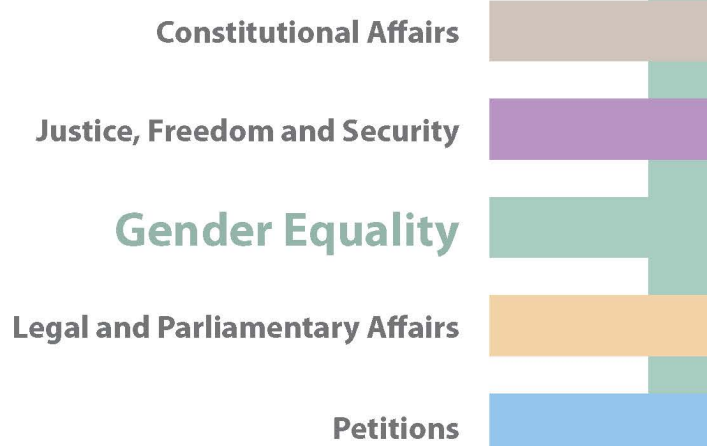


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Access to shelters of
undocumented migrant women
fleeing domestic violence: the
legal and practical situation in
the Member States**

STUDY





DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

GENDER EQUALITY

Access to shelters of undocumented migrant women fleeing domestic violence: the legal and practical situation in the Member States

STUDY

Abstract

This study is a literature review about the ability of undocumented migrant women who experience domestic violence to access shelter and support. The study brings together data on characteristics of this group of women and the difficulties they face in seeking help. It includes eight case studies and important lessons about the political/economic, social and individual-level barriers to their seeking the help they need to preserve their Human Right to safety.

This document was requested by the European Parliament's Committee on Women's Rights and Gender Equality.

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LIST OF ABBREVIATIONS

ACCESS ARAB AMERICAN COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE

BAG ASYL IN DER KIRCHE GERMAN ECUMENICAL COMMITTEE ON CHURCH ASYLUM

CEDAW UN CONVENTION TO ELIMINATE ALL FORMS OF DISCRIMINATION AGAINST WOMEN

EIGE EUROPEAN INSTITUTE FOR GENDER EQUALITY

EU EUROPEAN UNION

MS MEMBER STATE

NGO NON-GOVERNMENTAL ORGANISATION

PICUM PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

SOWS SPECJALISTYCZNE OSRODKI WSPARCIA, POLAND. WOMEN'S NON-RESIDENTIAL SUPPORT CENTRES

SVZV SUPPORT GROUP FOR UNDOCUMENTED WOMEN (NETHERLANDS)

UN UNITED NATIONS

USA UNITED STATES

VAWA VIOLENCE AGAINST WOMEN ACT (USA)

WAVE WOMEN AGAINST VIOLENCE IN EUROPE

WHO WORLD HEALTH ORGANISATION

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EXECUTIVE SUMMARY

Introduction

This literature review examines the evidence of undocumented migrant women's experiences of domestic violence, the barriers and challenges they face as a result of their 'undocumented' status and the types of support they are able to access.

Statistical overview: migration and undocumented migration in the EU

In 2008, an estimated 1.9 to 3.8 million undocumented immigrants lived in the EU, compared to a 'legal' population of 500 million (Clandestino, 2009). It is generally estimated that undocumented migrants tend to be young males. However, there are likely to be geographical clusters of more concentrated populations of female undocumented migrants. It is important to understand undocumented migration in the context of general patterns of migration, as the former strongly influences the nature of the latter.

Prevalence of domestic violence among the general population, documented and undocumented migrants

Overall statistics for the prevalence of domestic violence among the general population worldwide range between one quarter to up to 71% of women having experienced this abuse during their adult lives at the global level. The studies provide figures ranging from: 30% (in last 12 months), 23% (in lifetime), 25.7% (of patients in hospital emergency rooms).

The consequences of domestic violence are very difficult to endure. However, undocumented women face additional pressure and stress of worrying about their immigration status and the potential for being deported.

Characteristics of undocumented migrant women

Similar to data on undocumented migrant populations more generally, the country of origin of undocumented migrants is diverse. Age ranges appear to be older for those examined in the studies reviewed; however, this may be a reflection of where the samples were identified rather than representative. The majority of the sample in the studies was of working age.

Key characteristics of undocumented migrant women in the studies include:

- There are reasonably high proportions with high school or university levels of education.
- They experience high rates of poverty.
- They experience greater health risks compared to documented migrants and the general population.
- They are likely to have children.
- Around half of them are in intimate relationships.
- Many lack emotional support from friends or family.

Individual, structural and social vulnerabilities of undocumented migrant women to domestic violence

Individual vulnerabilities

Undocumented migrant women's lack of information, knowledge and experience

A key vulnerability identified in the studies is undocumented migrant women's poor access to information, knowledge and experience of both their rights to protection, their rights to citizenship status and rights to and knowledge of services that they may trust.

Individual socio-economic position

Poverty and social exclusion rates are high for the women featured in the studies, particularly those experiencing domestic violence. Being undocumented means that a woman is unable to legally work and earn money or access public welfare benefits. Being both financially dependent on their partners and having limited ability to earn money is a double bind for these women.

Structural vulnerabilities

Poverty and social exclusion risks

At the individual level, being undocumented means particular vulnerability to poverty and social exclusion (Keygnaert et al 2012, Ghafournia, 2011). Undocumented migrants are not well protected from wage exploitation, unemployment or ill health. Lack of material resources is also a risk factor for experiencing domestic violence in the first place.

Social vulnerabilities

Shame and honour in specific minority communities

One of the key assumptions in the literature is that issues of shame and honour in specific minority communities prevent them from seeking help. Abuse may be considered a 'private' matter that should not be addressed outside of the family.

Institutional vulnerabilities

Cultural stereotypes and scepticism of professionals

An important factor in preventing undocumented migrants from receiving help may include cultural stereotypes and scepticism that professionals may have and which may cause them to mistrust a claim of domestic violence, or be reluctant to intervene.

Routes into being undocumented for women experiencing domestic violence

A number of routes into undocumented status for women were revealed. These included **illegal entry; overstaying legal time limits or visas; being trafficked** (either through coercion, deception or cooperation); marriage sponsorship breakdown; and through a **failed asylum application**. Marriage sponsorship creates dependency and inequality between husband and wife which may easily be exploited as part of a strategy of abuse.

Challenges and opportunities in the policy landscape for undocumented migrant women experiencing domestic abuse

Challenge: increased securitisation and criminalisation of illegal residency

Victims of domestic violence require essential services to maintain their safety including health care, shelter and social assistance. Such services may influence a woman's decision on whether to remain in a dangerous situation. However, EU and Member States' law on fundamental rights such as health care, housing and social assistance for undocumented migrants is **more ambiguous** and **heterogeneous compared to regular migrants and native citizens**.

For victims of domestic violence who are undocumented, immigration control measures which may, for example, oblige health support staff to report any undocumented migrants to authorities, are likely to have the effect of deterring access to essential health care, thus diminishing access to fundamental rights further.

Challenge and opportunity: marriage and the use of 'humanitarian exceptions' for granting residency

One of the main reasons a woman becomes a migrant is through marriage sponsorship. However, wives are typically not entitled to public benefits in her own right. This dependency strongly plays to the power and control dynamic that is widely accepted by researchers to be part of domestic violence.

No specific directive exists that introduces 'residency relief' (granting of residency permits) on the grounds of domestic violence in the EU. Therefore, practices in the Member States differ widely.

Challenge: trafficking and migration policy

A number of studies highlighted the intersection between domestic violence and trafficked women. Trafficked women are also, frequently, victims of domestic violence; however their applications for a 'humanitarian exception' may well be contingent on successful cooperation with authorities in detecting and prosecuting traffickers. This can differ from undocumented migrant women (generally) who are domestic violence victims for whom it is not always necessary to secure a prosecution in order to obtain residency.

Support services' experiences and service recommendations

Health services are considered to be poorly aligned to identify and process victims of domestic violence in general and those with undocumented status in particular. In addition, understanding and negotiating immigration issues is a key challenge for staff of domestic violence shelters.

Key recommendations from case studies and the literature review

Barriers to accessing health services and medical treatment represent a serious threat to the health and wellbeing of undocumented women. This has to be regarded as a violation of their fundamental right to health care. Barriers to accessing health care may include a) the cost and b) fear of detection and deportation.

There is a lack of knowledge and research about the effectiveness of 'residency relief' for migrant spouses who experience domestic violence.

Lack of material resources, for example as a result of non-entitlement to social assistance or to employment, presents extreme difficulties for undocumented victims of domestic violence. Nearly all case studies identified deficits in terms of the number of available domestic violence shelter spaces. As such, it can be assumed that there would be **considerable competition for these shelter spaces**. Undocumented women risk being seen as a particular burden on shelter services and being denied the assistance they need although they are in a particular need because of their limited financial resources.

Recommendations to Member States and European Union institutions

Member States should:

- Review the impact of policies on undocumented victims of domestic violence; which oblige public sector staff to report undocumented migrants to the authorities.
- Increase the number of shelter places available in general, including those offering support to different nationalities, in different languages and with diverse minority and migrant staff.
- Evaluate the impact of the number of shelter spaces on the ability of undocumented migrant women to find assistance and protection in cases of domestic violence. This should take account of their restricted possibilities to find employment or to access social assistance.
- Review the effectiveness of provisions allowing for temporary residence permits in situations of domestic violence in marriage sponsorship arrangements. This should take into account how abusers misinform their spouses and withhold data on immigration rights.
- Implement programmes to raise awareness and understanding among undocumented migrant women and those with precarious residency rights, including trafficked women, of their rights.
- Where relevant, review the impact of the withdrawal of free health care for undocumented migrant women experiencing domestic violence; in particular, assess whether free health care may be provided where there is evidence of domestic violence.

The Commission should:

- Propose a consistent policy relating to 'residency relief' in cases of domestic violence in sponsored marriages, to prevent women from becoming 'undocumented', based on the experiences with Directive 2004/38, the VAWA in the USA, and the similar act in Canada. Developing such a policy may involve:
 - exploring the possibility to allow marriage migrants to apply for residence on their own behalf and within shorter time frames;
 - exploring the possibility of 'residency relief' in cases of domestic violence where intimate partners are not married.

- Ensure that the EU anti-trafficking policy framework incorporates and takes under consideration the potential links between domestic violence and trafficking in human beings, by placing victims at the heart of the framework and ensuring their respective needs are catered for.

All EU institutions should cooperate to:

- Ensure that gender mainstreaming is introduced in EU migration policies, including improving the availability of gender disaggregated data (undocumented and regular migration) to recognise that migration is not a gender neutral issue.

INTRODUCTION

Violence against women and domestic violence is understood as a violation of human rights in the Council of Europe 'Convention on preventing and combating violence against women and domestic violence' (the 'Istanbul Convention'), 2011, and freedom from violence a fundamental right under the European Charter of Fundamental Rights (2000). **This literature review examines the evidence of undocumented migrant women's experiences of domestic violence, the barriers and challenges they face as a result of their 'undocumented' status and the types of support they are able to access.** The review also explores the adequacy of legal and policy frameworks available in the EU for ensuring the safety of undocumented migrant women.

Both domestic violence and undocumented status are difficult areas to research. By definition, those without documented status are difficult to identify and likely to be hard to find. It is often in their interests to stay away from those in official positions, in order to keep their undocumented status private. By the same token, they are prone to be less likely to come to the attention of researchers. Domestic violence is also a sensitive issue, which women within various cultures have difficulty in speaking about. There are cultural and personal reasons which act to silence those experiencing this violence. The complexities of researching this area are well-known. Women experiencing violence and who have uncertain immigration status are therefore particularly hard to reach for any research study. **The review is a useful attempt to bring together diverse data sources about the experiences of this group of women who are chronically under-researched, highlighting common experiences, risk factors and needs, whilst acknowledging the need for additional research into their experiences.**

Definitions

Domestic violence

Domestic violence is defined by the **Council of Europe** (CoE) as '*all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim*' (Istanbul Convention, 2011).

The **United Nations** (UN) similarly defines violence against women including '*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*' (United Nations, 1993).

These are broad and therefore useful definitions capable of encompassing a number of other phrases commonly used to describe a range of forms of violence against women and girls.

Undocumented migrant

It is important to note that there are considerable overlaps in terms of policy and individual migrants' experiences between '**legal**' ('documented' or 'regular') and '**illegal**' ('undocumented' or 'irregular') **migration**. A migrant may arrive in a new country legally but may overstay their visa, or fail to submit the relevant applications; a number of

'migration relief' policies exist which afford 'irregular migrants' temporary or permanent legal status on humanitarian grounds; a person may become 'irregular' following a failed asylum application. These are examples of how 'legal' and 'illegal' status may cross.

PICUM¹ describes an undocumented migrant as someone '*without a residence permit authorising them to regularly stay in their country of destination*' (PICUM, 2012).

Speaking of their decision to use the term "undocumented", the group PICUM recommends: 'when referring to migrants without a valid residence permit, the use of terms "**undocumented migrants**" or "**irregular migrants**" as opposed to "illegal migrants" and "illegal immigration". The term "illegal" is increasingly identified as a politically-charged slur used to devalue, dehumanize, and discriminate' (PICUM, 2012).

Being 'undocumented' is not a criminal offence in most European countries but a civil or administrative breach of law (ibid, 2012) which, however, in both cases, could lead to fines, imprisonment or forced return. (Boino, 2013, WAVE, 2010, WAVE 2012, EMN 2012).

The Migration Policies Institute (MPI) describes eight different ways that a person may become an undocumented migrant:

- Illegal entry (illegal border crossing);
- Entry using false documents ;
- Entry using legal documents but providing false information in those documents;
- Overstaying visa free travel period or temporary residence permit;
- Loss of status because of nonrenewal of permit for failing to meet residence requirements or breaching conditions of residence;
- Being born into irregularity;
- Absconding during the asylum procedure of failing to leave a host state after a negative decision;
- A State's failure to enforce a return decision for legal or practical reasons (toleration).

