

PICUM's submission to the Secretary-General's report on the Human Rights of Migrants

10 May 2023

The [Platform for International Cooperation on Undocumented Migrants](#) (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 164 organisations working with undocumented migrants in 31 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With two decades of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

PICUM welcomes the opportunity to provide input to the Secretary-General's report on the Human Rights of Migrants covering all aspects of the General Assembly Resolution on the protection of migrants (A/RES/76/172).¹ PICUM's submission focuses on the following areas:

1. Access to justice and services for undocumented migrants
2. Lessons learnt from the COVID-19 vaccine rollout to undocumented migrants
3. Digital technologies in the context of border governance

¹ UN General Assembly Resolution adopted by the General Assembly on 16 December 2021, 76/172. [Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, A/RES/76/172](#)

Introduction

Across the world, many people live undocumented, or are at risk of becoming undocumented due to an insecure residence status. The significant challenges in collecting reliable and accurate data leads to very limited data being available on such populations.² Nonetheless, PICUM's research shows that insecure or irregular status creates an imbalance of power that puts people at greater risk of exploitation in the workplace, in personal relationships, and other settings because the state's perceived prioritisation of status over decent work and safety is used to coerce and control, increasing the likelihood of economic dependence, poverty and abuse. One of the deep-seated challenges to improving the working conditions, safety and protection for people with insecure residence status is countering the normalisation of rights violations³. Recent developments across Europe indicate undocumented people and people with insecure residence are increasingly at risk of harm, violence, and abuse. In fact, forcing undocumented migrants to leave the EU has become one of the key pillars of how the EU manages migration at its borders and within its territory⁴.

Access to justice and services for undocumented victims

In response to recommendation 4(b) *"Encourages States to establish or, when appropriate, strengthen mechanisms which allow migrants to report alleged cases of abuse by relevant authorities and employers without fear of reprisal, and which allow for such complaints to be addressed fairly."* (AVRES/76/172).

The criminalisation of irregular migration makes people who are undocumented fearful of engaging with public authorities⁵, and especially with the police, because of the risk that they will be detained and ordered to leave the territory as a result⁶. People who belong to ethnic and racial minorities are particularly affected by heavy policing and surveillance, which increases the distrust and insecurity in state authorities. When a person is a victim of violence or discrimination, their residence status can never be an obstacle to safely engaging with the criminal justice system and accessing services and support.⁷

European Union legislation foresees protection to undocumented people who are victimised. The European Union's Victims' Directive⁸, which creates a common framework for all EU member states (except Denmark) for the rights of victims of crime, defines victims broadly as "any natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offense" and highlights that the directive is applicable to victims "in a non-discriminatory

2 Clandestino Project. 2009. [Undocumented migration. Counting the Uncountable. Data and Trends across Europe. Final Report](#). Project no.: CIS8-044103.

3 PICUM, 2021, [Preventing harm, promoting rights: achieving safety, protection and justice for people with insecure residence status in the EU](#)

4 Michele LeVoy and Marta Gianco, 2023, [On migration, Europe's fixation with returns does not work](#)

5 For analysis of undocumented workers' access to state judicial and non-judicial complaints mechanisms for violations of labour rights, see PICUM (2020), [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#).

6 Statewatch, PICUM (2019), [Data Protection, Immigration Enforcement and Fundamental Rights: What the EU's Regulations on Interoperability Mean for People with Irregular Status](#)

7 PICUM, 2021, [Preventing Harm, Promoting Rights: Achieving safety, protection and justice for people with insecure residence status in the EU](#)

8 [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#) ("Victims' Directive").

manner, including with respect to their residence status⁹. The official guidance note that accompanies the directive highlights Member States' obligation to guarantee 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," stressing the particular relevance of equal application of these rights in the context of racist and xenophobic hate crime.¹⁰

For people with irregular or precarious residence status, the implementation of "firewalls" is an essential tool which allows them to engage with the criminal justice system without fearing deportation. If immigration authorities are involved whenever an undocumented person seeks assistance from law enforcement after suffering a crime or an act of violence or discrimination, their rights, as defined by the EU Victims' Directive, are undermined.

