



AN INCLUSIVE GENDER-RESPONSIVE APPROACH TO MIGRATION

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Introduction

On 5 March 2020, the EU adopted its long awaited [gender equality strategy](#) 2020-2025. Less than one week later, the World Health Organisation declared COVID-19 a global pandemic.

The pandemic has revealed in stark terms the gender-related dimensions of inequality. It has exposed and worsened systemic inequalities linked to: under-regulated and under-protected forms of work in our economy, where women¹ are often over-represented; porous social safety nets that fail to protect all those in need; and structural racism that is driving disparate health outcomes for people of colour. It has underscored the need for an inclusive and intersectional approach to gender equality that reaches across policy domains to ensure and protect women's safety, social and economic rights, while engaging with them as critical agents of change.

In the case of migrant women, the pandemic has exposed the profound undervaluing of their work in areas like health care, education, cleaning, food services, farm work, child and elder care. Confinement and physical distancing measures have cut off their access to vital sources of support and exposed some to a greater risk of violence in their homes or workplaces.

Underpinning this reality are migration systems that entrench structural asymmetries of power and opportunity. Access to decent work permits in Europe is largely restricted to highly qualified people who can secure high incomes, excluding people of all genders with lower socio-economic status. Racism – on personal, institutional and structural levels – is also a major barrier to access high income employment. Women, transgender and gender non-binary also face gender-based discrimination throughout the migration process. This results in numerous barriers to getting the jobs that would grant them decent and stable work permits and the incomes needed to bring their families with them. They are at particular risk of high levels of sexual and other violence when they travel in an irregular manner. Women are also more likely to be on spouse-dependent visas than men. If the relationship on which their status depends breaks down – for instance, because of domestic violence – they risk becoming undocumented.

Once undocumented, measures aiming to reduce irregular migration through border control, criminalisation, detention and deportation, have specific and discriminatory effects on safety, security and rights. Women, transgender and gender non-binary people face restrictions on services and justice when they are undocumented, which can have gender-specific impacts, and heighten their risk of living in situations of economic and social precarity. As they are often women of colour with a low income, undocumented women experience specific, intersecting forms of discrimination.

PICUM welcomes the EU's commitment to developing and implementing a gender strategy and urges the implementation of a forward-thinking and inclusive programme of work that strives to achieve real change in the lives of all women, without discrimination.

¹ All references to "women" or "woman" in this document are inclusive of cis and transgender women.

Part of this must include specific and concrete efforts to develop a gender-responsive approach to EU migration and asylum, so that policies integrate and address the rights and interests of women and girls, particularly in areas of regular migration, international protection, detention and return. EU migration and asylum policies should be re-oriented towards sustainable, humane, non-criminalising approaches to both regular and irregular migration.

An inclusive gender-responsive approach is grounded in the following principles:

- **Intersectionality:** Women experience varying and intersecting forms of discrimination due, among others, to their sex, disability, racial or ethnic origin, religion or belief, disability, age, social class and sexual orientation, health condition,² and migration status, which negatively impact their opportunities and wellbeing in ways that require appropriate legal, policy and practical responses.
- **Inclusiveness:** Inclusiveness recognises and promotes the rights of all women, in all their diversity, without discrimination on any basis.
- **Participation:** Moving past the tendency to view women through the lens of vulnerability, an approach that recognises women's autonomy and resilience, focuses on strategies that promote empowerment and non-hierarchical participation in decision-making, both individually and collectively, including by support to and engagement with organisations that work directly with women, particularly from traditionally disadvantaged communities.
- **Rights-based:** The international human rights framework, and the EU's Charter of Fundamental Rights, emphasise the universality of certain civil, political, economic, social and cultural rights, and the responsibility to duly implement them on a basis of non-discrimination.
- **Effective:** The full and meaningful implementation of law and policy recognising and promoting women's rights and equality, need to be emphasised at every level.
- **Partnership:** To be effective, both in its design and its implementation, the strategy must be developed and applied through deliberate and meaningful engagement with civil society actors working directly with specific groups of women who are under-represented in the mainstream and who face particular challenges and structural barriers to equality, including on the basis of their migration or residence status.

² For instance, barriers faced by people who are HIV positive in obtaining visas; or, obstacles pregnant women face in some countries to obtain a work permit.