(MPI, 2011)

¹ Platform for International Cooperation on Undocumented Migrants.

1. STATISTICAL AND POLICY OVERVIEW: MIGRATION AND UNDOCUMENTED MIGRATION IN THE EU

KEY FINDINGS

- In 2008, an estimated 1.9 to 3.8 million undocumented immigrants lived in the EU, the majority were thought to be young males.
- It is important to understand undocumented migration in the context of general patterns of migration, as the former strongly influences the nature of the latter.
- Domestic violence flourishes where there are imbalances of power.
- The studies suggest domestic violence prevalence figures ranging from: 30% (in last 12 months), 23% (in lifetime), 25.7% (of patients in hospital emergency rooms).
- Research into violence against women often fails to include the experiences of undocumented women. This lack of data is a barrier to creating effective and appropriate policies and services.

1.1. Documented and undocumented migration in the European Union – the Clandestino project

The issue of 'irregular' migration in the **European Union** (EU) is politically important and controversial (Eurofound, 2007). Despite this, attempts to measure the size of the undocumented migrant population or flow of undocumented migrants have been hampered by a lack of data collection and inconsistencies between Member States in terms of who is defined as undocumented (Clandestino, 2009, MPI, 2011). However, the Clandestino project, sponsored by the European Commission, attempted to measure the size and nature of undocumented migration across the EU between 2007 and 2009.

The Clandestino project measures the numbers of 'irregular foreign residents' (IFRs) and **defines** them as '*foreign nationals without any legal residence status in the country they are residing in, and persons violating the terms of their status so that their stay may be terminated, which basically concerns 'irregularly working tourists' from third countries*'. (Clandestino, 2009). It takes data from the EU's Border Control agency's (**Frontex**) reports from 12 Member States² and biometric database from which aggregate European (EU27) estimates were calculated³. Thus, the project excludes asylum seekers.

Table one below provides aggregate EU wide (EU 27) estimates of undocumented migrant people in the EU for selected years.

² Austria, Czech Republic, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Slovakia, Spain, United Kingdom.

³ Calculations were fraught with difficulties including differences in the quality of data collected in each of the 12 participating countries and poorer data on 'out' migration flows of undocumented migrants.

Table 1: Undocumented Migrant Population Estimates in the EU, 2002-2008

Year	Absolute population(millions)		Percentage population of		Percentage of Foreign Population	
	minimum	maximum	Minimum	Maximum	Minimum	Maximum
<i>EU 15</i>						
2002	3.1	5.3	.8	1.4	14	25
2005	2.2	4.8	.58	1.23	8	18
2008	1.8	3.3	.46	.83	7	12
<i>EU 27</i>						
2008	1.9	3.8	.39	.77	7	13

Clandestino Project final report, 2009

In 2008, an estimated 1.9 to 3.8 million undocumented immigrants lived in the EU, compared to a 'legal' population of 500 million (Clandestino, 2009).

1.2. Gender breakdown of documented and undocumented migrants

Based on **EU** States' official statistics, there were 101.940.47 women and 105.057.51 men legally residing in the EU who were born in a non-EU country, in 2012 (Eurostat, 2012). The number of males (of all ages) granted first residents permit in 2011 was 664.968, the number of women granted permits was 630.455. Gender breakdowns for asylum applications show for the age group between 14 and 34 years of age a three fourth majority of male applicants in 2011 (Eurostat) while for the acquisition of citizenship no gender-disaggregated data are available.

The figures show similar levels of 'documented' migration between men and women, based on estimates provided by EU-funded research. They indicate further that **young males constitute the overwhelming majority of undocumented migrants**, although data is very limited on socio-demographic characteristics. It should also be noted that **women make up significant numbers of undocumented migrants in certain countries and situations**, for example women seeking work in domestic service constitute large numbers of undocumented migrants in **Poland**. **Despite limitations, the data demonstrate that undocumented migrants are a heterogeneous group with different cultural and material needs**. The data also show that undocumented migration follows patterns of 'documented' migration, as populations follow already settled family and kin, as well as language alignment and political developments (Clandestino, 2009).

Table 2: Gender, age and country of origin of undocumented migrants in 12 EU Member States, 2008

Country	Country of origin	Males	Females	Age
Austria	Russian Federation, Afghanistan, Serbia, Romania	72% (smuggled people) 84% (entering illegally)	28% (smuggled people) 16% (entering illegally)	50% between 19-30 years old
The Netherlands	Bulgaria, Romania, North Africa, Morocco, Suriname	75% males	25% females	80% under 40 years of age
United Kingdom	Jamaica, Nigeria, Pakistan, China, Turkey, India	unknown	unknown	unknown
Germany	Turkey, Romania, Bulgarian, Serbia and Montenegro, Russia, Ukraine, China, Vietnam, Iraq, India	unknown	unknown	majority between 20 and 40 years old
France	no data	based on one detention centre – 95% male	5% females	young
Greece	Albania, Iraq, Afghanistan, Georgia, Pakistan, Bangladesh	more males than females	more males than females however, Eastern European migration comprises mainly women	young
Italy	Eastern Europe, North Africa, Asia and Oceania, Sub Saharan Africa, Latin America	just over half male	just under half female	no data
Spain	Ecuador, Colombia, Bolivia, Peru, Argentina, Brazil Paraguay, Uruguay	no data	no data	no data
Hungary	China, Vietnam, Serbia-Montenegro (with Kosovar Albanians), Ukraine	80% males	20% females	90-95% aged 20-59
Czech Republic	Ukraine, Moldova, Russia, Belarus, Vietnam, China	no data	no data	no data
Slovakia	Ukraine, Moldavia, Russia, Georgia, Vietnam, China, India, Pakistan	75% male	25% females	over 95% of working age
Poland	Ukraine, Belarus, Vietnam, Armenia	no data	high numbers of female migrants for domestic work	no data

Source: own analysis of Clandestino project, 2009

1.3. The context of general migration

It is important to understand undocumented migration in the context of general patterns of migration, as the former strongly influences the nature of the latter. For example different States' migration policies affect the location of illegal border crossings and therefore, locations of undocumented migrant concentrations (MPI, 2011); undocumented migrants often follow patterns of 'regular' migration. It is in these different contexts that the issue of violence against women who are undocumented is addressed.

Migration in Europe changed dramatically after the Cold War ended, both in terms of the size and nature of migration flows but also in the public understanding and tolerance towards it. **Public anxiety about uncontrollable levels of migration** played out in national policies, while there were simultaneously deliberate policies towards more fluid borders within the single market (Bade, 2004). Between 1950 and 1990, the total resident foreign population in the present EU countries, **Switzerland** and **Liechtenstein** increased more than four times, predicated on the increased need for workers in certain sectors.. However, **control and security also became a feature of EU Member States' immigration policies**, particularly focusing on a need to 'control' migration from non-EU areas and a notion of the problems of integrating 'foreign' cultures into those of the West (Bade, 2004, MPI, 2011). On 1 January 2012, 33.0 million people living in the EU were born outside the EU-27 (Eurostat), including 17.2 million persons who were born in a different EU-27 Member State from the country of residence. Most 'third country' nationals legally admitted to the EU enter for purposes of **family reunification** (particularly women) or employment (Eurostat, 2011)

1.4. Different types of undocumented migrant flows

A migrant may become undocumented in three key ways (flows). One is through the '**geographical flow**'- These are 'visible' flows of people physically crossing borders either by land or sea. The geographical flow is measured mainly by changes in the number of apprehensions by border guards. **Demographic flows** relate to the naturally changing size of undocumented migrant populations through births and deaths. Very little is known about the size of demographic flows (ibid, 2009). The third is the '**status related flow**' pointing to people's move between the 'undocumented' and 'documented' status. These are changes due to acceptances or rejections of migration status applications. An interesting finding of the Clandestino project is that status-related 'outflows' have been 'far higher' than status-related inflows in 12 EU countries, thus more people have been regularised than have been rejected and rendered 'irregular'. It is important to note that **the accession of new Member States** to the EU provided legal status to a number of migrants who were previously 'undocumented'. 782.200 people acquired citizenship in the EU in 2011 (Eurostat, 2012). **Whether and how newly-'documented' (or 'regularised') women who are experiencing domestic violence directly benefited from this change would be a useful question for further research.**

1.5. Prevalence of domestic violence amongst the general population, documented and undocumented migrants

It is now widely accepted that **domestic violence is common across a range of modern societies**. It is also clear that this form of violence **flourishes where there are imbalances of power** and where one person therefore has the opportunity to choose to misuse their power over another. It might be expected then that those with vulnerable immigration status would be particularly open to forms of abuse.

Headline statistics for the prevalence of domestic violence among the general population worldwide range between one fifth⁴ to up to 71%⁵ of women having experienced this abuse during their adult lives at the global level. **The studies included in this review suggest figures ranging from: 30% (in last 12 months), over 23% (in lifetime) to 25.7% (of patients in hospital emergency rooms)**. Even when assuming that undocumented migrant women experience the *same* levels of domestic violence as other women, given the (albeit limited) data on the numbers of undocumented women in Europe, the number of domestic violence incidents is likely to be high. However, some studies included in this review **highlight potentially higher levels of domestic violence among both documented and undocumented migrants, compared to the general population**.

PICUM observes that research into violence against women often fails to include the experiences of undocumented women and this failure means services are not attuned to those women's needs. Moreover, agencies that support women experiencing domestic violence rarely collect data on citizenship status of the women they support. Thus, a lack of knowledge about this group of domestic violence victims may prevent effective services and policies from being developed.

⁴ European Parliament resolution of 05 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (2012/2209/NI).

⁵ World Health Organisation WHO Multi-country Study on Women's Health and Domestic Violence against Women.

2. CHARACTERISTICS OF UNDOCUMENTED MIGRANT WOMEN

KEY FINDINGS

- Undocumented migrant women in the study populations come from a diverse range of countries of origin.
- Age ranges appear to be older for those examined in the studies, compared to the wider population of undocumented migrants (based on limited data).
- Key characteristics of undocumented migrant women in the studies include:
 - There are reasonably high proportions with high school or university levels of education.
 - They experience high rates of poverty.
 - They experience greater health risks compared to documented migrants and the general population.
 - They are likely to have children.
 - Around half are in intimate relationships.
 - Many lack emotional support from friends or family.
- A key way that a migrant woman may become undocumented is when an abusive resident spouse refuses to apply for her residency, often as part of a strategy of control.

2.1. Migration status, age, country of origin and migration purpose

The primary studies all provided some detail of the demographic and other characteristics of their research participants. Whilst the samples are constructed for the purposes of the specific research studies and cannot be considered representative of all undocumented women experiencing domestic violence, taken together they provide a useful overview of the range of who these women may be.

Where known, a number of characteristics for the groups studied are provided in the research. These are detailed in table three below.

Table 3: Characteristics of undocumented and other migrant women experiencing domestic violence (based on populations studied in the selected primary research)

Study	number	migration status	country of origin/ethnic origin either of migrants or client group	country of arrival	age
Keygnaert et al (2012)	223	Refugees and asylum seekers, some (28, 12.5%) undocumented	Iran, Roma, Kurdish, Somalia, Afghanistan, former Soviet Union	Belgium	15-49
Anitha (2011, 2010)	30	Unknown but who have experienced forced or arranged marriage*	South Asian countries of Pakistan, Bangladesh and Afghanistan	UK	18-54
Schoevers (2010)	100	undocumented female immigrants who had self-reported sexual health problems	Diverse	Netherlands	mean age 36.4
Freedman, 2011	not reported	not reported	not reported	Global	not reported
Wolff et al, 2008	161	undocumented women who are pregnant	83% Latin American	Switzerland	mean age 29.4
Burman et al, 2005	23	black and minority ethnic women, unknown proportion of undocumented	African/African Caribbean, South Asian,	UK	no data
Amanor-Boadu et al, 2012	496	'foreign born' women, unsure what proportion includes undocumented women	diverse	USA	mean age 33 years
Kulwicki et al, 2010	65 (domestic violence service workers)	NA	Arab-migrant communities	USA	no data
Villalon, 2010	unknown/NA	minority ethnic women including undocumented	Latin America	USA	no data
Erez et al, 2009	137	migrant women seeking help for immigration issues, 24% known undocumented	35 different countries of origin	USA	median age 31
Simbandumwe et al, 2008	65 (men)	immigrants/refugees, unknown how many are undocumented	South East Asia Central and South America	Canada	median age 38
Bhuyan 2012	15 (domestic violence shelter staff)	NA	no data	Canada	no data
Salcido and Adelman, 2004	10	undocumented migrant women	Mexico	USA	23-73 years

Table three shows that, similar to data on undocumented migrant populations more generally, the country of origin is diverse. Age ranges appear to be older for those examined in the studies; however, this may be a reflection of where the samples were identified rather than representative. The majority of the samples in the studies were of working age.

Only one study (Wolff et al, 2008) explored the reason for migration. Of the 161 undocumented migrant women who were pregnant (26.4% of whom had experienced domestic violence in their lifetime); a large majority (**84%** of the sample) had migrated for **economic reasons**. 7% had migrated on '**family grounds**' (such as reunification or marriage), 2% for **study** and 7% for '**political or tourism**' reasons.

2.2. Education, Health, and socio-economic situation

The primary studies revealed few details about the individual socio-demographic characteristics of undocumented women experiencing domestic violence. This is because of ethical and trust issues in working with this population group (Villalon, 2010, Keygnaert et al, 2012). However, a few relevant characteristics were revealed. Of the migrant women included in the studies:

- There are reasonably high proportions with high school or university levels of education.
- They experience high rates of poverty.
- They experience greater health risks compared to documented migrants and the general population.
- They are likely to have children.
- Around half are in intimate relationships.
- Many lack emotional support from friends or family.

