

Introduction:

- PICUM, Platform for International Cooperation on Undocumented Migrants
- Stichting LOS, national support organisation for undocumented migrants

1. Who are irregular migrant women

Irregular migrant women are first of all human beings like us. They have social networks, a family. They had their education and they had activities inside and outside their house. They have aspirations, dreams.

Being an irregular migrant is not an inherent attribute, but it is assigned to a migrant woman by immigration laws. Also the consequences of this irregular status are the result of domestic rules and regulations. Unfortunately, in many countries the residence status seems to become a dominant status, more important than any other aspect of a migrants identity. It decides whether a person has rights and access to justice. This is especially relevant for irregular migrant women who are victim of domestic violence.

Numbers of irregular migrants are not known, because they are not registered. According to researchers, in 2008 there might be between 2-4 million irregular migrants in the EU. 60 – 25% of them are women (depending on the host country). And 5-10% are children under 18.

Legal consequences of an irregular status are often : no right to work legally, no right to social housing or shelters, and difficulties in accessing health care. Irregular migrants are dependent on undeclared work, support from families, friends and charities for their survival. They live in constant fear of being detected and apprehended and deported. This is a real fear : police has ample freedom to controll residence rights at houses, workplaces and in public transport. When detected, irregular migrants will often be deported easily. That is why they often limit their social network and only trust few friends.

So how do they survive ?

In some countries it is easy to find undeclared work, especially in the southern and eastern European countries. In nordic countries, there are often bureaucratic barriers and an active labour inspectorate, so it is more difficult to find undeclared work. In these cases, irregular migrant women become dependent on friends to find work, for instance by borrowing documents or by introduction to sympathetic employers. Finding accomodation also can be difficult. In some countries where the housing market is highly regularised, it is difficult to have access to affordable housing. Also access to health care might be difficult to arrange, this depends on the structure of the health system and its openness for non-declared residents.

Survival as irregular migrant is all the more difficult when different adminstrative systems are connected. For instance, when the housing registration is connected with the municipal authorities. Or when the health care system is connected with the national registration system. In these cases, access to facilities is often restricted to legal residents, and there are no ways to use the system without being formally registered.

2. Domestic violence

Irregular migrant women are often for their survival dependent on their network (family, friends and employers).

Irregular migrant women who live with their partner are often dependent on this partner for shelter and food. In case of domestic violence, they have no escape, especially because they are afraid of authorities. There are also risks when irregular migrant women are dependent on their informal employer, especially for live-in carers or those who sleep in accomodation provided by the employer (might be in the work-place or elsewhere). Victims of human trafficking are often also victims of domestic violence. They as well are dependent on their employer, for their income and their accomodation. All of them are afraid to be expelled and therefore avoid contacts with the authorities.

Research among Irregular migrant women in the Netherlands showed that at least 28% of them suffered from sexual violence, and between 10-20% from violence by members of their family.

3. Escape-routes

In order to be able to escape domestic violence, it is important that alternative ways for survival are accessible. That means that women's shelters have to be open for irregular migrant women, and that they should not have a duty to report to authorities. Their funding should not be dependent on the residence status of the women they protect. We call this a firewall between protection and reporting duties. Another important element is the accessibility of the police to report domestic violence. Also here, a firewall is indispensable. The same police who has to take the complaint of the women, should not be obliged to also report her presence to the aliens police. This should also not be disclosed through police registration systems.

Finally, also courts should be accessible without residence permit, and women should not run a risk to be deported when entering the court hall. And in case compensation is awarded to irregular migrant women who are victims of domestic violence, she needs access to bank accounts for the money to be transferred.

These escape routes should be available in law and in practice.

A separate problem is the fact that many legal migrants are dependent on their spouse or employer for their residence permit. In case of domestic violence, they run the risk to lose their residence permit. This can be a reason to endure the situation.

4. Legal tools

Several international and European human rights conventions include also irregular migrants, and can be used to defend the human rights of victims of domestic violence.

Examples are

ICESCR, Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an **adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right**, recognizing to this effect the essential importance of international co-operation based on free consent.

The Istanbul Convention

Article 4 Fundamental rights, equality and non-discrimination

3. The implementation of the provisions of this Convention by the Parties, in particular **measures to protect the rights of victims, shall be secured without discrimination on any ground** such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, **migrant or refugee status, or other status.**

Article 59 Residence status

- 1. Parties shall take the necessary legislative or other measures to **ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit** irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.

Article 60 Gender-based asylum claims

- 1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of

the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.

Eu Victims directive

Article 1 Objectives

The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. **The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.**

As already mentioned, the most important barrier for irregular migrant women is the prevalence of the immigration status over the status as victim of domestic violence. Therefore, what has to be done is to restore the balance between these two ways of looking at irregular migrant women who are victims of violence : they should first and foremost be considered as victims and not as irregular migrants. As victims, they should have access to the police, to alternative sources of shelter and food, and redress. Migration policy should be of secondary importance.

Practically speaking, we need a firewall between protection and immigration enforcement. Otherwise, irregular migrant women will not be able to escape their dependent living conditions (partly caused by their immigration status) and will be at constant risk of repeat victimisation.

Moreover, in order to prevent irregular migrant women to become victims of domestic violence, immigration laws should be reviewed. Strict immigration laws often give migrating women no other choice than to depend on service-providers for their journey and survival : traffickers and people who offer access to undeclared jobs and shelters. This dependency, which is the result of immigration laws, makes them vulnerable to domestic violence.

Practically speaking, we need a realistic immigration policy. Pathways out of irregularity have to be created, because of its negative its consequences for the individual migrants and for society at large.

5. COE/ PACE

The Parliamentary Assembly of the Council of Europe already in 2006 made clear that irregular migrants have basic rights, such as shelter and food. This should be especially available for vulnerable irregular migrants, like children, handicapped and traumatised people. The resolution sets boundaries to the restriction of social rights for immigration enforcement reasons. This approach should become more common sense.

PACE 1509, 2006

13.1. **adequate housing and shelter guaranteeing human dignity should be afforded** to irregular migrants;

16. The Parliamentary Assembly also invites the governments of member states of the Council of Europe to assure that **irregular migrants are able to enjoy their minimum rights in practice**, including by:

16.3. **refraining from criminalising humanitarian assistance** for irregular migrants by civil society actors;

16.4. dispensing with the duty of certain authorities (for example school authorities, doctors and medical authorities) to inform on the illegal status of migrants so as to **avoid the situation where irregular migrants do not claim their rights through fear of identification as irregular migrants and fear of expulsion**;

It will be necessary to include protection measures for irregular migrant women who are victims of domestic violence in domestic legislation.

The Council of Europe can stimulate countries to change their laws and policy by creating reporting duties and legal avenues to claim rights. A recent example is the complaint of the PKN (Dutch Protestant Church) at the European Social Charter, claiming basic rights such as shelter and food for irregular migrants. The European Council on Social Rights decided that the Netherlands violate the rights of irregular migrants by refusing access to shelters. The political debate on this issue is still ongoing. Access to shelter and food is a first step to escape domestic violence. More needs to be done.

Thank you for your attention