To achieve the above-mentioned principles, the EU's gender strategy must address the specific situation, needs and rights of women with insecure residence status including in the following domains:

1. SUSTAINABLE, HUMANE AND JUST APPROACHES TO REGULAR AND IRREGULAR MIGRATION

- **Decriminalise irregular entry and stay, and promote measures that facilitate access to permits for people to work across skills and wage levels and sectors, including highly gendered and informal sectors such as domestic and care work.** These permits should guarantee equal treatment regarding labour and social rights and family unity, and also be accessible from within the country.
- **Consistent with EU law,³ [promote the availability of autonomous permits for people on partner-dependent visas based on individual criteria, and in circumstances of abuse.](#)** When a woman's permit is dependent, it puts her at risk of becoming undocumented if she ends that relationship before a certain time has passed, including due to abuse, and creates a power imbalance that can perpetuate gender discrimination and lead to violence.
- **Provide clear pathways for parents to access permits, with access to the labour market, when children are regularly residing, citizens or able to regularise their status, to ensure that migrant mothers can care for their own children.** These permits should be available from both inside and outside the country, regardless of the residence status of the parent.
- **Provide clear and transparent procedures for people residing irregularly on the territory to access stable permits that count towards settled and citizenship status.** The avenues for undocumented women to regularise their status need to be expanded, made more accessible and more effective in promoting long-term stability and inclusion. Criteria should be developed in consultation with local civil society to meet local realities and needs.
- **Reduce and ultimately end immigration detention.** Harmful, costly and ineffective, this practice has a disproportionate impact on individuals in a pre-existing situation of vulnerability due to the intersection of different factors including their gender, age, sexual orientation or disability. Systematically adopt and implement engagement-based, non-custodial [alternatives to detention](#) for all individuals in an irregular situation, including women and children, based on a holistic approach. Ensure access to gender-responsive services.

3 Citizens' Rights Directive 2004/38/EC; Family Reunification Directive 2003/86/EC.

- Ensure that nobody is **criminalised** for assisting migrants or refugees, including through the provision of goods and services without undue financial gain. Many human rights defenders across Europe are subject to judicial or other forms of harassment for having aided individuals in an irregular situation. These policies have a particularly harmful impact when they target individuals who are systematically discriminated against for instance because of their gender identity, sexual orientation and / or irregular status. A clear legal framework, effective oversight mechanisms and gender-responsive policies on the protection of human rights defenders are necessary to ensure that human rights defenders can act freely across Europe.
- Ensure that the rights to privacy and to the protection of personal data – bulwarks of democracy and the safeguarding of myriad other rights – are fully guaranteed for all, consistent with EU law, and not eroded in the service of an immigration enforcement agenda. The EU's [2019 regulations making its migration databases interoperable](#) rest on a conflation of immigration and criminal law aims that risks driving further stigmatisation and discrimination against migrant communities. The EU's global leadership in the protection of privacy and personal data requires coherence in its approach across all domains of policy, and resisting the exempting of certain groups from protection in ways that undermine everyone's fundamental rights.

2. PROMOTING SAFETY, PROTECTION AND JUSTICE FOR ALL WOMEN, REGARDLESS OF STATUS

- Ensure access to protection and justice for all women who experience crime by promoting and enforcing proper implementation of the [Victims' Directive's guarantees](#), which apply regardless of residence status, and promoting meaningful implementation of the [EU's Strategy on Victims' Rights](#). This includes by implementing "firewalls" that allow safe reporting of crime and full access to support, services and justice mechanisms - without any risk of immigration enforcement - and increasing awareness among law enforcement on how to make their engagement with survivors of violence and with diverse communities more respectful, professional and responsive. Systems and services to facilitate the reporting of crimes and mistreatment should be also available in immigration detention.
- Press for full EU accession to the [Istanbul Convention](#), or for legislation that codifies its core commitments and protections on prevention of and protection against violence, without discrimination on any basis, including residence status; and ensure that any proposed EU legislation addressing violence against women and girls adopts the holistic and inclusive approach of the Istanbul Convention, explicitly requiring application without discrimination on any ground, including based on residence or migration status, and including, pursuant to Article 59, provisions on access to residence permits for survivors, based on their personal circumstances.