Keygnaert and colleagues' study (2012) of 223 refugees including 12.5% who were undocumented finds the general profile of their sample to be '**highly educated women and men of reproductive age who reported experiencing a major setback in their socio-economic position**'.⁶ 23% of the sample were paid at work while 19% were seeking work. Schoevers' study of **124 'irregular' migrant women** who were selected from a range of community settings in the Netherlands finds that of the sample, **78% were in a full time or part time job**, the mean number of years living in the host country without documents was 2.86 years. In Wolff and colleagues' 2008 study of 161 undocumented migrant women who are pregnant in Switzerland, **24% of the study sample were university educated**, 40.7% achieving a high school degree; **62.5% lived in a single room**, typically sharing with at least one other person. 100% of the sample **lacked health insurance**.

All the women in Anitha's study were **living in poverty**⁷; 50% were unemployed; **only 6.7% were able to speak the 'host' country language fluently**. No data are provided

⁶ The proportion of undocumented to other migrants that match this description is not provided in the data.

⁷ Defined as less than 60% of the average median income per year. This was the result of No Recourse to Public Funds.

on the individual socio-demographic characteristics of migrant women experiencing domestic violence in Burman and colleagues' (2005) study.

2.2.1. Family situation and support networks

15% of undocumented women in Wolff and colleagues' (2008) study reported **lacking emotional support**. Of the 'irregular' migrant women in Schoevers' study, **27% were pregnant while being undocumented**, 53% had partners and 73% had children. In Keygnaert and colleagues' study 46.6% had a steady partner and **52% had at least one child**. **39%** of the women in Anitha's studies **had at least one child**.

2.2.2. Health

Of the 27 undocumented women who were pregnant in Schoevers and colleagues' study sample, **19% (5) had never attended an antenatal clinic**. Only 15% of the sample had received a 'Pap' smear (preventative screening test for cervical cancer); 11% mentioned concerns about sexually transmitted infections. In Wolff and colleagues' study, a **wide range of health issues were reported among undocumented migrant women** (some of whom had experienced domestic violence). The researchers found a risk 6 times higher of under-use of the Pap screening test and an **11 times higher risk for delayed prenatal care**.

This finding has particular significance for undocumented migrant women; as some case studies demonstrate, health services may be the only service that this group of women access and the only chance for their victimisation to be identified and addressed. Despite this, the literature appears to show that **undocumented women delay accessing health care**. The **barriers** in some Member States include, on the one hand, that **health care is not free of charge** for those without legal residence or, on the other hand, the (real or perceived) **risk of being reported to authorities** (see **Germany**).

2.3. Experiences and prevalence of domestic violence amongst (undocumented) migrant women⁸

2.3.1. Prevalence data in the studies

Table 4: Prevalence of domestic violence amongst the study populations

Study	% of sample experiencing domestic violence	number in sample
Keygnaert et al (2012)	26.2% (since arrival in host country)	223
Schoevers (2010)	28% had experienced sexual violence at least once in lifetime	100
Wolff et al, 2008	26.4%	161

⁸ The non-European primary studies included purposively selected populations that had all experienced domestic violence so prevalence indicators are not applicable.

Only three studies provided data on prevalence of domestic violence amongst migrant women populations including undocumented migrant women. These were also European based. (Keygnaert et al, 2012, Schoevers, 2010, Wolff et al, 2008), see table 4 above. Wolff and colleagues found that **lifetime prevalence** of domestic violence amongst undocumented migrants who are pregnant was **similar to a control group** of legal citizens who are also pregnant in the same country. **Overall lifetime exposure to domestic violence** was 26.4% amongst the undocumented migrant group, which was **lower** to the control sample of legal migrants, (32.2%). However, **exposure to violence** during pregnancy was **significantly higher** for undocumented migrant women, compared to the control group: 11.2% compared to 1.3%.

In Schoevers' 2010 study of 100 undocumented female immigrants in the Netherlands, **28% had reported past exposure to sexual violence**. This is a similar rate to Wolff and colleagues' samples of both legal migrant women (28.6% prevalence) and illegal migrant women (24.4%). Keygnaert and colleagues identified a high prevalence of past victimisation among their sample of refugees and asylum seekers which includes some undocumented women (87, 39%); 30% of 102 separate violent incidents were committed by ex/partners; 23.2% (77) were committed by service providers and 16% (53) by family members. These rates are **comparable with or slightly higher than prevalence rates within a wider population** which are, for example, 32.3% (of a control group of migrants *with* legal residency), or 25% lifetime prevalence rates within the general population (Council of Europe, 2002)

Box 1: Potentially higher rates of domestic violence among migrant groups in general: understanding the context behind domestic violence

A number of studies discuss the potentially higher prevalence of domestic violence among both documented and undocumented migrant women, compared with the general population. Whilst there has been a general resistance amongst feminist scholars to locate domestic violence within specific racial or socio-economic contexts (Rizo and Macy, 2011), there is also **growing acceptance of 'ecological' models of gender based violence** (e.g. Merali, 2008, Keygnaert et al, 2012, Ghafournia, 2011). This approach identifies **individual, interpersonal, organisational and societal (structural) factors** that determine risk of abuse. In so doing, the ecological approach seeks to **understand the circumstances and consequences of domestic violence without excusing individual perpetrators' behaviour**. Merali (2008), for example finds that the structure of women's relationships and their socio-economic and cultural contexts are key factors in determining the occurrence and consequences of abuse. Villalon (2010) argues that *'Immigrant women are particularly vulnerable to abuse: the intersection of their gender, sexuality, class, race, ethnicity, religious and political orientations, and immigration status stimulates nationalistic anxieties and multiplies the effects of both interpersonal and structural violence'*. Furthermore, **undocumented migrant women face particular individual, interpersonal and structural barriers to 'exercising their agency' (ibid, 2010) in response to the abuse they encounter**. Bhuyan (2012) notes that *'factors related to language, religious beliefs, traditional help-seeking behaviour, composite of social networks, and degrees of acculturation'* affect the way that a victim of domestic violence responds to the abuse she suffers. These barriers are discussed more fully in the following sections.

2.3.2. Qualitative reports of personal and psychological consequences

The wider literature on the impacts of domestic violence is explicit that experiences of **domestic and sexual violence are strongly correlated to mental distress, particularly self-harm and depression** (e.g. WHO, 2013). These findings relate to global data. At a national level, for example in the **UK**, there is also an **elevated rate of completed suicides** of South Asian women in the **UK** (Soni-Raleigh, 1996) and of **self-harm** (Bhui, McKenzie and Rasul, 2007). Cooper and colleagues' (2010) study showed that Black African and African-Caribbean women aged 16-39, had the highest rate of presentation to accident and emergency departments compared to white and South Asian women, and that South Asian and Black women had a lower rate of referral to formal psychiatric services (Cooper et al, 2010). Housing problems and problematic family relationships were reported as precursors to such distress.

Qualitative studies with women who have experienced domestic and or sexual violence also illustrate the **link between such experiences, immigration status and mental distress** (e.g. Chantler et al 2003; Humphreys and Thiara in the UK). Three **UK** based studies (Anitha, 2011, Chantler et al, 2003, Chantler, 2012) illustrate how insecure immigration status combined with domestic abuse exacerbates **self-harm and mental distress**. Studies in the **USA** also indicate the additional distress linked to insecure immigration status suffered by victims of domestic violence (Villalon, 2010, Salcido and Adelman, 2004, Erez et al, 2009). These studies indicate that **fears over deportation are a stressor in themselves** as well as a barrier to help seeking. For example, Anitha (2010) reports:

*When asked about their health over the past six months, a majority of women recounted **a range of mental health problems** including depression, extreme stress, suicidal thoughts, suicide attempts, self-harm, eating and sleeping difficulties and extreme fear, **which they attributed to the abuse they had faced as well as their ongoing financial difficulties and worries about deportation.** (ibid, 2010)*

In another qualitative study of immigrant women with insecure migration status who had recently arrived in **Canada** experienced victimisation, including emotional, sexual and physical, **increased during critical moments during spouses' residency applications**. As one respondent reported '[the violence] has gotten worse. Now he takes out all the frustration on me' (Erez, 2009):

3. VULNERABILITIES OF UNDOCUMENTED MIGRANT WOMEN TO DOMESTIC VIOLENCE

KEY FINDINGS

- Undocumented migrant women face a number of vulnerabilities to domestic violence. These include individual, institutional, social and structural vulnerabilities.
- Individual vulnerabilities include:
 - Lack of Information, knowledge and experience;
 - Drugs and alcohol use;
 - Being dependent on a sponsoring spouse;
 - Individual socio-economic position.
- Structural vulnerabilities include:
 - Economic distress.
- Social vulnerabilities include:
 - Among others, fear of bringing shame and dishonour on family.
- Institutional vulnerabilities include:
 - Health, social and other support workers' own prejudices and scepticism, including not believing the reported abuse, is genuine;
 - Competence and knowledge differs between professionals which leads to inconsistencies between outcomes for residency applications on the grounds of domestic violence.

3.1. Individual vulnerabilities

Keygnaert and colleagues list a number of 'individual vulnerabilities' to sexual and gender based violence including: '*gender, behaviour, mental health, information, knowledge and experience, individual socio-economic position, internalised cultural norms*' (ibid, 2012). In the following, these vulnerabilities are explored in more detail.

3.1.1. Lack of Information, knowledge and experience

A key vulnerability identified in the studies is undocumented migrant women's **poor access to information, knowledge and experience** of both their rights to protection, their rights to citizenship status and rights to and knowledge of services that they may trust. In Keygnaert and colleagues' study, one third of respondents (n=66) identified a lack of knowledge and information as a **risk factor**, including '*not knowing the language and culture of the host country*', '*lack of sexual knowledge*' and lack of '*self defence skills*' (ibid, 2012). Of the 28 undocumented migrant women who had experienced domestic violence in Schoevers and colleagues' study, 19% had '*difficulties in reading and writing*'. **Being misinformed** or **misunderstanding information** was also highlighted as a vulnerability.

One respondent in the study reported: *'My lawyer told me that I have to wait till the 37th week of my pregnancy before I can get pregnancy care'* – information that was incorrect. Bhuyan (2012) finds that lack of information and knowledge is a significant risk factor for undocumented migrant women and recommends that both regular and undocumented migrant women be provided with **information in their own languages** about domestic violence and immigration rights when entering the **USA**.

Rizo and Macy (2011) also identify domestic violence survivors' lack of knowledge about rights and how to access them as well as how to access community resources available to them was a significant barrier to both undocumented and documented migrants in the USA.

Importantly, **lack of knowledge of rights** and how to access them **is deliberately exploited** by abusers and forms a key **part of the abuse pattern**. This is especially the case for undocumented migrant women who live in fear of deportation (inter alia, Kulwicki et al, 2009, Erez and Globokar, 2009, Conyers, 2007, Pendleton, 2003)

This lack of knowledge on the part of the women is exacerbated by a **lack of information from agencies** contacted for help, advice and support (PICUM, 2012).

Box 2: Potentially good practices

PICUM (2012) highlights undocumented migrant women's lack of knowledge and access to information about their rights to protection and services, which can be observed as an international phenomenon. **PICUM highlights what it identifies as innovative practices to address this problem**; for example, the Steungroep voor Vrouwen zonder Verblijfsvergunning in **the Netherlands** (Support Group for Undocumented women, SVZV) holds **open office drop in sessions** for undocumented migrant women to provide information and advice, including about domestic violence. SVSZ **coordinates with other services** to ensure that undocumented women are able to access health, housing and counselling as necessary. **'Le Cimade'** in Paris, **France**, provides a **telephone helpline** for all migrant women experiencing violence⁹. Similarly, in London, UK, the Latin American Women's Rights Service provides **drop in sessions** for women to gain advice. However, whilst culturally-specific services are praised, other researchers point out the **potential for unprofessionalism and breaches of confidentiality** among small, culturally specific grass roots services (see section on institutional risks).

3.1.2. Drugs and alcohol

One study identified drug and alcohol use among undocumented migrants experiencing domestic violence as an additional risk factor for the abuse (Keygnaert, 2012).

3.1.3. Poverty, lack of financial resources and control of money

There is some evidence to suggest that undocumented migrant women may experience high levels of **poverty** and **social exclusion** despite their high level of **education** (Keygnaert, 2012). This is proven particularly true for those experiencing domestic violence. This is the result of being undocumented and therefore **unable to legally work and earn money** (Salcido and Adelman, 2004, Villalon, 2012). The consequent lack of

⁹ The provision of telephone helplines is recommended within the Istanbul Convention Article 24.

material resources is a key factor in explaining why women who are victims are **unable to leave** an abusive relationship (Anitha, 2010, 2011).

Abusers are known to use **control of money** as part of their abusive strategies (Kulwicki et al, 2010, Villalon, 2010). Being both financially dependent on their partners, whether or not the partners are also undocumented, and having limited ability to earn money, is a double bind for these women (Rizo and Macy 2011, Anitha, 2010, 2011).

3.2. Structural vulnerabilities

3.2.1. Economic distress

At the individual level, being undocumented means particular vulnerability to poverty and social exclusion (Keygnaert et al 2012, Ghafournia, 2011)¹⁰. Undocumented migrants are **not protected from wage exploitation, unemployment or ill-health to the same extent as native people or regular migrants**. They are not entitled either to work or to social protection in the case of unemployment. In some Member States, undocumented migrants may not be entitled to free health care (Schoevers, 2010).

In her qualitative study of documented and undocumented migrant women experiencing domestic violence, Anitha (2010) finds that **lack of financial and material resources greatly exacerbates these women's vulnerability in the UK**. A lack of money, food and shelter precludes a woman from leaving a dangerous situation and was strongly linked to a range of mental health problems as evidenced as well in previous studies (e.g. Chantler et al, 2001; Burman and Chantler, 2005). Access to material resources is a key factor in whether or not a woman is able to leave a violent situation.