While imperfect, some countries have already implemented practices that allow for people with irregular or insecure residence status to safely receive support after being victimised, such as:

- The **Netherlands** has created a policy known as "Free in, Free out", which allows undocumented migrants to enter a police station to report a crime and leave freely, without the intervention of immigration enforcement¹¹. A study by the University of Oxford's Centre on Migration, Policy and Society (COMPAS)¹² interviewed civil society organisations (CSOs) in the Netherlands who provided support and services to undocumented victims of crime. The CSOs noted that the most frequent types of crimes undocumented people experienced included labour exploitation, theft, sexual violence, drug trafficking, domestic violence, blackmail and stalking. Despite this, however, police and immigration authorities were found to routinely exchange data about people's status. Furthermore, the "Free in, Free out" policy was not accompanied by access to support services and does not cover situations that fall outside the scope of criminal law.
- In **Spain**, the *Guardia Civil*, one of the country's two national police forces, created specialised groups called Immigration Attention Teams or EDATI ("*equipos de atención al inmigrante*"). These units are responsible for providing aid to migrants – including those who are undocumented – by informing them of their rights, providing advice on how they could regularize their status and offering assistance in filing a complaint against employers or others from mistreatment, exploitation or other offenses. The EDATI members do not have the competence to detain individuals or issue deportation orders, thus undocumented migrants are protected from adverse responses to their requests for assistance¹³.
- In **Belgium** federal and local police are obliged to provide assistance to all victims of crime. However, they also have a duty to report all crimes and administrative offences to the public prosecutor, which includes reporting the irregular entry and stay of an undocumented migrant to the Immigration Office and following-up on their decision in case of a removal order. Victims of rape, attempted manslaughter, or victims of violence with dependent visa status have exemptions from these rules. In these cases, the Immigration Office cannot deliver an expulsion order. However, undocumented

9 Ibid, article 1.

10 European Commission, DG Justice [Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), December 2013.

11 PICUM, 2022, [Unconditional access to services for undocumented victims of crime](#)

12 R. Timmerman, A. Leerkes, & R. Staring (September 2019), Safe reporting of crime for migrants with irregular status in the Netherlands, COMPAS: Oxford; R. Timmerman, A. Leerkes, R. Staring & N. Delvino (7 October 2020) Free In, Free Out: Exploring Dutch Firewall Protections for Irregular Migrant Victims of Crime, *European Journal of Migration and Law*, 22(3), 427-455.

13 PICUM, 2021. [Preventing Harm, Promoting Rights: Achieving Safety, Protection and Justice for People with Insecure Residence Status in the EU](#).

victims are not always covered by these provisions and administrative practice shows that domestic violence sometimes still is not considered a strong enough ground to merit non-expulsion¹⁴.

Undocumented women are particularly at risk of violence. In March 2022, the European Commission released a proposal on combatting violence against women and domestic violence (VAW Directive)¹⁵. The proposal constitutes an important opportunity to strengthen the rights of undocumented women facing violence. Indeed, it acknowledges the increased risk of violence against undocumented women¹⁶ and includes a number of provisions that aim to address their limitations in accessing justice, protection, and services¹⁷. Notably, the European Commission proposes to include a “partial firewall” – preventing the transfer of information about an undocumented victim of crime’s residence status to migration authorities during the first individual assessment. This proposal is significant because it would explicitly aim to establish some type of safeguard at EU level to limit the sharing of personal data about undocumented migrants with immigration authorities. The file is currently under negotiation with the European Parliament and the Council¹⁸.

Furthermore, the European Union is expected to soon accede to the Council of Europe Convention on preventing and combating violence against women (“Istanbul Convention”)¹⁹. In its meeting of 21 February 2023, the Council requested the consent of the European Parliament to adopt the decisions on the ratification of the Convention²⁰. The EU’s accession to the Istanbul Convention constitutes an important opportunity to strengthen the rights of women facing violence in the European Union. The Istanbul Convention is a milestone for undocumented women and for women with precarious residence status because it applies expressly to all women regardless of migration status and requires states to make it possible for women whose status is dependent on a violent partner or spouse to obtain an independent residence status²¹. However the Council draft decisions on the conclusion emphasise that the EU will accede to the Convention only as regards matters falling under its exclusive competences as conferred by agreed common rules in the area of judicial cooperation, and asylum and non-refoulement, as well as with regard to the institutions and public administration of the Union²². It is therefore yet to be established whether the EU’s ratification of the Istanbul Convention will advance the rights of undocumented women facing violence in the EU.

