DISCUSSION PAPER

“LOVE IS NOT A PASSPORT TO SWEDEN”:

Intimate Partner Violence against Migrant Women and the Proliferation of Rights’ Statuses

No. 24, September 2018

HALLIKI VOOLMA
PROGRESS OF THE WORLD’S WOMEN 2018

UN WOMEN

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Halliki Voolma is a Policy Officer in the Gender Equality Unit of the Directorate-General for Justice of the European Commission. She gained her PhD from the University of Cambridge Centre for Gender Studies as a Gates Cambridge Scholar. Paper presented at a conference hosted by UN Women and the New York University School of Professional Studies Center for Global Affairs: *Families on the Move: A Conference on Migration, Gender and Family Relations*

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SUMMARY

This paper investigates how women's right to live free from violence operates in the context of insecure immigration status. It is based on qualitative research addressing intimate partner violence against women with insecure immigration status in England and Sweden, analysed within a human rights theoretical framework. Empirical data were collected through in-depth semi-structured interviews with 31 survivors from 14 different non-European Union countries and 57 professional stakeholders from local, national and international organizations. The paper identifies a tension between human rights and immigration control that is present in theory, policy frameworks and migrant women's lived experiences. It contends that this tension has led to a proliferation of rights' statuses for migrant women who are exposed to intimate partner violence. A solution is offered in the form of an expansionist model of human rights whereby presence in a territory is the basis for recognition as a rights-bearing subject.

RÉSUMÉ

Ce document se propose d'analyser la manière dont se décline le droit des femmes de vivre à l'abri de la violence dans le contexte d'une situation précaire au regard de l'immigration. Il s'appuie sur des recherches qualitatives concernant les violences infligées par un partenaire intime aux femmes en situation irrégulière en Angleterre et en Suède, lesquelles ont été analysées dans un cadre théorique relatif aux droits de l'homme. Les données empiriques ont été recueillies par le biais d'entretiens approfondis semi structurés avec 31 survivantes de 14 pays différents de l'Union européenne et 57 parties prenantes professionnelles issues des organisations locales, nationales et internationales. Ce document met en lumière le conflit entre les droits de l'homme et les contrôles d'immigration dans les cadres théoriques, politiques et dans les expériences vécues par les femmes migrantes. Il estime que ce conflit a mené à la prolifération des statuts de droits des femmes migrantes exposées à la violence de leurs partenaires intimes. Ce document préconise une solution fondée sur un modèle élargi de respect des droits de l'homme par lequel on considérerait qu'une migrante présente sur un territoire serait automatiquement reconnue comme un sujet de droit.

RESUMEN

En este artículo se investiga cómo se aplica el derecho de las mujeres a una vida sin violencia en aquellas situaciones precarias de inmigración. Se basa en investigaciones cualitativas donde se aborda la violencia de pareja contra las mujeres que viven una situación precaria de inmigración en Inglaterra y Suecia, analizada dentro de un marco teórico de derechos humanos. Los datos empíricos se recopilaron mediante entrevistas exhaustivas semiestructuradas que se les realizaron a 31 sobrevivientes de 14 países no pertenecientes a la Unión Europea y 57 profesionales de organizaciones locales, nacionales e internacionales. En el artículo se identifica la tensión entre los derechos humanos y el control inmigratorio que está presente en la teoría, los marcos normativos y las experiencias de las mujeres migrantes. Asimismo, se argumenta que esta tensión ha conducido a una proliferación de casos de violación de los derechos humanos de las mujeres migrantes que están expuestas a la violencia de pareja. La solución que se ofrece consiste en un modelo que amplía los derechos humanos, por el cual la presencia en un territorio constituiría la base para reconocer que un individuo goza de derechos.

1. INTRODUCTION

Violence against women is an endemic global problem of epidemic proportions and requires urgent action. A third of women worldwide have experienced physical and/or sexual violence by an intimate partner or sexual violence by someone other than a partner.[1] Intimate partner violence may be physical, sexual or psychological.[2] A 2014 survey by the European Union Fundamental Rights Agency (EU FRA) found that 22 per cent of women over the age of 15 who had been in a relationship had experienced physical and/or sexual violence and 43 per cent had experienced psychological violence.[3] Intimate partner violence can result in illness, disability, poverty and homelessness of women.[4]

The global reach of violence against women does not mean that all women experience violence to the same degree or that the dynamics or consequences are the same. The gender-based vulnerability of women to violence intersects with other axes of inequality. In the context of migration, Kiwanuka explains that it can be exacerbated by a "multifaceted interaction of culture, poverty, host country immigration laws and policies, and other contextual factors".[5] However, these factors do not necessarily affect all migrant women. This paper addresses women with insecure immigration status, for whom Sabates-Wheeler and Feldman's notion of "socio-political vulnerability" is particularly relevant;[6] this refers to the institutional constraints facing migrant women, which typically reflect a lack of political commitment from the host country. In addition to these and other formal barriers, women with insecure immigration status may also experience "social isolation, language barriers, lack of awareness about services, and racism on the part of services"[7] as key factors. Heightened vulnerability can mean either higher prevalence of violence or having fewer options to address or escape it.