Box 3: Lack of material resources as a risk factor

Lack of material resources is also a risk factor for experiencing domestic violence in the first place. Askola (2007) finds that lack of material resources is a key reason why women may take the risk of using traffickers to illegally enter another country. Once indebted to a trafficker a woman is vulnerable to sexual exploitation and violence. Similarly, Radford and Tsutsumi (2004) point out that the illegal exploitation of women by traffickers is part of a '*continuum of control*' which links domestic violence with the sex trade. **Women may be trapped into violent situations through direct bondage and physical coercion but also through 'friendship and strategies that use love'**. Thus, undocumented 'trafficked' women are especially vulnerable to domestic violence, often by their 'pimps' who are also ex/partners. The authors conclude '*there is no doubt that domestic violence contributes to the trafficking of women into the sex trade*' (Radford and Tsutsumi, 2004).

¹⁰ Structural vulnerabilities apply at the global level also. Radford and Tsutsumi (2004) comment that economic globalisation has created a globally unequal distribution of resources which divides the world into rich, 'benefit zones' and poor 'victimisation zones'. The authors continue to draw parallels between the unequal global distribution of resources and the distribution of risk and violence to women. Increasingly men, from 'benefit zones' target women and children in poor 'zones' where there is **little protection of human rights**, for example through sex tourism and mail-order brides, thus avoiding any risk of detection and prosecution to themselves. This is witnessed in trafficking of women and children for sex, sex tourism, but also in the inadequate protection of women experiencing violence owing to their undocumented status in destination countries. Thus, whilst there is increasing recognition of the need to stop violence against women in rich 'benefit zones' and laws and policies have been enacted to address such violence, **similar protections are not afforded to citizens of these poorer, less protected zones** (ibid, 2004).

3.3. Social vulnerabilities

One of the key assumptions in the literature is that issues of shame and honour in specific minority communities prevent women experiencing domestic violence from seeking help. Bucci (2012) notes of Muslim migrants in Italy for example, that they are subject to **strict social norms**. The study goes on to note that '*familial values inherent in [Muslim] cultures serve to make the situation worse*'. **Abuse may be considered a 'private' matter** that should not be addressed outside of the family. (ibid, 2012). Anitha (2010, 2011) also reports that the desire to avoid bringing shame on the family and on the wider community of immigrants deters many women experiencing domestic violence from seeking help, including undocumented migrant women.

Traditional gender roles in which women are expected both by themselves and by others to **endure a level of violence within marriage** is also seen as a barrier within certain cultural groups (Amanour-Boadu et al (2012)).

Box 4: 'Right of ownership' over a women's body

It should be noted that a range of research illustrates that seeking help for domestic violence in native European communities is also constrained. Some studies suggest that up an average of **35 assaults** are endured before a woman approaches services for help. Further, it should be noted that the issue of shame is not restricted to minority communities. Some authors have argued that domestic violence could be construed as resulting from a **man's authority being undermined** if, for example, his wife/girlfriend is having an affair. The right of ownership over a woman's body and her appropriate sexual behaviour is comparable in situations of **domestic violence** as well as in **honour crimes** (See for example Welchman and Hossain, 2005).

3.4. Institutional vulnerabilities

3.4.1. Professionals' cultural stereotypes and prejudices

In addition to victims' own lack of knowledge of their entitlement to services, the literature identifies that an important factor in preventing undocumented migrants from receiving help are the cultural stereotypes and scepticism of professionals who encounter them when reporting domestic violence. Examples of **unhelpful cultural constructions** held by those working for public agencies include '*Black women are strong*' and therefore able to handle domestic abuse without support; or in the case of South Asian women '*they look after their own and therefore do not require intervention*' or '*it is part of their culture*' and therefore not amenable to intervention (Burman, Smailes and Chantler, 2004). **Such discourses are highly dangerous and fail to protect undocumented migrants from further abuse and exploitation.**

3.4.2. Lack of competence and knowledge of professionals

Scepticism by professionals is often driven by a lack of understanding of the pressures that undocumented women face in situations of domestic violence. PICUM reported a case in the **UK** of one undocumented **Iranian** woman who was destitute as a result of having no access to public support or the labour market. She was abducted and repeatedly raped and then dumped. An NGO working with sexual violence survivors assisted the woman to report

the crime to police. When police were unable to find evidence or were unable to verify the locations reported by the woman, they threatened to prosecute for wasting police time and report the woman to immigration authorities. The police did not understand, according to the support worker, **that the victim was very confused, frightened and disoriented** which would account for her inability to trace her previous locations (PICUM, 2010).

One small and unpublished piece of research in a metropolitan city in the **UK** found that although 'helping' agencies' (council, health and NGOs) knew when a client seeking help for domestic violence was 'undocumented', they have **no record** of how many such women they encountered. The research –a survey of support agencies working with domestic violence - was conducted by Safety4Sisters, an NGO. Safety4Sisters conclude that there is a **lack of good data** about the needs of a significant client group (Cook, 2010).

Women Against Violence in Europe (WAVE) highlights the absence of **multilingual services** in domestic violence shelters in a number European countries as a key barrier for undocumented and other migrant women (WAVE, 2009, 2010, 2012).

3.4.3. Service providers at the intersection of immigration and domestic violence

Bhuyan (2012) extends the analysis of services providers' roles further. The study describes the critical role played by front line support workers – often domestic violence shelter staff. These '*street level bureaucrats*' (*ibid*, 2012) play a **crucial role in interpreting laws and policies surrounding domestic violence and immigration**; they are able to assist some women and not others to obtain temporary residency based on their own skills in advocacy and interpretation of the law. Bhuyan suggests that shelter staff require **detailed training** in immigration law and advocacy for migration issues (*ibid*, 2012).

3.4.4. Undocumented women as a burden on services

Further, Bhuyan finds that 'undocumented women' are often seen as and portrayed by shelter staff as a burden on services that are already stretched. This is because of undocumented women's limited access to social benefits and the labour market which means they tend to remain in shelters for longer than other women.

Villalon (2010) observed in her research conducted at a NGO working with undocumented migrant women experiencing domestic violence that, frequently, staff members make judgements about which of the women are '**worthy of support and which are 'lost causes'**'. These judgements are based on ephemeral notions such as whether the victim 'cries a lot' or is able to 'control her children when visiting their office. Villalon (2010) recommends training of staff in these settings to **understand their own judgement processes** in order to avoid subjective assessments of need and 'worthiness'.

3.4.5. Risk of unprofessionalism of small, grass roots, culturally specific services

Another important risk identified in the research relates to small, grass roots, culturally specific services. Whilst these are generally seen as crucial for reaching undocumented migrant women, the risk of unprofessionalism needs to be managed. Kulwicki and colleagues (2010) point out that there may be an **inherent tension** between the desire for

grass roots, culturally sensitive services, which are provided by people from similar cultural backgrounds, and the need for professionalism, in particular, **confidentiality**. In the context of domestic violence advice services for Arab-American women for example, '*many Arab clients shy away from these services because of trust issues and lack of professionalism, despite them being culturally appropriate*' (ibid, 2010). The authors highlight the ACCESS (Arab American Coalition Against Domestic and Sexual Violence) project as **good practice** in this regard. ACCESS aims to increase awareness of domestic violence among Arab Americans through training of domestic violence service staff and community level awareness raising activities.

3.4.6. Further institutional and organisational risks

An additional underlying institutional and organisational risk for undocumented migrant women experiencing domestic violence is the **lack of good quality data** and **gender mainstreaming in migration policy** (Freedman, 2010). Lack of gender disaggregated statistics collected, for example by the European Border Agency (**Frontex**) means that there is poor knowledge of the locations of particular groups of female undocumented migrants who may need additional services, including for domestic violence issues.

4. MARRIAGE – A ROUTE INTO BEING UNDOCUMENTED FOR MIGRANT WOMEN EXPERIENCING DOMESTIC VIOLENCE

KEY FINDINGS

- Marriage sponsorship 'breakdown' is an important way that migrant women experiencing domestic violence may fall into 'undocumented' status.
- This may occur as a result of a migrant woman's failure to apply for residency, sometimes as a result of deliberate sabotage or refusal to support their applications by their abusers.
- Marriage sponsorship may also be a result if an arranged or forced marriage.
- A feeling of 'gratitude' and debt towards the 'sponsoring' family may deter women from seeking help for their abuse, for fear of appearing ungrateful.
- A migrant woman may be deterred from applying for legal residency, due to chaotic living conditions created as a result of financial stress.

The limited number of primary studies specifically of **'undocumented' women provided very few details of the routes into undocumented status**, most likely owing to the sensitive nature of this issue and difficulties of getting participants to speak to researchers.

The secondary studies identified a number of routes to insecure migration status. These included **illegal entry; overstaying legal time limits or visas; being trafficked** (either through coercion, deception or cooperation); marriage sponsorship breakdown; and through a **failed asylum application**. Most detail was provided on marriage sponsorship breakdown and is presented below.

4.1. Marriage sponsorship breakdown

A number of primary studies demonstrate how **marriage sponsorship 'breakdown'** is an important way that women experiencing domestic violence may fall into undocumented status. This may occur as a result of a woman's failure to apply for residency as a result of **deliberate sabotage or refusal to support their applications by their abusers**. (Villalon, 2010, Anitha, 2010, 2011, Keygnaert et al, 2012, Amanor-Boadu et al, 2012, Kulwicki et al, 2010, Erez and Globokar, 2009, Erez et al, 2009, Bhuyan, 2012). As this quote from a PICUM (2012) report illustrates:

"I've been in the UK for seven years now, been married to a British citizen for nine years, met him about twelve years ago. He hasn't made me legal, I tried it on my own but by the time I tried to send the right application form I was already overstayed, and my husband didn't do anything to help me – actually, it helped him you know because he liked to control me".

(Undocumented migrant woman, PiCUM, 2012)

Similarly, Villalon (2010) explains in her qualitative study of undocumented migrant women experiencing domestic violence in the **USA**, that a key route towards being undocumented is when a women may be entitled to independent residency on the basis of sponsorship by a resident spouse but is prevented from making a successful application.

4.2. Forced or arranged marriage

(Anitha, 2011) explores the specific experiences of women who have either been **forced into marriage** to a **UK**-based man or whose **marriage is arranged**. Upon arrival, the women included in the study were subject to physical and emotional abuse both by their spouses and the spouses' family. The abuse identified included preventing the victim from speaking with her own family, withholding money and enforcing long hours of domestic servitude. A key component of the abuse and a means by which it is continued was the 'sponsoring' families' refusal to apply for citizenship for the abused woman. Thus, although the arriving woman may be entitled to apply for citizenship, she continues to exist with an **ambiguous migration status, which can make her dependent on her new family, in both perception as well as reality**. Similarly, Anitha points out that a feeling of 'gratitude' and debt - referred to as the 'sponsorship debt' - may deter women from seeking help for fear of appearing ungrateful. However, it should be noted that a variety of marriage practices can give rise to domestic violence including for example, the increased use of '**mail-order**' **brides** where the perpetrators are likely to be white, indigenous nationals.

4.3. Barriers to seeking help with immigration status

Financial and material instability means that women may also be prevented from **seeking help and advice** relating to their immigration status. For example, in the **USA**, undocumented women who are victims of domestic violence are entitled to residency 'relief' if they are able to demonstrate the abuse and meet a number of other conditions (see discussion of 'VAWA' below). These **conditions may easily be missed** when a woman is under considerable financial and emotional pressure. In one case for example,

'Luisa... decided to cooperate with the police, with whom she had been in touch when her abusive partner was incarcerated, and petitioned for a [special visa]. Luisa took the steps suggested by [her advocate agency] but the police refused to certify her as an applicant by claiming that she had not been cooperative enough because she had not returned their phone calls. Luisa had not been able to do so because she had moved to various temporary residences, without phone lines, due to her financial instability and the continuous threats from her abusers' family members'. (Villalon, 2010)

Similarly, Salcido and Adelman (2004) report the case of one woman in the USA suffering domestic violence in the **USA** whose abuser **deliberately hid immigration petition papers from her**:

'When he hears the mail coming, he jumps up to get it, and he takes everything. That is how he hid that [INS] envelope [requiring a response within 90 days].'

5. CHALLENGES AND OPPORTUNITIES IN THE POLICY LANDSCAPE FOR UNDOCUMENTED MIGRANT WOMEN EXPERIENCING DOMESTIC ABUSE

KEY FINDINGS

- There is a growing tendency across Europe for securitisation of borders and stricter enforcement against irregular migration. In this context, (undocumented) women's right to safety in terms of a residence permit in cases of domestic violence is only ensured through 'humanitarian exceptions', granting temporary 'residency relief'. Additionally, this is only granted on a case by case basis in accordance with Member States' law and practice. As there are no EU-wide standards for the conditions leading to a residence permit for victim/survivors of domestic violence, practice differs widely among EU Member States.
- In all Member States, undocumented migrants face penalties when they do not have valid residence permits, including administrative fines, imprisonment and forced return. Fear of detection and punishment is likely to prevent victims of domestic violence from seeking help.
- Women may be granted 'residency relief' if they are victims of trafficking *only if* they contribute to criminal investigations of their traffickers. However, trafficked women are subject to very similar power and control dynamics as victims of domestic violence.

5.1. Challenge: increased securitisation and criminalisation of illegal residency

5.1.1. Fundamental rights and irregular migrants in the EU

Undocumented migrants find themselves in '*a vulnerable situation that puts them at heightened risk of Fundamental Rights violations*' (FRA, 2011a), see also chapter 3. Notwithstanding the legal and constitutional frameworks of the Member States, all human beings in the European Union are protected notably under the Charter of Fundamental Rights¹¹ and the European Convention on Human Rights. This includes a right to non-discrimination on the grounds of (inter alia) sex (Charter of Fundamental Rights, Article 21); preventative health care and medical treatment (Charter, Article 35) as well as social assistance and housing (Charter, Article 33, Article 34) under the conditions established under national laws and practice. For victims of domestic violence, such services are essential components of an effective response and can make the difference, for example, to a woman's decision whether to remain in a dangerous abusive relationship as well as to the levels of mental distress she endures.