14 Anja Van den Durpel, 2019, [Safe Reporting Of Crime For Victims And Witnesses With Irregular Migration Status In Belgium](#)

15 [Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic violence](#)

16 Ibid, article 35(1)

17 Ibid, articles 32(2), 35(3)

18 For the state of play [see the European Parliament’s Legislative Train Schedule](#)

19 Council of Europe, [Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#)

20 [Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union \(5514/23\)](#); [2023 Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement \(5523/1/23\)](#) [Code of Conduct laying down the arrangements regarding the exercise of rights and obligations of the European Union and Member States under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\) \(6087/23\)](#); [Declaration concerning the competence of the European Union with regard to matters governed by the Council of Europe Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\) \(6088/23\)](#)

21 PICUM Fact Sheet, November 2020, [Achieving a world free from violence against all women, regardless of migration status: Council of Europe Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#)

22 [Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union \(5514/23\)](#); [2023 Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement \(5523/1/23\)](#)

Lessons learnt from the COVID-19 vaccine rollout to undocumented migrants

In response to recommendation 6(e) “Calls upon all States also to include all migrants, regardless of their migration status, in their responses to the COVID-19 pandemic, including in equitable vaccination plans and protocols, with full respect for human rights and specific attention to migrants in vulnerable situations, and stresses that there is no place for any form of discrimination, racism or xenophobia in the responses to the pandemic” (A/RES/76/172)

The COVID-19 pandemic aggravated long-standing, structural disparities in access to healthcare by migrants, particularly those who are undocumented. There has been evidence of higher COVID-19 infection rates among migrant groups across the world²³ which can be explained by a number of factors, including socioeconomic precarity²⁴ and poor working and living conditions, usually in overcrowded, unsanitary facilities with no possibility to practice social distancing.

At the same time, the COVID-19 pandemic has also led to the implementation, by government authorities, service providers and civil society organizations, of innovative, humane and effective responses to these challenges. In early 2021, as European countries started rolling out Covid-19 vaccines for the general population, PICUM began mapping to investigate if undocumented migrants were facing any administrative barriers in requesting the vaccine, and if they faced immigration enforcement as a consequence of getting the vaccine²⁵. Outcomes of this research are collated in a report *Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants*²⁶, which includes country examples (United Kingdom, Belgium, Spain, Ireland, Portugal, Greece) of Covid-19 vaccines for undocumented migrants. Later in 2021, the investigative journalism body Lighthouse Reports released a policy scorecard²⁷ of 18 European countries’ policies concerning the Covid-19 vaccine for undocumented migrants.

Despite numerous challenges, PICUM found the portrait not to be entirely bleak²⁸. In fact, the pandemic opened windows of opportunity for the inclusion of undocumented migrants in quite unlikely ways. Considering that irregular migration status constitutes one of the most significant obstacles to accessing healthcare, as UN Special Rapporteurs have pointed out²⁹, some states allowed for the creation of temporary regularization schemes following the outbreak of COVID-19. For instance, Portugal temporarily regularised the status of all people with a pending residence application, so they could have access to state support, including full access to health care³⁰. Ireland granted safe access to health care to undocumented people, ensuring no data is shared with immigration authorities³¹. Imperfect and impermanent as many of these measures may be, they show that change is possible and that more inclusion benefits everyone.

23 See, for example: Irish Times, [Ireland: Migrants face higher COVID-19 infection rate](#)

24 Srikanta Sannigrahi et al. (2020), ‘[Examining the Association Between Socio-demographic Composition and COVID-19 Fatalities in the European Region Using Spatial Regression Approach](#)’, Sustainable Cities and Society 62.

25 PICUM (2022) [Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants](#)

26 Ibid

27 Lighthouse Reports (2021) [Vaccinating Europe’s Undocumented: Policy scorecard ranks European countries efforts to respond to Covid-19](#)

28 PICUM (2022) [Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants](#)

29 Office of the UN High Commissioner for Human Rights (2020), [UN Experts Call on Governments to Adopt Urgent Measures to Protect Migrants and Trafficked Persons in Their Response to COVID-19](#)

30 PICUM, 2020, [Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19](#)

31 Ibid

Digital technologies in the context of border governance

In response to recommendations:

- 4(c) *"Expresses concern about legislation adopted by some States that results in measures and practices that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants"* (A/RES/76/172)
- 5(e) *"Requests States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, and to regularly train public officials who work in those facilities and in border areas to treat migrants respectfully and in accordance with their obligations under international human rights law"* (A/RES/76/172)
- 5(i) *"Recognizes the particular vulnerability of migrants in transit situations, including through national borders, and the need to ensure full respect for their human rights also in these circumstances"* (A/RES/76/172)
- 6(d) *"Calls upon States, within the framework of applicable international law, to take steps to ensure that their national procedures at international borders include adequate safeguards to protect the dignity, safety and human rights of all migrants, including in the context of COVID-19"* (A/RES/76/172)

Over the past few years, an increasing use of surveillance and digital technologies to monitor human mobility has been observed in the EU. The use of digital technology for immigration enforcement follows the tendency to blur the line between immigration control and security goals. At national level, examples include:

- In **France**, **Germany**, the **Netherlands**, and **Sweden**, for instance, police have been given the power to fingerprint people they stop on the street to check if they have a permit³².
- In **Greece**, local human rights organisations have challenged a national program that equips police with smart devices that allow them to scan vehicle license plates, collect fingerprints, and scan faces with the aim of identifying undocumented people³³. This new program is inconsistent with international human rights standards on privacy and likely to amplify ongoing discrimination.
- In **Germany**, according to AlgorithmWatch³⁴, the Federal Office for Migration and Refugees (BAMF) employs automated text and speech recognition systems in asylum proceedings: "Agency employees can ask asylum seekers to give them access to their cell phone, tablet or laptop to verify they are telling the truth about where they come from", running software on the data to extract from the devices. When an asylum seeker does not have a valid ID, a voice recording of the person describing a picture in their mother tongue is analysed by software to evaluate their dialect³⁵. In June 2021, a regional court ruled that the searching of asylum seekers' phones was unlawful³⁶.

32 Statewatch (2022), [Building the biometric state: Police powers and discrimination](#)

33 Human Rights Watch (2022), [Greece: New Biometrics Policing Program Undermines Rights](#)

34 AlgorithmWatch (2020), [Automating Societies Report 2020 Germany](#)

35 Deutsche Welle, 2017, [Speech software to test refugees' claims of origin](#) [checked on 5 May 2023]

36 Deutsche Welle, 2021, [Berlin court: Searching asylum-seeker's phone was unlawful](#) [checked on 5 May 2023]

- In **Germany**, a coalition of various associations advocated against policing of migrants that goes beyond migration policy. Their campaign, *Gleich Behandeln* (“Treat Equally”)³⁷, targets section 87 of Germany’s Residence Act on the “transfer of data and information to foreigners’ authorities”, which obliges public authorities to report undocumented people they come in contact with to the immigration authorities. The result is that people with irregular migrations status in Germany face immigration control consequences if they try to obtain health care to which they are entitled. In 2021, following this campaign, the new German coalition government adopted a coalition agreement with a pledge to lift these obligations³⁸.
- In the **United Kingdom**, in 2019 the Joint Council for the Welfare of Immigrants (JCWI) and Foxglove launched a legal case³⁹ challenging the discriminatory nature of the secretive visa algorithms used by the UK Home Office, arguing they created three separate streams or channels for applicants, whereby applications from people of certain nationalities received a higher risk rating and were much more likely to be refused. They alleged that this type of risk streaming resulted in racial discrimination and violated the 2010 Equality Act. In August 2020, the Home Secretary announced plans to end the use of the streaming algorithm, and to do a full review of the system.
- The use of surveillance to monitor human mobility is not limited to the sea or to land borders. In **Slovenia**, the police systematically gather the data (Passenger Name Records) of passengers for all flights arriving from third countries and EU member states into Slovenia, which is matched against “other police data” like criminal files. The police reportedly⁴⁰ acquired information about nearly 800,000 airline passengers between October 2017 and November 2018, prompting the Slovenia Human Rights Ombudsman and Information Commissioner to file a complaint with the constitutional court challenging the practice⁴¹.
- The **Netherlands’** Ministry of Foreign Affairs has been secretly using an algorithm that ethnically profiles visa applicants⁴². The algorithm has profiled millions of short-stay visa applicants using variables like nationality, gender and age. Applicants scored as ‘high risk’ are automatically moved to an “intensive track” resulting in delays and rejections.

This is also evident at EU level. Since 2013, **Frontex** has run operation Eurosur⁴³, a framework for information exchange and cooperation between the agency and member states to prevent irregular migration and cross-border crime, using military and technology resources.