Migrant women's limited options in this regard are documented in several studies. For example, Menjivar and Salcido's review article finds that:

> "The experiences of immigrant women in domestic violence situations are often exacerbated by their specific position as immigrants, including limited host-language skills, lack of access to dignified jobs, uncertain legal statuses, and experiences in their home countries, and thus their alternatives to living with their abusers are very limited."[8]

In the context of very limited data, it is an open question whether the heightened vulnerability of women with insecure immigration status leads to higher prevalence of intimate partner violence.[9] The results of the EU FRA's 2014 survey indicate that women who are not citizens of their current country of residence experience somewhat higher rates of physical and/or sexual violence from the age of 15 by partners and non-partners.[10] The only study to date addressing exposure to intimate partner violence of foreign-born women in Sweden found that this group of women (particularly those with low disposable income) is at increased risk of violence including intimate partner violence compared to Swedish-born women, and that foreign-born women have an increased risk of mortality due to interpersonal violence.[11] Dedicated prevalence studies have not been conducted in the United Kingdom (UK), and British Crime Survey data do not include enough detail to enable such analyses.[12] The scarcity of data

1 WHO 2013.
2 Devries et al. 2013.
3 EU FRA 2014.
4 Meyersfeld 2010.
5 Kiwanuka 2010, 164.
6 Sabates-Wheeler and Feldman 2011.
7 Anitha 2011, 1260.
8 Menjivar and Salcido 2002, 901-902.
9 Kelly 2013.
10 EU FRA 2014.
11 Fernbrandt 2013.
12 Kelly 2013.

on the prevalence and dynamics of intimate partner violence against women with insecure immigration status is a challenge for scholars, advocates and policy-makers.

While it is very important to document and highlight marginalized women's experiences of violence, this carries the risk of feeding into problematic cultural discourses on violence against women.[13] Burman describes the issue as follows:

> "There is also a common tendency to culturalize violence against immigrant or minority women and relate it to 'others', whether the 'other' is women, men or states. Such othering processes, whereby certain 'cultures' or marginalized groups are stigmatized as 'violent', serve to normalize this violence and hence make it less visible."[14]

Phillips highlights the delicate balance between the recognition of women as active agents rather than 'puppets' of cultural forces and complacency with regard to the potential need for protection.[15] Culture is not an invariable phenomenon, "individuals interact with their culture so that the culture is constantly challenged and redefined".[16] The approach of this paper is in line with Anitha's conviction that "Recognising difference among women does not preclude the possibility of a feminist analysis that reflects on the connections and commonalities in women's experiences of oppression",[17] while accounting for the intersectional interplay of structural inequalities including on the basis of gender, race, class and immigration status.

The focus of this paper is on intimate partner violence[18] against 'women with insecure immigration status' in England and Sweden. Insecure immigration status is defined as not having the right to live and work in a specified country for an unlimited period—in other words, not having citizenship or permanent residency. In the UK context, 'insecure immigration status' is the term used for people who do not have 'Indefinite Leave to Remain' (permanent residency). In Sweden 'insecure immigration status' is not an official term, but it is used here to distinguish between having only temporary legal status, or being undocumented, and having permanent residency or citizenship. The focus is on non-EU,[19] or 'third-country', citizens with insecure immigration status residing in England or Sweden, including women on spousal, employment or student visas, asylum seekers, women who have been trafficked, visa 'over-stayers' and undocumented women. All of these different categories can be identified in the migration journeys of women interviewed for this study. With the context of intimate partner violence in mind, the empirical significance of having insecure immigration status is linked to its intrinsic uncertainty. Perpetrators can exploit women's fears of deportation that are linked to her not knowing how long she can stay.[20]

Intimate partner violence described by survivors in this study includes physical, sexual and emotional abuse as well as controlling behaviours by current or former intimate partners. For most of the women interviewed, abusive intimate partners were

