunity in the EU. 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 home countries before legal action has got under way.

There is an urgent need to *protect the victim's dignity and privacy* within the framework of proceedings related to gender violence and *ensure that justice is made safe and accessible* in Europe. EU member states must take steps to protect victims when they report violence and also, facilitate the prosecution of perpetrators regardless of the status of their victim.

2. Content of an EU Strategy to combat violence against women

2.1 What should the general and specific objectives be?

General:

Ensure violence against women is always addressed on grounds of non-discrimination and all victims are ensured access to medical assistance, support services, social protection and justice regardless of their origin, status or ethnic background.

Specific:

- Ensure women are protected from violence at all stages and in all areas of their life regardless of their residence status. The strategy should address the areas in which women are disproportionately vulnerable to violence, particularly in hidden and isolated workplace environments, in the home environment, on the street, in homeless shelters or living rough, in administrative or criminal detention. The strategy must effectively respond to the various forms of gender-based violence which women and girls are subject to throughout their life cycle, from denial of basic education about sex and violence, to violations of their sexual and reproductive health and rights (including unsafe abortion and delivery), to inability to seek support and protection from the authorities in case of rape, to lack of physical and mental health services to enable 'healthy aging' in later life.
- Prevent double victimisation of migrant women subjected to violence. As violence against women is a criminal offence, the protection of the victim and prosecution of the perpetrator must remain the primary concern of the European Union and its member states. Migrant women who report violence should be protected from losing their residence or work visa, their path to justice must be secured and under no circumstances should they be reported to the immigration authorities, cut off from social assistance, forced into destitution and detained or deported when attempting to seek justice.
- Ensure access to the full range physical and mental health services for all victims of violence in Europe. Violence against women is impacted by social law and health behaviour, thus barriers which impede the access of victims of violence to services on grounds of their residence status must be removed. As an insecure residence status compounds the exposure of migrant women to violence, they are precisely the vulnerable and disempowered group of women that must be included and assisted if the current culture of impunity for gender-based violence in Europe is to be effectively addressed.
- Victims of violence should never be denied access to legal, financial or housing support because of their migration status. All services and programmes receiving support from the European Commission and its member states to tackle violence against women must be available to all women regardless of their status. Administrative or financial barriers which restrict access to support and assistance for victims of violence who are not 'legally residing third-country nationals' should be removed.
- Remove the barriers which prevent local service providers from adequately addressing victims of violence most in need of support. Policies which limit the support of services to legal residences place an additional burden upon service providers. The difficult and sensitive task of assessing the residence situation of users, risks biased and discriminatory

treatment of 'foreign looking' women when they are at their most vulnerable – seeking protection from violence. Not only are service providers ill-equipped to adequately assess the residence status of migrant women, and risk doing so wrongly, but many have taken a professional oath to provide care to all in need.

The EU strategy should ensure that services and programmes receiving support from the European Commission and its member states are available to *all* women regardless of their status. Administrative or financial barriers which restrict access to support and assistance for victims of violence who are not 'legally residing third-country nationals' are discriminatory, counter-productive and should be removed.

- Address violence in migrant communities through the active involvement of migrant communities. There is a need for improved access to education, develop targeted awareness raising campaigns and also, ensure admittance of migrant men to perpetrator-rehabilitative or resolution services all regardless of their status.

2.2 What specific actions should the strategy include?

- Support an increase in specific and transparent data on the prevalence of violence against migrant women with an unsecure residence status (including domestic violence, sexual violence, physical attacks, forced marriage, FGM, honour killings and trafficking). This should be done by providing funding independent experts with strong links to the migrant communities and by encouraging the mainstreaming of 'vulnerable migrant women' within other initiatives on gender-based violence. Data on the treatment of female victims with an unsecure residence status by the member states should also be gathered; this information, including statistics on the number of victims detained or deported following contact with the police, judiciary or medical services, should be disclosed and open to public scrutiny.
- Close follow-up with the EU's Fundamental Rights Agency on their current research and mapping of the fundamental rights situation of irregular migrants in Europe. To be completed in March 2011, this research will provide essential insight into the fundamental rights violations experienced by undocumented women in Europe and their exposure to violence. This research will specifically highlight barriers to access remedies against violence as well as barriers to access to health, housing and education services for undocumented migrants across the EU27. An EU Strategy to combat violence against women should not only take relevant findings into account, but have an active role in disseminating them and raising issues of concern with particular member states.
- Implement impact-assessments on gender-based violence at both EU and National level. Impact assessments on policies which criminalise assistance to undocumented migrants, place a 'duty to denounce' on service providers, implement the forced removal of those living or working without a necessary permit or finally, deny support and protection of non 'legally residing third country nationals' should be implemented at European and member state level. This is an important step to gaining increased knowledge about the structural and institutional barriers which hinder legal and social assistance to vulnerable migrant women – which many organisations working in the field have identified as enabling, perpetuating and compounding this most hidden and extreme form of violence in Europe.