However, the rights of undocumented migrants in Europe are set out in differing degrees according to theme and are considered under secondary European law and guidance rather than primary (ibid 2011), as well as through case law. Thus, EU and Member States' law on

¹¹ The Charter is not applicable in the UK

fundamental rights for undocumented migrants is **more ambiguous** and **heterogeneous compared to regular migrants and native citizens**.

The effect of these differences between undocumented and native residents or regular migrants in Europe manifests in **differences in access to basic services** like health care, education, social assistance and housing. By way of example, undocumented migrants in the **UK** are not entitled to social assistance or social housing. The result is that undocumented women may not be able to access shelters as their accommodation costs are not covered by the state. Another illustrative example is access to health care in **Germany** which is dependent on the production of proof of legal residency.

Furthermore, obligations by health care providers and other state agencies in **Germany** to report undocumented migrants, may delay seeking healthcare. This is especially problematic for domestic violence victims who are likely to experience injuries and ill health. In these ways fundamental rights (to health care, physical integrity and dignity) may be less available to undocumented migrants and undocumented victims of domestic violence in particular who have additional needs for health and safe housing.

5.1.2. Migration policy in the EU and their implications for undocumented victims of domestic violence

EU migration policy has increasingly combined stricter border control (removals and prevention) in conjunction with the management of skilled labour migration. For example, the Treaty on the Functioning of the European Union (TFEU) obliges the EU to develop a common immigration policy that ensures fair treatment of third-country nationals residing legally but also combats '*illegal immigration and trafficking*'. **There is no direct reference to the dignity or rights however of people who are undocumented** migrants and who are subject to removal. The EU Returns Directive (2010) is an attempt to provide clear and transparent rules for the removal of undocumented migrants including a transparent procedure for decisions and limiting the use of detention. However, not all Member States have fully implemented the Directive.

Boiano, (2013) argues that undocumented migrant women in **Italy** are '*substantially denied by national legal systems*' as a result of the recently increased criminalisation of undocumented status (Boiano, 2013). Tensions between the protection of fundamental rights and immigration control have been referred to as a '**conflict between policy measures developed to address irregular migration, and undocumented migrants fundamental rights**' (PICUM 2010). For victims of domestic violence who are undocumented, immigration control measures which may, for example, oblige medical support staff to report any undocumented migrants they become aware of to authorities, is likely to have the effect of deterring access to essential health care (WAVE, 2012). Overall, fear of detection, whether real or perceived, may be increased through tougher immigration control measures the consequences of which are to prevent help seeking (FRA, 2011b). This is also the case for undocumented domestic violence victims.

In this sense, Thronson (2012) identifies **immigration law as a contributing factor in the 'power and control' dynamic which makes women especially vulnerable to domestic violence**. Thus, Thronson identifies that,

in the USA, 'residency relief' introduced through the Violence Against Women Act (1994, 2005 – see below) whereby victims of domestic violence may obtain temporary or

permanent permits to remain is a '*concerted effort to **counteract the manner in which immigration law itself contributes to the perpetuation of domestic violence***'. Bhuyan (2012) also notes that immigration laws contribute to the pressures facing undocumented women experiencing domestic violence and prevents them from seeking help for fear of deportation.

5.2. Challenge and opportunity: marriage and the use of 'humanitarian exceptions' for granting residency

Box 5: Dependency and the power and control dynamic

One of the main reasons for a woman to migrate is **marriage sponsorship** which is also one of the few ways to enter the European Union legally. Typically, she may only be entitled to petition for residency, **with the support of her husband**, following two years of residing with her spouse¹². This means that women in this situation have **no access to public benefits in their own right** but only through their husbands.

This **dependency** strongly plays to the **power and control dynamic** that is widely accepted by researchers to be a part of the pattern of domestic violence and abuse. Crucially, **abusive spouses frequently refuse to apply for residency** on their wife's behalf. Data from the qualitative studies revealed how abusive partners are able to **delay and obfuscate their spouse's residency proceedings**. Furthermore, the arriving spouse may have feelings of indebtedness towards the sponsoring partner and their family; which Merali refers to as the '*sponsorship debt*' (Merali, 2008) and may prevent spouses from reporting abuse.

5.2.1. Marriage sponsorship breakdown

In some countries such as the **UK** and **Spain**, if a marriage to a 'sponsoring' spouse deteriorates within a time limit, the immigrant spouse is not entitled to remain in the country unless she can prove that she is a victim of domestic violence. The **standards set to prove domestic violence** are in many cases **extremely difficult** for the victim to meet and differ between EU countries. Admissible evidence of violence occurring includes police cautions, convictions, and medical reports (Batsleer et al, 2002). More recently in the **UK**, in recognition of the need for more immediate support to victims, the government has made some modifications which ensure that the woman is offered immediate support whilst the domestic violence claim is established. This marks a shift from the previous provisions whereby a woman had to prove she was a victim before she could access any support services.

Merali (2008) writes that sponsorship rules which in Europe typically require a marriage migrant to remain in the relationship for a minimum of 2 years, creates **complete dependence** on the sponsoring partner creating an **uneven power dynamic** which may be easily exploited and used as a weapon of abuse (also Anitha, 2010, 2011).

¹² Under **Directive 2003/86**, common rules governing the right to family reunification were established across the EU. This allows third country nationals (who have legally resided for at least one year) to obtain visas for their spouses or children. Member States are able to determine if the same right applies to unmarried partners and whether it is the family member themselves or the residing third country national who submits the application. The directive stipulates that family members are able to apply for their own permanent residency status no later than 5 years after residing in the new country and in practice many Member States allow this after 2 years.

5.2.2. Residency relief

No specific directive exists that introduces 'residency relief' (granting of residency permits) on the grounds of domestic violence in the EU. Therefore, practices in the Member States differ widely. Directive 2004/38, which is only applicable to EU citizens and their family members with a third country nationality, could be taken as a basis for the development of a **legal framework on EU level**¹³ to assist migrant and undocumented victims of domestic violence.

Whilst many countries in Europe also have a provision for residency relief, the conditions for eligibility vary for different countries. For the time being, as the case studies below show, obtaining residency on the grounds of domestic violence typically involves a number of difficult **hurdles including cooperation with the police in reporting the abuser and obtaining some form of recognition of the abuse either from Court or other public authority**. These requisites are particularly difficult for undocumented women to fulfil due to **language barriers and fear and suspicion of authorities**.

Also of importance is that no provisions were noted to exist in Europe for 'residency relief' for **undocumented migrant women who are not married**, except in the case of trafficked women who must prove cooperation with the criminal justice system before she is able to qualify for residency.

5.2.3. Institutional and structural responses to 'humanitarian exceptions'

Perez argues that public sector staff involved in processing an undocumented woman's claim for 'residency relief' will be **influenced by her 'irregular' status**. Perez argues that such **staff are likely to suspect that she is bogusly claiming** domestic violence in order to obtain residency (ibid, 2012, also Rizo and Macy, 2011 for similar findings with the American 'humanitarian exception' provisions).

For the EU, Perez (2012) points out that whilst there is room for Member States to provide residence permits at their discretion, as set out in the EU level immigration policy for 2010-2014 (the Stockholm Programme), the use of exceptional procedures only applies on a **case by case basis**. Perez consequently argues that *'the use of exceptional measures is not the same as recognizing undocumented women's (and men's) rights and protecting them from gender violence'*.

5.3. Opportunities and challenges: Residency 'relief' in cases of domestic violence: lessons from USA and Canada sponsorship

The treatment of marriage sponsorship breakdown in cases of domestic violence represents an opportunity to introduce best practice in a consistent manner across the EU.

The **USA** and **Canada** were among the first countries to introduce 'residency relief on humanitarian grounds' in their immigration policies for victims of domestic violence who had entered the country through marriage.

¹³ Article 13§2c: divorce or marriage annulment 'shall not entail loss of right of residence' where this has resulted from 'difficult circumstances, such as having been a victim of domestic violence' (during the marriage).

5.3.1. USA

In the **USA**, residency relief is provided through the Violence Against Women Act (VAWA, 1994, amended). When the VAWA was passed originally in 1994, it was 'as a formal acknowledgment by the Congress that **the disproportionately high number of foreign-born battered women** was partially **because of existing immigration laws** (Conyers, 2005). The subsequently amended VAWA allows victims who are sponsored by their spouses the opportunity to "self-petition," or independently seek legal immigration status in the U.S. **without having to rely on abusive husbands to file petitions on their behalf**, or having to wait for the minimum two year qualifying period. However, the victim must show that she 'entered the marriage in good faith, resided with the abuser, that the abuser is either a US citizen or legal permanent resident, and that she is a person of good moral character (not a criminal) (Thronson, 2012).

The **VAWA was heralded as significant progress for marriage migrant women with insecure migration status who suffer abuse**. However, a number of limitations continue to exist, notably the difficulty many migrant women, particularly those experiencing abuse, have in **proving they meet the conditions** listed above. In particular, **abusers routinely try to sabotage self-petition applications** either by denying there was a marriage, hiding papers or claiming to the victim that they have no such right to immigration relief (Villalon, 2010, Thronson, 2012, Salcido and Adelman (2004)). Importantly, VAWA is only available to women who are sponsored through marriage and whose sponsorship may break down as a result of domestic violence. It does not provide for non-married couples, co-habitees or any other intimate personal relationship.

5.3.2. Canada

Canada approaches the issue of marriage sponsorship differently, thus avoiding some of the potential problems created within sponsored residency applications. In Canada, once a spouse's sponsorship has been approved, **the spouse is automatically granted the opportunity to become a permanent resident in his/her own right** (Merli, 2008).

5.4. Challenge: Relations between trafficking and domestic violence

A number of studies highlighted the connection between 'humanitarian exceptions for domestic violence' policies and trafficking in human beings in the **USA** (Villalon, 2010, Thronson, 2012, Conyers, 2007) and in **Europe** (Askola, 2007, Radford and Tsutsumi, 2004).

In **Europe**, 'humanitarian exceptions' are permitted on the grounds of trafficking provided that certain conditions are met. **Council Directive 2004/81** introduced a temporary residence permit to victims of trafficking. Conditions of renewal and extension are determined by each Member State. It does not address victims of domestic violence (who may also be trafficked). Typically, in order to obtain an exception in the case of trafficked women, the victim must prove her **cooperation with authorities** in detecting and prosecuting the abusers. This may prove extremely difficult for victims who may not be assured of successfully obtaining residency at the end of the process (Villalon, 2010,

Thronson, 2012). Thus, 'residency relief' may be granted not to protect the victim but because she may prove useful in prosecuting traffickers (Askola, 2007)¹⁴.

Askola argues that as Member States are left to implement EU-law on trafficking on the basis of their own definitions about what constitutes sex working/prostitution/sexual exploitation, EU anti-trafficking law 'ends up as a *'race to the bottom'* that *'fails to address the real life circumstances'* of trafficked women (ibid, 2007).

Researchers point out the **strong connection** between the causes and consequences of the trafficking of women and domestic violence. For example, Radford and Tsutsumi (2004) suggest that there is a 'continuum of control' through which male abusers get women into sex work. Women are often 'procured' through the promise of love and friendship, even having **abusive intimate relationships** with their traffickers in some circumstances. In these ways, the different policies towards trafficked women may fail to address her needs as a domestic violence victim.

¹⁴ There are some further exceptions to these rules. In the United States, for example, in order to obtain a T-visa (the legal residency for trafficking victims in the U.S), victims have to collaborate with law enforcement in the investigation of the crime committed against them (trafficking). However, if victims are younger than 18 years old (minors) or they are physically and/or mentally traumatized, they can request not to collaborate with the investigation because of its risks and re-victimizing effect. According to Villalon (direct communication, 2013), victims of trafficking sometimes have a history of or are currently victims of domestic violence. Lawyers check which route to legal residency may be faster or more certain to obtain, and decide upon which route to take.

6. SUPPORT SERVICES' EXPERIENCES AND SERVICE RECOMMENDATIONS

KEY FINDINGS

- Health services are considered to be poorly aligned to identify and process victims of domestic violence in general and with undocumented status in particular.
- It is necessary for staff working in shelters and other support services to have a deep understanding of relevant migration policy in order to help their clients who don't have valid residency documents.
- When domestic violence shelters receive state funding, their ability to lobby on behalf of migrant women is felt to be compromised.

6.1. Experiences of agencies working with undocumented women

Qualitative research with non-governmental organisations (NGOs) and other agencies working with undocumented migrant women who experience domestic violence reveals that health services play a crucial role which can make a **large impact on a woman's safety**. Additionally, those working in shelters with undocumented victims of domestic violence report the importance of having a good understanding of immigration law and policy in order to help these women. Social workers in the **USA** reported that in hospital emergency room settings, there is a lack of attention to domestic violence cases in general (Kulwicki et al, 200), for example a lack of **protocol** for identifying where domestic violence may be the cause of injury or providing a safe space for patients to be able to disclose if they wish to, as has been introduced through so-called '**domestic violence screening**' (see for example OpCit Research, 2008). This is particularly relevant for undocumented migrant women experiencing domestic violence, as medical treatment may be the only help they seek in an emergency.

In their research with Arab-American community leaders and domestic violence shelter staff (working with undocumented women, among others), Kulwicki and colleagues find that health service staff in the **USA** are perceived as **too accepting of perceived cultural norms** which may be used to justify violence within minority communities. Police officers who participated in the same research reported that police interventions were useful at securing immediate safety for women (through arresting the alleged perpetrator), however other respondents were concerned that involvement of the police creates shame and humiliation for the family in the eyes of the community (Kulwicki et al, 2010).