13 Thiara et al. 2011.
14 Burman 2012, 2.
15 Phillips 2010.
16 Kasturirangan et al. 2004, 319.
17 Anitha 2011, 2.

18 This paper focuses on intimate partner violence as one type of domestic violence. While survivors' experiences of abuse by family members and in-laws is a feature of the data in this study, for all but one of the survivors interviewed the intimate (ex-)partners were the main or sole perpetrators. The term 'domestic violence' is used when referring to policy or service provision, or citing scholarship that addresses this broader concept.
19 Due to EU free movement principles, EU citizens residing in England or Sweden do not have 'insecure status' in the sense that they are not vulnerable to deportation in the same way as non-EU migrants. While not addressing their situation in this study, it should be noted that EU migrants who experience intimate partner violence while residing in another EU country may also face various migrant-specific difficulties and barriers to protection, for instance, language barriers and restricted access to welfare benefits.
20 Voolma 2018.

permanent residents or citizens of Sweden or the UK. That is to say that the perpetrators generally had a more secure immigration status than the survivors in this study, thus the abuse occurred in a context of power imbalance in relation to immigration status (among other axes of inequality, especially gender).

1.1
The Two-Country Design

The two-country design of this research reflects the study's aim to identify and highlight links between different levels of analysis: between international frameworks and trends, national law and policy and individual lived experiences. The interplay between immigration control and human rights vis-à-vis migrant women's right to live free from violence varies between different national contexts, thus gathering data in two countries enables a more thorough understanding of the key issues.

Both Sweden and the UK have long histories of immigration and, since the 1950s, have been countries of net migration.[21] Non-nationals make up 8.6 per cent of the UK population and 7.8 per cent of the Swedish population.[22] As the domestic violence service provision systems are different in the four nations of the UK,[23] it is cogent to focus on one of them in an international comparative analysis. England was selected as it hosts 92 per cent of the UK's foreign-born population.[24]

The EU FRA's 2014 survey found that 29 per cent of women in the UK and 28 per cent of women in Sweden had experienced physical and/or sexual violence by a current or previous intimate partner since the age of 15.[25] Furthermore, 46 per cent of women in the UK and 51 per cent of women in Sweden reported psychological violence by a current or previous intimate partner since the age of 15.[26]

Consecutive Governments of both Sweden and the UK have publicly committed to working to end violence against women,[27] and they can be considered as leaders in domestic violence service responses in Europe and are among just seven other European countries with around 40 years of experience of delivering services to survivors.[28] In such a context—where political commitment and service responses for guaranteeing women's right to freedom from intimate partner violence are well-established—it is pertinent to ask the question: Do all women in these countries have the right to live free from violence?

This paper, based on qualitative interviews with survivors of intimate partner violence and professional stakeholders, addresses women's right to live free from violence in the context of insecure immigration status. It links women's right to live free from violence with having access to safe accommodation (physical security) and the means to survive (subsistence).[29] This conception draws on Shue's theory of 'basic rights', where he posits that physical security and subsistence are necessary background conditions for the enjoyment of any other right.[30] These 'basic rights' are commonly threatened in intimate partner violence contexts, and access to safe accommodation and subsistence support are necessary to ensure survivors can leave violent relationships.[31] The point of departure of this paper is that these essential conditions must be guaranteed by state welfare systems and legal frameworks for all survivors of intimate partner violence, regardless of immigration status.

The core argument of the paper is that the empirical problem of intimate partner violence against women with insecure immigration status brings to the fore a tension between immigration control and human

21 MIPEX 2015a; 2015b.
22 urostat 2016.
23 England, Northern Ireland, Scotland and Wales.
24 This study's empirical data and analyses are England-focused, but the wider UK context is referenced where relevant, for instance, when discussing UK-wide legislation and policy or citing statistics that are not available for England on its own. See Migration Observatory 2014.
25 EU FRA 2014.
26 Ibid.
27 Regnér 2015; UK Home Office 2015a.
28 WAVE 2014.
29 Voolma 2018.
30 Shue 1996.
31 See Voolma 2018 for a fuller discussion of Shue's (1996) concept of basic rights as regards survivors of domestic/intimate partner violence.

rights.[32] This tension can be identified in human rights theory, in the intersection of immigration and welfare policies, and through exploring women's lived experiences of actualizing the right to live free from violence in the context of insecure immigration status. I contend that this tension leads to or is connected to a proliferation of human rights' statuses, as described by Nash.[33] These arguments are developed in relation to empirical findings in the two case study countries about migrant women's access to the basic rights of physical security and subsistence in the context of experiencing intimate partner violence.

The paper will first elucidate the theoretical concepts used here to frame the empirical analysis, second explain the empirical method, third discuss qualitative data from interviews with professional stakeholders in combination with an outline of national policy frameworks and fourth examine a survivor case study to reflect on the individual scale of analysis.