- The European Commission should implement a specific EU-wide visa programme for migrant women who have lost their status due to violence. Successful initiatives already exist in Spain as well as the United States.

In Spain:

Article 31 of the ‘Gender-based Violence Act’ of 2004 guarantees rights to ‘All women suffering gender violence, regardless of their origin, religion or any other personal or social condition’ and affirms that ‘particular attention shall be given to the situation of women whose personal and/or social circumstances put them at greater risk of suffering gender violence.’

Of particular importance is the right for a court order providing legal protection. This order gives a series of rights, and is the first step to access all protection available from the Spanish government. This right contains subsequent rights; irregular women who are victims of gender based violence who want to have a temporary protective order can get residence and work permit. Penalties relating to irregular residence will be suspended until criminal proceedings are resolved. Significantly, the administrative file for a penalty on the basis of their irregular residence in Spain is *automatically suspended* until the resolution of the criminal proceedings. The Spanish authorities have also issued an instruction to all police stations regarding the protocol for dealing with undocumented foreign women victims of domestic or gender-based violence.

In the United States

‘Violence Against Women Act’ (VAWA) of 1994, 2000, and its 2005 reauthorisation recognise the predicament of immigrant survivors of domestic violence and offer them protection and assistance. The VAWA 1994 was the first federal legislation in the U.S. to make provision to protect immigrant women from domestic violence. The VAWA 1994 allows immigrant women married to citizens or permanent residents to self-petition for immigrant status. The VAWA 1994 also includes provision for all legal service organizations to assist victims of domestic violence, sexual assault, and trafficking regardless of the victims’ immigration status. The VAWA 2000 and its 2005 reauthorization made amendments to ease VAWA requirements and expanded services to include a broader category of immigrant women and children who previously did not qualify for VAWA.

‘The U-Visa’ was created by the VAW 2000 legislation. It is a non-immigrant visa for victims of certain crimes, including domestic violence. This visa allows victims to reside legally in the U.S. while cooperating with law enforcement to prosecute offenders and prevent these crimes.

- Guarantee access to physical and mental health services for all victims of violence regardless of their origin or status. All legislative and practical barriers which impede access to services are discriminatory and should be removed. Member states should take positive measures to improve access for vulnerable migrant women subject to violence.
- Develop an expert group of service providers, NGOs, medical professionals, police, judiciary and policy makers on the issue of gender-based violence to set key priorities for the strategy, provide ongoing monitoring and gauge implementation.

2.3 What thematic priorities, if any, should the strategy address?

- Target group

As the most vulnerable, disempowered and hidden victims of gender-based violence in Europe, it is essential that undocumented migrant women, asylum seeking women and women on a spouse-dependent or employer-dependent visa are prioritised in this strategy.

- Strengthening legal obligations for victims of violence to address the impunity of perpetrators whose actions are often condoned through the member state's inaction and tendency to ignore the plight of victims with an irregular migration status. To ensure that the prevention, punishment and eradication of violence against women, the multiple forms of institutional discrimination and social violence facing vulnerable migrant women must be addressed.

- Enhancing the economic security of vulnerable migrant women in Europe by ensuring access to a legal income for all women regardless of status to reduce their reliance on the informal economy where they are exposed to extreme forms of exploitation, forced labour, wage-theft, isolation and sexual harassment. Implement measures to address the use of economic destitution and social isolation as a tool of migration control in many of the member states. These discriminatory, ineffective and inhumane practices violate Europe's human rights obligations and disproportionately impact upon women.

- Addressing adolescents and young people

Educating migrants about gender equality, harmful traditional practices and the rights of women to live in a society free of violence is a key step to tackling the high instances of violence within these communities. Equally, education is a recognised response to addressing the disproportionate poverty of women and improving capacity to realise their sexual and reproductive health and rights. Ensuring access to pre-school, primary, secondary and third-level education for all migrants in Europe, regardless of their migration status is an essential step in tackling the root causes of gender-based violence in Europe.

- Strengthen the Role of the Civil Society

Support those individuals and organisations providing assistance to the most vulnerable victims of violence by removing the structural, financial and administrative barriers that oblige many health, housing and support services to limit access to 'legally residing third country nationals'. In order to be successful, an EU strategy on combating violence must enable increased funding and support of organisations working on the local, national and European level. Measures should also be taken to address the criminalisation of legal and humanitarian assistance to Europe's most vulnerable group of migrant women. Finally, there is an urgent need to reduce the sizable barriers which prevent the active participation and empowerment of undocumented migrant women in the political domain, (for example the inability to travel to EU level meetings, the fear of detection if speaking publicly about their experiences of violence or inability to access justice).