Qualitative data from domestic violence shelter staff in **Canada** in Bhuyan's 2012 study suggest that immigration issues are a key challenge for staff to work with. Not only does **insecure immigration status impact** on the women they try to assist by reducing their ability to work or claim benefits, it also creates a necessity for shelter staff to understand the intricacies of immigration law. Bhuyan goes on to suggest there is a risk that domestic violence shelters and the wider domestic violence 'movement' may lose its **political voice** due to its being increasingly funded by the state. Whereas shelters have traditionally been powerful advocates for women's rights, including migrant and undocumented migrant

women's, strains on funding and reliance on state grants means, for example, they are unable to apportion time to lobbying work which may be deemed 'political' and **therefore, ineligible for funding** (Bhuyan, 2012).

6.2. Good practice identified by PICUM

PICUM (2012) identifies good practice in terms of services for undocumented migrant women experiencing domestic violence. However, criteria for how these practices are selected are not explained.

- Informing undocumented women of their right to a life free of violence through:
 - Open hours drop in advice sessions or telephone lines
 - Providing printed material in different languages
 - Conducting group sessions with women to inform about rights
- Providing an evidence base on violence against undocumented women through:
 - Action and participatory research projects using undocumented or migrant women as community researchers
 - Training frontline services in participator research
- Raising awareness about the presence, contribution and rights of undocumented women through:
 - Regular participation in local radio and press
 - Reports and features in women's press
 - Internationally observed awareness days.

Only one academic study identified, potentially, a good practice in service provision. Bucci (2012) suggests that the provision of shelter and alternatives to police intervention by a grass roots organisation for Muslim women in **Italy** allows many victims to obtain help when they feel unable to appeal to the criminal justice system. However, this finding does not appear to be based on an evaluation of the service, rather on anecdotal evidence. Little information is provided about the exact nature of the support provided.

Generally, there is a lack of evidence on the impact of services for undocumented migrant women experiencing domestic violence.

7. CASE STUDIES

KEY FINDINGS

- The main challenges for undocumented migrant women experiencing domestic violence as noted in case studies include:
 - Inability to access free health care although this is often the only type of service that undocumented migrant women experiencing domestic violence may turn to for help.
 - In some cases (see **German** case study) health service support staff is obliged to report suspected undocumented migrants to authorities. This may act as a significant deterrent to those experiencing domestic violence from seeking help.
 - The only option to become regularised for undocumented women who are victims of domestic violence is if they are marriage migrants whose relationship breaks down in cases of domestic violence, where this is foreseen in national legislation.
 - There appears to be no provision for victims of domestic violence who are not married.
 - Where specific Action Plans or National Strategies for the elimination of domestic violence exist, they do not specifically mention undocumented migrant women. Thus, this group appears to be under-considered in Member States' domestic violence strategies.

7.1. Introduction

The experiences of undocumented migrant women victims of domestic violence were examined in eight Member State 'case studies'. The general legal and policy frameworks are first uncovered and then specific information about access to shelters, health services and other relevant agencies were addressed. For additional context, general policies towards migration and where known, irregular migration patterns are set out.

All case study countries have ratified CEDAW and, as EU Member States, are subject to the European Charter of Fundamental Rights and, when ratified, the Istanbul Convention. As part of the latter, Member States are obliged to 'take necessary legislative or other measures to provide appropriate, easily accessible shelters in sufficient numbers'. A 'sufficient number' is determined by Council of Europe recommendations based (broadly) on one space per 7500 women in the population. Furthermore, the Istanbul Convention determines that measures to protect rights of victims shall be secured without discrimination on any ground including 'migrant or refugee status'. In March 2013, out of the 47 member States of the Council of Europe, Turkey, Portugal and Albania had ratified the Istanbul Convention and 25 additional States had signed it. Austria, Bosnia and Herzegovina, Finland, France, Italy, Serbia, Slovakia and Spain are expected to ratify by the end of 2013, Sweden and Germany to ratify shortly after that (Moreno, 2013).

A key problem facing all case study countries is the **lack of data** on the number of undocumented migrant women who are experiencing domestic violence. Generally, migration status is **unrecorded** by shelters and support services and undocumented women themselves will tend to **avoid revealing their status**, including by avoiding help seeking at all. This means that services and governments are unable to plan effective interventions and facilities suitable for this group of women. Few case study countries had **multi-lingual shelter services** available. Overall, there is a profound lack of data on the experiences and volume of undocumented migrant women accessing shelters.

The case studies are based on a **few, non-academic sources**, including WAVE and PICUM reports.

Health services are essential for support

An important common theme throughout the case studies is that health services are an essential way that undocumented victims of domestic violence access support. Indeed, this may be the only time that these women are in contact with services, due to fears of detection. However, in some member states (Germany in the case studies) accessing medical treatment may imply detection, either because staff are obliged to report undocumented people to authorities or because free treatment depends upon proof of citizenship. This is likely to act as a significant deterrent to undocumented women seeking help for the abuse they suffer.

7.2. Case Study: France

7.2.1. Prevalence of domestic violence in France

WAVE (2010) reports that amongst women aged between 11 and 25 in France, **23% have suffered domestic violence at least once in their lives**, based on a 2006 study by Ernestine Ronai. However, the reference is unknown. Other (unverified) reported statistics suggest one in ten women has been a victim of domestic violence in 2000 (Profession Banlieu, 2007).

7.2.2. Undocumented migrants in France

According to Clandestino (2009), estimates of the number of undocumented migrants living in France are unreliable. However, estimates based on expulsion orders and asylum application rejections suggest that an **estimated 101.287 undocumented migrants** were present in France in 2006 (ibid, 2009). In 2011, 57.975 irregularly present migrants were apprehended in France (EWN, 2012).

7.2.3. Migration policy

France is currently undergoing an important public debate about the meanings of being both French and from a migrant community (MPI, 2012).

Since 1973, immigration policy in France has focused mainly on **reducing and deterring migration** (Guiraudon, 2002). In 2004, 140.033 people immigrated to France (MPI, 2013).

7.2.4. Legal and policy context regarding domestic violence

France ratified CEDAW in 1983 and adopted the optional protocol in 2000. In 2011, France developed and began to implement the third National Action Plan for tackling violence against women, in partnership with non-governmental organisations. The Action Plan includes strategies for improving protection for victims to allow them to remain in their own homes; prevention to improve the rates of identification among service workers and professional of domestic violence and 'solidarity' – to improve community level awareness and reduce tolerance towards domestic violence. In French law, **domestic violence is a specific criminal offence**, which is deemed 'aggravated' if the perpetrator is a spouse or co-habiting with the victim.

7.2.5. Opportunities for regularisation for undocumented migrant women

Migrant women who arrive through marriages and who are victims of domestic violence may be granted a **temporary residence** if they are able to **satisfy a French criminal court** that domestic violence has taken place.

7.2.6. Health

Access to health care is dependent on lawful residency in France. Thus, according to some estimates, **90% of undocumented migrants do not have access to health care.** This is sometimes due to language barriers which prevent undocumented migrants from understanding their rights to health care. This may be a particular risk area for undocumented migrant women experiencing domestic violence. If undocumented women avoid accessing health services, this may be a missed opportunity for domestic violence to be identified and addressed (MEHO, no date).

7.2.7. Shelters in France

There are 41 shelters providing 1100 places for women experiencing domestic violence in France. However, according to Council of Europe minimum standards, 6.140 are needed, this leaves a **deficit of 5.040 places**. Undocumented migrant women have limited options except for remaining in shelters as they are not entitled to social benefits and do not have the right to work (WAVE, 2010).

7.2.8. Recommendations

Based on the situation in France and evidence presented in this literature review, the following recommendations are made for the French authorities:

- A review should be made of the impact on undocumented migrant women's reports and identification of domestic violence since access to free health care recently became dependent upon having full residency rights.
- The number of shelter places needs to be increased including those offering support to different nationalities and with different languages.

- A review should be made of the effectiveness of the provision of a temporary residence permit in situations of domestic violence in marriage sponsorship arrangements.

7.3. Case Study: Finland

7.3.1. Prevalence of domestic violence in Finland

A 1998 report found that **40 percent of Finnish women had at some point in their life experienced domestic violence** (Heiskanen and Piispa, 1998). This is the most up to date prevalence data obtained by EIGE (2012)

7.3.2. Undocumented migrants in Finland

In 2011, Finland report 3.305 irregularly present migrants apprehended (EMN, 2012).

7.3.3. Migration policy

Finland remains a net immigration country. Migration policies are focussed on student and labour migration and attempts to **discourage unfounded asylum applications** (MIPEX 3, 2013)

7.3.4. Legal and policy context regarding domestic violence

Finland ratified CEDAW in 1986¹⁵. Domestic violence and violence against women is addressed in Finnish law in the following key pieces of legislation: The Penal Code of Finland; Sex Offence Code; Trial Counsel; Restraining Order; and the Child Welfare Act. The law allows domestic violence victims to report to police remotely (e.g. by email or phone) and on behalf of another person. Entitlement to free legal assistance depends on an individual's financial situation. Free victim support services are provided by trained staff. A Restraining Order can be obtained by anyone who feels justifiably threatened by another (EIGE, no date).

7.3.5. Opportunities for regularisation for undocumented migrant women

In situations of domestic violence, a sponsored spouse may be able to obtain an autonomous residence permit before an obligatory two-year waiting period elapses. However, in this situation, they must provide '**sufficient evidence**' of violence to immigration and law enforcement authorities. Evidence may include a medical certificate or a statement provided to a family clinic. Given restrictions placed on health care access for undocumented migrants, and evidence that abusers mislead their victims about their rights and entitlements, it **may prove difficult** for victims to provide such evidence. Fear of deportation or concerns about having to pay for a doctor's certificate may prevent a woman from obtaining such information.

¹⁵ UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW)

7.3.6. Health

Finland has in place a health service **protocol** for the detection and referral of women experiencing domestic violence but only in maternity services (EIGE, 2012). Undocumented migrants are provided access to emergency healthcare but it is **not provided free of charge**. This represents a potential risk area for undocumented women experiencing domestic violence as they may **avoid seeking medical help**. In restricting access to health care, opportunities for the detection of domestic violence among this group may be diminished.

7.3.7. Shelters in Finland

In Finland, less than one shelter space per 50.000 women is provided which is below the Council of Europe minimum standard. Access to shelters is offered to non-residents as well as residents. (EIGE, 2012)

7.3.8. Recommendations

Based on the situation in Finland and evidence presented in this literature review, the following recommendations are made for the Finnish authorities:

- Review the impact on undocumented migrant women's reporting and identification of domestic violence, given the limitations on access to free health care.
- The number of shelter places available to victims of domestic violence should be increased generally and particularly for undocumented women.
- A review should be made of the effectiveness of the 'exception' from the 2 year waiting time rule for victims of domestic violence.

7.4. Case Study: Germany

7.4.1. Prevalence of domestic violence in Germany

In a representative study of domestic violence prevalence among German women, **25% were found to have experienced physical or sexual violence from a partner** (German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2004).

7.4.2. Undocumented migrants in Germany

The EU funded Clandestino project estimates that the population of undocumented migrants in Germany was between **500.000 and 1.000.000** in 2004 (Clandestino, 2009). In 2011, 56.345 irregularly present migrants were apprehended (EMN, 2012).

7.4.3. Migration policy

Migration policy in Germany has changed since 2000 through a series of reforms to better manage migration towards greater integration of foreign born residents and **controlled small-scale labour migration from outside of the EU** (MPI, 2009).

7.4.4. Legal and policy context regarding domestic violence

Germany ratified CEDAW in 1985 and the optional protocol in 2002. It is a signatory of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). There is **no specific offence of domestic violence in German criminal law**; rather it is addressed through existing offences such as bodily harm. A law introduced in 2001 which provides civil protection against acts of violence and harassment is intended to enable a victim to remain safe in her home through civil legal sanctions against harassment by former partners.

7.4.5. Opportunities for regularisation for undocumented migrant women

No specific data were found. In the very specific cases, under directive 2004/38, victims of domestic violence who are on a marriage visa may be able to obtain residency in their own right.

7.4.6. Health

Undocumented migrants are only provided health care in cases of medical emergencies or in cases of testing for infectious diseases including HIV/AIDS. Treatment for the latter is only provided once a person applies for temporary residence which may be refused. Undocumented migrant women who are pregnant are provided free health care coverage for a period of six weeks prior to delivery and eight weeks following.

Importantly, **support staff working in medical settings are obliged by law to report undocumented migrants to authorities**. As health care providers must apply to government for reimbursement of the costs of treating uninsured people (including undocumented migrants), there is a risk that the residency status of the patient will be uncovered as establishing residency is one of the tasks of the office processing medical treatment claims.

The risk of being discovered as undocumented means that many undocumented migrant women experiencing domestic violence may be deterred from seeking medical assistance (WAVE, 2012).

7.4.7. Shelters in Germany

345 shelters in Germany provide refuge space for women experiencing domestic violence, offering 6.812 places. However, there is a **shortfall of 1.398 shelter places** based on recommendations for the number of places per population made by the Council of Europe. Shelter is provided to undocumented migrant women by Church organisations and other NGOs, not funded with state support (WAVE, 2012).

7.4.8. Recommendations

Based on the situation in Germany and evidence presented in this literature review, the following recommendations are made for the German authorities:

- The policy which obliges support officers working with health services to report undocumented migrants to the authorities should be reviewed.
- The number of shelter places should be increased in general and for undocumented migrant women in particular.

7.5. Case Study: Greece

7.5.1. Prevalence of domestic violence in Greece

According to a 2003 survey, the numbers of women experiencing abuse by a cohabiting partner include **3.6% (physical abuse)**, **3.5% (sexual abuse)** and **56% (verbal/psychological abuse)**. (PICUM, 2012).

7.5.2. Undocumented migrants in Greece

Clandestino estimates that in 2007, there were **280.000 undocumented migrants** in Greece (Clandestino, 2009). Greece reported that in 2011, 88.840 irregularly present migrants were apprehended.