- **Actively promote and fund research and exchange on the transfer of good practices promoting the safety and protection of women with insecure status**, as required under some EU directives, the Council of Europe Istanbul Convention and the Council of Europe Anti-Trafficking Convention.
- **Take proactive measures to address [dehumanising and hateful language](#) used against migrants**, as well as widespread stereotypical assumptions about migrants' cultures and ways of life, to increase awareness about the damaging impact on the safety, welfare and overall inclusion of migrant women and girls; and foster positive understanding of migration and migrants' rich contributions to Europe's history, culture and development.
- **Remove obstacles to women accessing information, quality and independent legal representation, shelters and other [victim support services](#)**, by ensuring that access is freely available based on need and not conditioned on factors like the nature of the crime; and through improved and sustained financial support that addresses the needs of all women in need, regardless of status, and ensures that shelters and other services are adapted to be responsive to women of migrant background (e.g., staff training, cultural sensitivity, support in languages other than the country's official language).
- **Promote the removal of criminal and administrative prohibitions and penalties on sex work, against sex workers, clients and non-exploitative third parties, to protect and [empower undocumented sex workers](#)**. Criminalisation places power in the hands of exploitative managers, dangerous clients, and abusive police officers, and undermines access to services, safety and justice. These harms are exacerbated if a sex worker has an irregular immigration status.
- **Ensure that undocumented women do not face discriminatory treatment in family court and custody proceedings, and are supported to participate in proceedings** through access to information, interpretation and legal advice.
- **Ensure the rights of all victims of crime apply without discrimination based on residence status** by reaffirming in any proposed legislation on victims' rights the prioritisation of safety above immigration control, consistent with Article 1 of the Victims' Directive, and leverage the Victims' Rights Platform to support improved exchange and implementation of policies and practices advancing the rights undocumented victims.
- **Address the intersectional dimensions of inequality** by examining, under the EU Action Plan against Racism, and through the work of the Task Force on Equality, the historical and structural dimensions of discrimination experienced by migrant women; and generate proposals on how to integrate a the perspective of racial justice into relevant policy domains, including gender equality and migration.

3. PROMOTING THE RIGHTS AND PROTECTION OF ALL WORKERS, REGARDLESS OF STATUS

- **Explicitly include all workers** - in any employment relationship and regardless of their authorization to work - in relevant laws and collective agreements regulating wages, working time, rest and paid leave, conditions of work, parental rights, termination of employment, health and safety, insurance and state compensation funds or mechanisms (in case of employer insolvency and work-related illness or injury). This must include migrant domestic workers, who are currently excluded from numerous labour law protections. Promote the ratification and implementation of ILO Convention 189 as a key step in advancing the rights of migrant women domestic workers.
- **Better implement existing legislation** so that all women workers have meaningful access to justice and redress through effective mechanisms for reporting labour law violations, mistreatment, and violence and harassment in the world of work, regardless of their migration status or the sector in which they work, without risk of employer retaliation or immigration enforcement as a result.
- Implement a **rights-based and victim-centred approach to anti-trafficking** that does not tie support, protection or **residence permits** to the criminal justice process and focuses on redressing the harm caused to victims and supporting their recovery, including through services, unpaid wages and compensation, and clear pathways to long-term residence.
- Ensure that policies addressing women's migration include their role as agents of economic and social development, including as breadwinners for their families abroad – and not just as potential victims of human trafficking or otherwise “vulnerable” migrants.

4. ADVANCING SOCIAL INCLUSION THAT ENSURES ACCESS TO SERVICES, INCLUDING HEALTH CARE, REGARDLESS OF STATUS

- Promote the social rights of women in an irregular situation and their effective **access to services**, including preventative and curative care, as a means of supporting their social inclusion, economic opportunities, as well as the physical, mental and emotional wellbeing.
- Recognize that inequality starts before birth, ensure that undocumented mothers have access to pre- and postnatal care, and undocumented girls have equal access to life-cycle-appropriate services, **including early childhood education and care, education, (mental) health care**, etc. Ensuring undocumented children and their families are equally able to make use of public child care and early years education is essential both for children's development and learning and to support inclusion and participation of migrant women in the labour market, in quality jobs.

- **Mainstream a gender perspective in EU funding programmes that [support the integration of migrants](#) (ESF+, AMIF, ERDF, Erasmus+, etc.); invest in establishing programs serving those who are excluded from mainstream social security to limit their marginalisation; and promote the involvement of migrant women regardless their residence status and [meaningful participation of civil society organisations](#) working with and led by migrant women.**

5. PROMOTING DIVERSITY AND GENDER-RESPONSIVENESS WITHIN THE EU'S GOVERNANCE

- **Ensure EU policies – across policy domains - are developed, implemented and evaluated with clear processes and lines of responsibility for gender impact assessments and resulting adaptations, and in meaningful consultation with civil society organisations representing, working with and led by migrant women.**
- **Adopt a long-term strategy to achieve meaningful representation of women from diverse backgrounds in decision-making roles in the EU and member states; mandatory training on intersectionality and gender-responsiveness for EU staff and member states' administration, including at the political levels; as well as processes to ensure and to monitor the gender-responsiveness and -impact of planned and existing policies.**



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