Although the EU recognizes that the gathering and use of biometric data for remote identification purposes carries specific risk for fundamental rights⁴⁴, the EU is further developing and implementing surveillance systems, whose respect for fundamental rights is under question. This policy tends to make false links between immigration and serious threats. As the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has highlighted, “Digital technologies are being deployed to advance the xenophobic and racially discriminatory ideologies that have become so prevalent,

37 See the campaign [here](#)

38 PICUM (2022) [Digital technology, policing and migration – what does it mean for undocumented people?](#)

39 Joint Council for the Welfare of Immigrants (2020) [Home Office to stop using racist visa algorithm](#) [checked on 5 May 2023]

40 AlgorithmWatch (2019), [Automating Society Report 2019 Slovenia](#)

41 PICUM (2022) [Digital technology, policing and migration – what does it mean for undocumented people?](#)

42 Lighthouse Report, 24 April 2023, [Whistleblower reveals Netherlands’ use of secret and potentially illegal algorithm to score visa applicants](#) [checked on 3 May 2023]

43 European Commission, [Eurosur](#)

44 European Commission, [White Paper on Artificial Intelligence](#)

in part due to widespread perceptions of refugees and migrants as per se threats to national security.⁴⁵ In particular, over the last years the EU has developed the following frameworks which contribute to the use of digital technologies in the borders management and migration control:

- The **EU's regulations on interoperable databases** (adopted 2019) - create a basis for interconnecting multiple migration databases⁴⁶, together with data on criminal records, to pursue goals related to immigration enforcement and addressing serious crimes. The interoperability framework is highly discriminatory⁴⁷, implying a false link between serious threats and immigration. Plus, it is a deeply complex system with multiple databases that increases the likelihood of errors with a huge lack of transparency.
- The **EU's Pact on Asylum and Migration**⁴⁸ (European Commission proposal in 2020, currently under negotiation) – It includes elements on strengthened interoperability and the use of artificial intelligence in the context of immigration enforcement. It proposes changes to existing EU legislation to permit the collection of data to better locate undocumented people⁴⁹. Those numerous propositions raise serious concerns about increased discriminatory policing and racial profiling targeting communities of colour in Europe⁵⁰.
- The **reform of the Schengen Borders Code** (European Commission proposal in December 2021⁵¹, currently under negotiation) - In order to increase surveillance and controls over non-EU citizens crossing internal and external borders, the proposals reinforce the view that irregular migration is a threat to the EU that needs to be addressed through more policing, in ways that are likely to increase racial and ethnic profiling⁵².
- The **European Travel Information and Authorization System (ETIAS)** (2022) – Through this new travel authorisation system, people of nationalities coming to Europe for holidays and business and currently not requiring a visa to enter the Schengen area, will see their personal data stored in a new database. This new system is effectively part of the EU's security apparatus: "ETIAS enables the collection of information on people travelling visa-free to the EU in order to deny individuals travelling within the Schengen area who pose a security risk. This is a centralised EU system to issue travel authorisations that enhances external and internal security of the EU"⁵³.
- The **Artificial Intelligence Act** (AI Act) (European Commission proposal in 2021, currently under negotiation)⁵⁴ – This legislation aims to regulate AI in the European Union. Given concerns about its use for migration control and law enforcement ends, advocates welcomed the proposal's ban of certain uses of AI, including the use by police of real-time facial recognition in public spaces; and its categorisation of some uses of AI for migration, asylum and border control as "high risk". Crucially,

45 UN (2020), [Report of the Special Rapporteur E. Tendayi Achiume on contemporary forms of racism, racial discrimination, xenophobia and related intolerance](#)

46 Statewatch, PICUM (2019) [Data Protection, Immigration Enforcement and Fundamental Rights: What the EU's Regulations on Interoperability Mean for People with Irregular Status](#)

47 PICUM (2020) [How do the new EU regulations on interoperability lead to discriminatory policing?](#)

48 PICUM (2021) [The EU Migration Pact. Questions and answers](#)

49 PICUM (2020) [More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations](#)

50 PICUM (2020) [How do the new EU regulations on interoperability lead to discriminatory policing?](#)

51 European Commission, [Proposal for a regulation of the European Parliament and of the Council amending Regulation \(EU\) 2016/399 on a Union Code on the rules governing the movement of persons across borders](#)