7.5.3. Migration policy

Recently, as with other Southern European Member States, Greece has become an **entry and transit point of Europe of large numbers of immigrants from Africa, Asia, and the Middle East**. As a consequence, politicians and migration control services are struggling to manage mounting asylum applications and border crossings (MPI, 2012). As a consequence, many migrants are left undocumented.

7.5.4. Legal and policy context regarding domestic violence

Greece ratified CEDAW in 1983 and the optional CEDAW protocol in 2011.

Greece introduced a specific law (3500/2006) on Combating Domestic Violence which has been in effect since 2007. This law obliges authorities to provide legal counselling or emotional victim support services during court proceedings. Legal aid is available to provide legal advice for free but it is dependent on the individual's financial situation.

The majority of sentences passed to convicted perpetrators of domestic violence tend to be either suspended or converted to non-custodial sentences. Thus, **sanctions for perpetrators are generally considered lenient** (WAVE, 2010). Undocumented migrant women are not entitled to free legal support in cases of domestic violence.

7.5.5. Opportunities for regularisation for undocumented migrant women

The only opportunity for migrant women with insecure migration status to 'regularise' is through an **exception** to regulations on marriage migrants. When a migrant woman is married to a Greek citizen and is a victim of domestic violence, she may be entitled to a residence permit (WAVE, 2010). No evidence was found on the effectiveness of this provision.

7.5.6. Health

Greece has **no protocol** in place for health service professionals who are confronted with patients they suspect of suffering domestic violence. Only **emergency medical care** is provided in public hospitals regardless of immigration status, although some NGOs and hospitals provide care to uninsured people including undocumented migrants. The absence of access to full health care provision for undocumented migrant women experiencing domestic violence means that this group may avoid seeking support from these services. This represents a missed opportunity to identify and assist undocumented women experiencing domestic violence.

7.5.7. Shelters in Greece

Eight shelters in Greece provide approximately 201 places (WAVE, 2011). However, Greece requires a further 1.000 places approximately to meet the standards set by the Council of Europe. Access to shelters is provided to all women regardless of their immigration status. However, no multilingual counselling is provided in any of the shelters (WAVE, 2010).

7.5.8. Recommendations

Based on the situation in Greece and the evidence presented in this literature review, the following recommendations are made for the Greek authorities:

- The number of shelter places including those offering support to different nationalities and with different languages should be increased.
- A review should be made of the effectiveness of the provision of a temporary residence permit in situations of domestic violence in marriage sponsorship arrangements.

7.6. Case Study: Italy

7.6.1. Overall prevalence of domestic violence in Italy

A survey conducted in 2006 in Italy suggests that **31% of women** aged between 16-70 have experienced domestic violence at some point in their life (UN Women, 2011). In 2006, 192 murders were committed by intimate partners in Italy, and over a 6 years period to 2006, 721 women were murdered by their intimate partners (ibid, 2011).

7.6.2. Undocumented migrants in Italy overall

According to Clandestino (2009), the large majority of undocumented migrants in Italy reside in the Northern regions which provide better employment opportunities. Clandestino estimates the **Italian undocumented migrant population to be around 349.000 in 2007**. For 2011, Italy reported apprehension of 29.505 irregularly present migrants (EMN, 2012).

7.6.3. Migration policy overall

Following five 'regularisation' programmes since 1986 – the last in 2002 (Clandestino, 2009) – Italy introduced quotas for legal immigration. Detention for immigrants without a valid residence permit was also introduced. In 2002, the so called "Bossi-Fini" law introduced detention for those requesting political asylum. Conditions in the detention centres have been subject to much controversy in Italy with NGOs reporting poor living and hygiene standards. In 2008, a 'security package' was introduced by the fourth Berlusconi government which has drawn attention for its extremity. In response to **public fears about immigrant arrivals**, which particularly centre on Roma immigrants, the Italian government has **encouraged rapid expulsions** and repatriations (BBC, 7th March, 2009). The security bill also made **irregular immigration a criminal offence punishable by a fine of €5.000-€10.000** and imprisonment for those who rent housing to illegal immigrants. These measures were subject of a ruling of the European Court of Justice in 2011 who restricted the application of imprisonment in the framework of return policies (ECJ, 2011)

7.6.4. Legal and policy context regarding domestic violence

Italy ratified CEDAW in 1985 and the CEDAW Optional Protocol in 2000. The Italian Criminal Code provides for legal counselling or support to women survivors of violence during court proceedings. However, this assistance depends on the financial situation of the victim and may be limited in terms of level of advice or aid offered (WAVE, 2012). The Italian Criminal Code also foresees holding perpetrators accountable with strong penalties, especially for sexual violence. However, high penalties tend to be avoided in reality. WAVE reports that *'in general, there is a sense of impunity for violent crimes against women'* (WAVE, 2012). In August 2013, the Italian government passed a new law designed to make it easier to protect women against domestic violence. The new law introduces stricter penalties for men who attack pregnant women and minors and makes it easier to report domestic violence anonymously, including for witnesses of the violence. The law also strengthens existing laws against stalking or harassment of partners or ex partners, including 'cyber' (online) bullying and stalking.

7.6.5. Opportunities for regularisation for undocumented migrant women

Residence permits for women migrants in Italy are usually granted under sponsorship by a resident spouse. The length of the residency permit is the same as the spouse's, although it is not withdrawn in case of separation or divorce. However, no evidence was identified that examines the effect of this provision.

7.6.6. Health

Individuals are entitled to **cost free urgent or essential health care**, regardless of their migration status (FRA, 2011b). However, in order to access this treatment, they must obtain a temporary residence 'code', sign a declaration of poverty, and provide a proof of address. **These conditions may be difficult to meet** for undocumented migrants because of fear of detection as well as having insecure accommodation. There are no health-system protocols for identifying and referring victims of domestic violence who present in health care settings (WAVE, 2012).

7.6.7. Shelters in Italy

Those without residency permits are not entitled to accommodation in Italian domestic violence shelters (WAVE, 2009). In any case, the number of shelter places in Italy is inadequate. According to Council of Europe Taskforce Recommendations, approximately 6.019 shelter places are needed in Italy. There are currently, 500 shelter places with an average stay of between 3 and 6 months. Thus, 5.519 places are lacking in Italy. There are also inadequate numbers of minority ethnic women working in Italian shelters according to WAVE (ibid, 2009). Increasing these numbers would provide for a more inclusive shelter service.

7.6.8. Recommendations

Based on the situation in Italy and the evidence presented in this literature review, the following recommendations are made for the Italian authorities:

- The number of shelter spaces and the provisions for undocumented migrant women should be increased.
- The use and effectiveness of residency relief provisions in Italy in cases of domestic violence should be reviewed and evaluated.

7.7. Case Study: The Netherlands

7.7.1. Prevalence of domestic violence in the Netherlands

According to the most recent prevalence survey of domestic violence in the Netherlands, published in 2010, **9% of the population have been a victim of obvious acts of violence** in the past five years (Van der Veen and Bogaerts, 2010).

7.7.2. Undocumented migrants in the Netherlands overall

The Clandestino project estimated that in 2005 there were **88.116 undocumented migrants** residing in the Netherlands (Clandestino, 2009). The Netherlands reported that in 2011, 6.145 irregularly present migrants were apprehended (EMN, 2012).

7.7.3. Migration policy

A new law concerning migration was introduced in the Netherlands in June 2013 which emphasises both simplification of residence and visa application processes and bolsters **enforcement of illegal residency**. The law aims to simplify visa and residence permit applications particularly for students. However, as part of the act, **residing illegally** in the Netherlands has now become a **criminal offence** and significant powers of enforcement and supervision have been provided to the immigration authorities

7.7.4. Legal and policy context regarding domestic violence

The Netherlands ratified CEDAW in 1991 and the optional protocol in 2002. There is no specific offence of domestic violence but the offence is treated under a number of existing criminal offences.

7.7.5. Opportunities for regularisation for undocumented migrant women

Migrant women must remain in a marriage which has sponsored their residency for a minimum of **three years** in order to qualify for independent residency status. However, if domestic violence is proven, women may be able to apply for independent residency before the three year period has elapsed. No data on the effectiveness of impact of this provision were obtained.

7.7.6. Health

Undocumented migrants are not able to purchase health care insurance in the Netherlands and so are **not generally entitled to free health care** except in cases of '**medical necessity**' and for the prevention of public health threats. Whilst support in cases of domestic violence may be deemed a 'medical necessity', **lack of a firm definition** of what this means may lead to confusion among undocumented women about what support they are entitled to. Patient confidentiality rules prevent medical staff from reporting undocumented migrants to authorities (Schoevers, 2010).

7.7.7. Shelters in the Netherlands

There are 96 shelters in the Netherlands providing 1.608 refuge spaces for victims of domestic violence. There is a **small (41) deficit** between the places provided and the number recommended by the Council of Europe. Shelters provide **multilingual support** with the assistance of 24 hour interpreters (WAVE, 2009).

7.7.8. Recommendations

Based on the situation in the Netherlands and evidence presented in this literature review, the following recommendations are addressed to the Dutch authorities:

- A review should be made of the numbers of women accessing health care under 'medical necessity' provisions in cases of domestic violence to determine whether these provisions adequately support these women's needs.

7.8. Case Study: Poland

7.8.1. Prevalence of domestic violence in Poland

According to a national survey of women and men aged between 18-69, **11.2% of women stated they had been victims** of physical violence in the last five years (Beata, 2004)

7.8.2. Undocumented migrants in Poland

Poland reported apprehension of 6.875 irregularly present migrants in 2011 (EMN, 2012).

7.8.3. Migration policy

Poland is historically and currently a net migration country and few non-EU nationals attempt to migrate to the country (MIPEX, 2013). In 2012, the Polish Government published a strategy on migration 'Migration policy of Poland – the current state of play and the further action'. This sets out the government's intention to improve integration of residents not born in the country, strengthening the system of migration management, and preventing illegal immigration through voluntary returns.

7.8.4. Legal and policy context regarding domestic violence

Poland ratified CEDAW in 1980 and the Optional Protocol in 2003. Poland has in place a National Action Plan on Counteracting Family Violence for 2006-2016, which is a gender neutral strategy. There are no specific action plans to combat violence against women (WAVE, 2010). **Poland has in place a domestic violence law which was passed in 2005.** This law provides for help and support for victims of domestic violence in the form of medical, psychological, legal and counselling and crisis intervention and support. It also provides for safe shelters for victims, although there are few places available. There are **no specific mentions of migrant women or undocumented migrant women** in the text of the law. Implementation of the National Action Plan Counteracting Family Violence has not been consistent across Polish regional governments (WAVE, 2010).

7.8.5. Opportunities for regularisation for undocumented migrant women

Migrant women must remain in a marriage which has sponsored their residency for a minimum of three years in order to qualify for independent residency status. However, if domestic violence is proven, women may be able to apply for independent residency before the three year waiting period elapses. No information was identified on the effectiveness of this provision.

7.8.6. Health

Whilst health care in Poland for migrants is only available to those with temporary residence permits or those applying for permits to stay in Poland, in some regions free health care is provided to those who are undocumented. However, this **provision is inconsistent across the regions** and not available everywhere.

7.8.7. Shelters in Poland

In 2010, there was only one shelter in Poland offering 26 places for female victims of domestic violence. According to Council of Europe guidelines on shelter places needed, a further 3.797 shelter places are required. Women who are victims of domestic violence are frequently referred to houses for homeless people. In addition, there are 36 'Specjalistyczne Ośrodki Wsparcia' (SOWs) which provide non-residential support for female victims of domestic violence. Access to shelters and SOWs is provided to all women regardless of residency or migration status.

7.8.8. Recommendations

Based on the situation in Poland and the evidence presented in this literature review, the following recommendations are made for the Polish authorities:

- Efforts should be made to improve the regional consistency of health care provision for undocumented migrant women and understand the impacts of non-free health care provision in the case of undocumented domestic violence victims.

7.9. Case Study: Spain

7.9.1. Prevalence of domestic violence in Spain

Over 10.8% of women experience violence in Spain in their lifetime, with three per cent who have experienced it in the last 12 months, according to Spain's National Prevalence of Violence against Women Survey. In 2010, 73 women were murdered by their current or former partner. 27 women were killed by their husbands, 15 by their partners, two by their boyfriends and 27 by their former partners (WAVE, 2012).

7.9.2. Undocumented migrants in Spain

Most of Spain's undocumented migrant population consists of migrants that enter legally as **tourists** or **students**, and lapse into 'irregular' status (Clandestino, 2009). Internal controls are weak in Spain and so undocumented migrants are able to remain and work undetected. Clandestino estimates that **354.000 undocumented migrants** were in Spain in 2008 (ibid, 2009). For 2011, Spain reported that 68.825 migrants were apprehended who were found irregularly present.

7.9.3. Migration policy

The 'foreign born' population in Spain increased by 10% in the ten years prior to 2009. However, Spanish society remains **tolerant towards migrants** (Migration Policy Institute, 2013) and there has been significant resistance to restrictions to entitlements to social benefits for undocumented migrants. Nevertheless, being resident in Spain without a permit is regarded as criminal offence (Real Decreto-Ley, 2012).

Under Spanish migration law, undocumented migrants who are arrested may be held in detention for a maximum of 40 days in special detention centres for undocumented migrants. If authorities are unable to identify the migrant, or if there is no re-admission agreement signed with the country of origin, the migrant must be released (although not 'regularised') (Clandestino, 2009).

7.9.4. Legal and policy context regarding domestic violence

Spain ratified CEDAW in 1984 and the optional CEDAW protocol in 2001. In 2004, the Spanish government passed the 'Organic Act on Integrated Protection Measures against Gender Violence' (Ley Organica de Proteccion integral contra la Violencia de Genero) which includes prevention, protection and support measures for female victims of gender-based violence. The law is designed to be a **comprehensive set of measures addressing detection, primary prevention, victims' rights, and enforcement of the law**, in line with the 'coordinated community response'¹⁶ model of addressing domestic violence.

7.9.5. Opportunities for regularisation for undocumented migrant women

Through Spain's 2009-2012 'plan of care and prevention of domestic violence among immigrants', a new '**Aliens Act**' introduced the possibility of obtaining a temporary residence permit to victims of gender violence. The Act allows undocumented women who are experiencing domestic violence to 'obtain authorization' under exceptional circumstances and is '**intended to facilitate the reporting of these events**' (Spanish Immigration Act Explanatory Statement, 2009). In these situations, **residence permits allow women to work legally**. In order to be eligible for such protection, victims of domestic violence must obtain proof of their victimisation such as holding a protective order from the court or informing the Public Prosecutor of the presence of violence (ibid, 2009). In these cases, prior to obtaining 'authorisation', all records of illegality (illegal immigration) are removed. However, if criminal proceedings do not find that domestic violence was present, the temporary residence permit will be withdrawn and the woman may become 'undocumented' again.

7.9.6. Health

A key part of the 'Organic Act 2004' is that it obliges medical staff to **report** domestic violence injuries to criminal justice officer in order to ensure that perpetrators are held

¹⁶ The coordinated community response model to domestic violence originated in Duluth, Canada and is internationally regarded as the most effective way of reducing domestic violence in the medium to long term. In brief, it involves enlisting all agencies in a community to improve awareness of domestic violence and to agree between them effective services and processes. It also involves primary prevention (usually through schools-based awareness education), safe choices for victims and bringing perpetrators to justice.

accountable, as part of an effort to improve the way different state agencies work together. Whilst deportation orders are often un-implemented in cases of domestic violence (PICUM, 2010), this may not be sufficient to address fears of being returned of undocumented migrant women if they turn to public services. Organic Act 2004 also obliges health authorities to *'promote and facilitate action among health professionals for the early detection of gender violence'*. (UNHCR, 2013) This includes training for health workers and the development of protocols for staff to use to identify and refer victims to appropriate services. Whilst such **protocols** are generally considered good practice to identify domestic violence more generally, the introduction of these protocols is particularly sensitive for undocumented migrant women who may be fearful that they will be reported to migration authorities.

Health care is often the only means of support that undocumented migrant women in Spain access, particularly in emergency situations, however, following the 2012 Real Decreto-Ley, undocumented migrants' access to free, state sponsored healthcare has been limited to only **basic healthcare** in emergency situations or in pregnancy (Semones, 2013).

7.9.7. Shelters in Spain

In 2010, there were approximately 4.500 domestic violence shelter places available, although since 2011 there have been some shelter closures as a result of funding cuts. According to the Council of Europe taskforce guidelines, 4.607 shelter spaces are needed in Spain thus, there is a shortfall of around 100 places. Shelter spaces are available to women regardless of their migration status and women may stay for more than 6 months.

7.9.8. Recommendations

Based on the situation in Spain and the evidence presented in this literature review, the following recommendations are made for the Spanish authorities:

- The impact of the Aliens Act on victims of domestic violence should be evaluated as this may provide useful data for other EU countries.
- The impact of the withdrawal of free care for undocumented migrants who are victims of domestic violence should be researched.

7.10. Summary of barriers and risks for undocumented domestic violence victims in the case studies

Three essential themes emerge from the case studies regarding particular barriers to undocumented domestic violence victims and their ability to seek help.

7.10.1. Access to free health care

Seeking medical treatment may be the **only time** that undocumented migrants who are victims of domestic violence come into **contact with a service** that could potentially help them. They may seek help because of the injuries they receive from their abuse or for

another medical issue (including maternity). This represents an **opportunity** for public authorities to identify that a woman is experiencing abuse and ensure she receives the assistance she needs to keep her safe. For example, some Member States' health services have introduced domestic violence screening protocols which proactively seek to identify where domestic violence has taken place. However, barriers to accessing health services and medical treatment **represent a serious threat to the health and wellbeing of undocumented women**. This has to be regarded as a violation of their fundamental right to health care.

Barriers to accessing health care may include a) the **cost** and b) **fear of detection and deportation** (Fundmental Rights Agency, 2011b). Some Member States provide access to health care regardless of migration status and do not require proof of address or registration with a health insurance scheme. However, some Member States only provide free access to medical emergency services. Under the Istanbul Convention, **maternity care** is considered a fundamental right for all women regardless of their migration status. Actual or perceived costs may represent a significant deterrent to undocumented migrant women who are experiencing domestic violence (ibid, 2011b). Although only Germany in the case studies has introduced some obligations on health related staff to report undocumented people to authorities, anti-immigration policy and overall criminalisation of undocumented migration serve to create a **perceived fear of detection** which will also serve as significant deterrents to seeking medical help when needed.

7.10.2. 'Residency relief' in cases of domestic violence

Another important theme to emerge from the case studies is the apparent **lack of knowledge and research** about the effect of 'residency relief' for migrant spouses on marriage 'sponsorship' who experience domestic violence. Whilst EC directive 2004/38 stipulates that residency rights of sponsored spouses shall not be removed in cases of domestic violence, the Directive addresses only a particular group of third country nationals who are spouses of EU citizens and the terms under which this exception is granted remain ambiguous. Some case studies revealed that in such cases, the **victim must prove the violence** either through the court or by obtaining proof from a medical professional. These steps could constitute significant barriers to spouses with a precarious migration status, particularly if they are ill-informed or ill-equipped to understand their rights. Whilst there must be some means of being able to verify the veracity of claims of violence, the appropriateness of these means is not well understood or explored in research. Innovative practices amongst agencies seeking to combat domestic violence (generally) include the provision of 'evidence cameras' and 'kits' so that victims may provide evidence of their abuse or the ability to report to third parties who are not police. In these ways, a victim may be able to prove abuse without having to work with authorities that she may be fearful of.

7.10.3. The importance of shelters and the lack of resources of undocumented women

The final important theme to emerge from the case studies was that lack of material resources, for example as a result of non-entitlement to social assistance or to employment, presents extreme difficulties for undocumented victims of domestic violence. Nearly all case studies identified deficits in terms of the number of available domestic violence shelter spaces. As such, it can be assumed that there would be **considerable competition for these shelter spaces**. Undocumented women risk being seen as a

particular burden on shelter services and being denied the assistance they need although they are in a particular need because of their limited financial resources and means to be self-sufficient.

Overall recommendations addressed at Member States from the case studies therefore include:

- the impact on undocumented victims of domestic violence of fees and entitlement arrangements to health care should be reviewed;
- ways to reduce fears of detection among undocumented victims of domestic violence who need medical help should be investigated;
- the impact of the number of shelter spaces on the ability of undocumented migrant women to find assistance and protection in cases of domestic violence should be evaluated. This should take account of undocumented women's restricted possibilities to find employment or to access to social assistance.

The Commission should review the implementation of Directive 2004/38 regarding the application of 'residency relief' in the case of marriage sponsorship breakdown, with particular attention to the conditions for 'proving' domestic violence, and the quality of information provided to sponsored spouses on their rights under these provisions.

8. MAIN CONCLUSIONS

Key characteristics of undocumented migrant women experiencing domestic violence identified through the literature review include:

- There are reasonably high proportions with high school or university levels of education.
- They experience high rates of poverty.
- They experience greater health risks compared to documented migrants and the general population.
- They are likely to have children.
- Around half of them are in intimate relationships.
- Many lack emotional support from friends or family.

8.1. Fundamental rights, migration and domestic violence

This study has examined the particular risks that women face once they have become an undocumented migrant who experiences domestic violence. Thus, whilst the study focuses on the migrant woman as a victim, it should be noted that women migrate mainly because they are seeking a better life for themselves and their families.

The literature emphasises that the overall migration policy context, both towards irregular *and* regular migration in the EU is increasingly focused on **securitising borders and enforcing control**. As such, it has been considered antithetical to women's fundamental rights in general. In this framework, undocumented migrant women who experience domestic violence can, at best, be considered in an exceptional situation which allows for exceptional treatment (Perez, 2012). However, this is far from being the rule as PICUM observes:

PICUM has witnessed how undocumented women's fundamental right to access justice is regularly superseded by migration control interests. (PICUM, 2012)

This review has found a number of ways that women become undocumented, ranging from illegal entry (border crossing), usually for work; overstaying visa/free travel period or temporary residence permit, usually for work; being trafficked; or through the breakdown of marriage sponsorship.

The latter route is particularly relevant for women. Other forms of undocumented migration tend to be dominated by young males, although international estimates suggest that migration generally is almost **equally split** between males and females.

The impacts of domestic violence are always difficult to endure and could be mitigated through appropriate access to shelters. This review provides an overview of the mental health issues, emotional isolation, and financial hardships of undocumented migrant women experiencing domestic violence and the role of shelters for each of them. Additionally and more importantly, the difficulties in accessing relief and assistance in cases of domestic violence amongst undocumented women have been examined. The literature

suggests that the situation of a victim of domestic violence is seriously worsened and her ability to seek help severely tested as a consequence of her undocumented status (Anitha, 2010, 2011). Many women in this situation are unable to access public funds, in the worst case also unable to access health care and deterred from reporting their situation out of fear of deportation (whether real or perceived). If women are unable to access shelters due to either not having the correct papers, social assistance or through fear of deportation, their risk of destitution is ever increased (PICUM, 2013). In addition to Member States penalising irregular residence status with fines, imprisonment or forced return, today, the rather new legal provisions requesting from health agencies to report on irregular migrants further aggravate this situation.

Whilst some strong prejudices exist among public officials towards domestic violence in migrant communities, criminalising irregular status increases suspicion and doubts when domestic violence is reported. A woman may, on the one hand, be suspected of trying to '*play the system*' when claiming domestic violence. On the other hand, she may be felt to be a burden to the services because of her lack of resources which, for example, means she must remain in a domestic violence shelter for longer than other women.

It can be concluded that, whilst fundamental rights are less assured for undocumented migrants in general (FRA, 2011a), domestic violence victims have particular needs (such as health care for injuries; safe longterm shelter to recover and for protection from the abuser), which make her fundamental rights more of a **challenge** to uphold.

8.2. The 'Sponsorship Debt', power and control

One of the main reasons and also one of the few legal paths to migrate into the EU for a woman is marriage sponsorship. Typically, she may only be entitled to petition for **autonomous residency**, with the support of her husband, following at a maximum five years of residing with her spouse. This means that until this moment, women have no access to public benefits in their own right but only through their husband. This **dependency** strongly plays to the power and control dynamic that is widely accepted by researchers to be a part of the **pattern of domestic violence** and abuse.

Crucially, abusive spouses frequently refuse to apply for residency on their wife's behalf. This is a key route towards undocumented status. Abusers frequently use this dependency to prevent victims from seeking help, often by obfuscating information about women's rights. The '**sponsorship debt**' (Merali, 2008) –a feeling among marriage migrants that they are somehow in debt to their (new) family – may also prevent them from seeking help. Also of importance is that no provisions were noted to exist in Europe for 'residency relief' for undocumented migrant women victims of domestic violence who are not married, except in the case of **trafficked** women. However, in the case of trafficked women, temporary relief is only granted on the basis that the victim may be useful for the investigation of criminal activity. She may be deported if there are no successful prosecutions.

8.3. Lack of knowledge about undocumented migrant women experiencing domestic violence

Given the difficulties of researching both domestic violence victims and undocumented migrants, as already noted, there is a **deep lack of data and knowledge about this group of victims**. Gender disaggregated data is not widely or consistently available on undocumented migrants from Frontex; there is only limited gender disaggregation of data on the numbers of citizenship or residency claims from Eurostat. Those agencies working directly with undocumented migrant victims of domestic violence may not have the institutional capacity to collect useful data on the circumstances and outcomes for these women. The lack of data makes research very difficult to conduct. Given the EU's general commitment to gender mainstreaming – a key part of which is to provide gender disaggregated data – this limitation is difficult to accept. The lack of data makes it more difficult to plan effective policies for undocumented victims of domestic violence.

9. RECOMMENDATIONS

This report has produced a number of recommendations for both Member States and the EU.

9.1. Recommendations for Member States:

Member States should:

- Review the impact of policies on undocumented victims of domestic violence; which oblige public sector staff to report undocumented migrants to the authorities;
- Increase the number of shelter places available in general, including those offering support to different nationalities, in different languages and with diverse minority and migrant staff;
- Evaluate the impact of the number of shelter spaces on the ability of undocumented migrant women to find assistance and protection in cases of domestic violence. This should take account of their restricted possibilities to find employment or to access social assistance;
- Review the effectiveness of provisions allowing for temporary residence permits in situations of domestic violence in marriage sponsorship arrangements. This should take into account how abusers misinform their spouses and withhold data on immigration rights;
- Implement programmes to raise awareness and understanding among undocumented migrant women and those with precarious residency rights, including trafficked women, of their rights;
- Where relevant, review the impact of the withdrawal of free health care for undocumented migrant women experiencing domestic violence; in particular, assess whether free health care may be provided where there is evidence of domestic violence.

9.2. Recommendations for the EU institutions

The Commission should:

- Propose a consistent policy relating to 'residency relief' in cases of domestic violence in sponsored marriages, to prevent women from becoming 'undocumented', based on the experiences with Directive 2004/38, the VAWA in the USA, and the similar act in Canada. Developing such a policy may involve:
 - exploring the possibility to allow marriage migrants to apply for residence on their own behalf and within shorter time frames;
 - exploring the possibility of 'residency relief' in cases of domestic violence where intimate partners are not married.

- Ensure that the EU anti-trafficking policy framework incorporates and takes under consideration the potential links between domestic violence and trafficking in human beings, by placing victims at the heart of the framework and ensuring their respective needs are catered for.

All EU institutions should cooperate to:

- Ensure that gender mainstreaming is introduced in EU migration policies, including improving the availability of gender disaggregated data (undocumented and regular migration) to recognise that migration is not a gender neutral issue.

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