52 PICUM (2022) [The new draft Schengen Borders Code risks leading to more racial and ethnic profiling](#)

53 FRONTEX (2021) [Artificial Intelligence - based capabilities for European Border and Coast Guard](#)

54 European Commission (2021), [Europe fit for the Digital Age: Commission proposes new rules and actions for excellence and trust in Artificial Intelligence](#)

the proposal does not prohibit some of the sharpest and most harmful uses of AI in migration control, despite the context of significant power imbalances in which these systems operate. The proposal also includes a carve-out for AI systems that form part of large-scale EU IT systems, such as EURODAC⁵⁵. This is a harmful development and means that the EU itself will largely not be scrutinised for its use of AI in the context of its migration databases⁵⁶. It is therefore critical for the European Commission to use the opportunity of new AI legislation and the Anti-Racism Action Plan⁵⁷ to recalibrate its approach, by prioritising fundamental rights and broader democratic values. PICUM, alongside other actors of the civil society, published a joint statement⁵⁸ on how the EU AI Act must protect people on the move⁵⁹.

Recommendations

In light of the above, PICUM calls for the Secretary-General's report on the Human Rights of Migrants to:

- 1. Reaffirm the imperative of delinking immigration responses from mechanisms promoting protection, support and justice to ensure victims' rights, which are available unconditionally.** States should establish clear safeguards ("firewalls") allowing undocumented migrants to safely report crimes to competent authorities and interact with other actors in the criminal justice system (as victims or witnesses), including by ensuring that no data on residence status is transferred between authorities for the purpose of immigration enforcement and communicating this clearly to people from affected communities. They should also ensure undocumented migrants have access to residence permits based on their personal situation, without pressure to cooperate with the investigation and prosecution of the accused person.
- 2. Call on States to build accessible, effective, and resilient health systems for all, regardless of their residence status, in line with international law⁶⁰.** States should enact changes in law and policy and/or practice to open up access to health care services for children and adults with irregular or insecure residence status by addressing systemic barriers they face, whether administrative or with respect to legal entitlements.
- 3. Call on States to ensure democratic oversight and systems of accountability of uses of digital technology and large-scale processing of personal data.** Given the well-recognised asymmetries of information and of power between those who develop and deploy digital technology and those who are subject to it, States must integrate mechanisms for genuine oversight and consultation, including with civil society organisations and communities most likely to experience the harmful effects of digital technology, including artificial intelligence. There must also be accessible systems of accountability in place to permit redress for rights violations linked to the use of these systems and technologies. This requires empowering equality bodies, data protection authorities, and other

55 EDRI (2021), [Intensified surveillance at EU borders: EURODAC reform needs a radical policy shift](#)

56 PICUM (2022), [Regulating migration tech: how the EU's AI Act can better protect people on the move](#); PICUM [Dismantling the use of Big Data to deport](#)

57 Adopted in September 2020, [the EU Anti Racism Action Plan](#) is meant to step up action to counter racial discrimination and racism within the EU. The plan is ambitious in its scope and has been welcomed by anti-racist organisations in Europe, since it is the first time structural, institutional and historical racism have been acknowledged by the EU.

58 Published in December 2022, updated in March 2023: [joint statement: The EU AI Act must protect people on the move](#)

59 See the platform [ProtectNotSurveil](#) for more advocacy work on the topic

60 PICUM (2022) [The Right to Health for Undocumented Migrants](#)

relevant public bodies to ensure accountability for the implications of digital technology and data processing for human rights and discrimination; and creating rights of redress for those harmed.

4. **Recall the commitments made by States in the 2018 Global Compact for Safe, Orderly and Regular Migration⁶¹ and the 2022 Progress Declaration⁶² to “[build] on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status⁶³ and “strengthen[ing] efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration”⁶⁴.** This should include designing and implementing regularisation programmes and mechanisms for undocumented migrants.

61 UN General Assembly, 2018, [Global Compact on Safe, Orderly and Regular Migration](#) (2018), Resolution

62 UN General Assembly, 2022, [Progress Declaration of the International Migration Review Forum](#) (2022), Resolution

63 Under objective 7 ‘Address and reduce vulnerabilities in migration’, para 23(i).

64 UN General Assembly, 2022, [Progress Declaration of the International Migration Review Forum](#) (2022), Resolution, para 59.