32 Benhabib 2004.
33 Nash 2009.

2. THEORETICAL FRAMEWORK

2.1 Tension between Immigration Control and Human Rights

In *The Rights of Others*, Benhabib identifies a tension between "sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other".[34] She argues that this is a "constitutive tension at the heart of modern liberal democracies" in so far as they recognize international human rights obligations while simultaneously upholding the legitimacy of territorially bounded sovereign States.[35] The Weberian definition of sovereignty involves the State having supreme authority in a given territorial area.[36] From this perspective, control of national borders is central to State sovereignty, and as such Hollifield observes that international migration can be seen as a direct challenge.[37] Benhabib highlights that most theories of global justice have failed to acknowledge the issues raised by international migration.[38] Freeman explains how the tension between human rights and State sovereignty emerged:

> "International law was traditionally concerned with regulating the relations among states with the primary aim of maintaining international peace. The leading concept of this project was that of *state sovereignty,* which forbade states from interfering with each other's internal affairs. The UN introduced the concept of human rights into international law without altering the concept of sovereignty."[39]

This paper addresses State sovereignty through the lens of immigration control. 'Immigration control' usually connotes control at the national border in relation to the type of migrants and how many migrants are allowed to enter the country. The paper is, however, concerned with the rights of migrants once they are already in the territory of another State, guided by the insight that "how 'we' treat 'the other' goes far beyond what happens at the border".[40] Addressing the tension between immigration control and human rights by examining the experiences of women with insecure immigration status who have suffered intimate partner violence shifts the focus from national to internal borders:[41] regulatory spheres inside national territories that shape the experiences of migrants once they have crossed the border.[42] As Balibar compellingly argues in relation to European citizenship:

> "Sometimes noisily and sometimes sneakily, borders have *changed place*. Whereas traditionally... they should be *at the edge of the territory*, marking the point where it ends, it seems that borders and the institutional practices corresponding to them have been transported *into the middle of political space*."[43]

Is the historically close connection between national citizenship and human rights affecting public policy today? Nash argues that it is, presenting the uneven application of human rights law in Europe as an illustration:

34 Benhabib 2004, 2.
35 Ibid.
36 Weber 1965.
37 Hollifield 2008.
38 Benhabib 2004.
39 Freeman 2011, 10.
40 Dembour and Kelly 2011, 5.
41 Balibar 2004.
42 Bosniak 2007.
43 Balibar 2004, 109.

> "Human rights law ... is still very unevenly applied in Europe... This is especially notable where issues of immigration and security tempt political authorities into sacrificing the rights of unpopular minorities – precisely those groups who are most in need of human rights."[44]

She contends that this uneven application leads to a proliferation of rights statuses:

> "As a result of the uneven application of human rights law combined with existing social and economic inequalities between citizens and non-citizens, [there] is a proliferation of statuses regarding citizenship and human rights rather than an equalization of treatment for citizens and non-citizens."[45]

From Nash's perspective, the interplay of human rights and citizenship produces a number of status groups, the members of which "enjoy a different package of formal and substantive rights according to their situation as citizens or non-citizens, the way in which states administer human rights, and their access to material and moral resources within that state".[46] She theorizes that these different status groups would include at least the following five: "super-citizens, marginal citizens, quasi-citizens, sub-citizens and un-citizens".[47] The first two groups consist of 'full citizens' of States, quasi-citizens are denizens or long-term residents, sub-citizens are those without independent rights to residence and un-citizens are those with no recognized legal status—for instance, undocumented migrants. These groupings do not wholly map onto the statuses represented among the 31 survivors who participated in the study on which this paper is based, but the categories of sub-citizens and un-citizens are instructive for the focus on women with insecure immigration status.

44 Nash 2009, 1072.
45 Ibid., 1079.
46 Ibid., 1072.
47 Ibid., 1073

Nash's model makes the assumption that individuals belong to one group[48] yet, as Oberoi observes and as is shown by the survivor interview data of this study, the lifecycle of migration is complex, and an individual migrant will often "move into and out of definitional categories throughout his or her migration journey".[49] A clear example of this involves women on spousal visas becoming 'over-stayers' (and thus being classed as 'illegal migrants') as a result of intimate partner violence (for instance, if their abuser refuses to support their application to renew their visa).

Morris[50] goes further than Nash in arguing that the proliferation of statuses or civic stratification[51] has formed part of the management of migration in European States[52] since the 1990s. 'Civic stratification' can be understood as "a system of inequality based on the relationship between different categories of individuals and the state, and the rights thereby granted or denied".[53] For Morris, "any given regime of rights reflects a balancing of or competition between a variety of constraints, most notably welfare resources, labor market management, and international obligations",[54] and there is an "increasing diversity of 'outsider' status"[55] rather than a simple expansion of post-nationalism. She also contends that on top of the formal differentiation framework, axes of race and gender are diffused through civic stratification, affecting access to rights.

An important aspect of civic stratification is the way in which the criteria and conditions for specific types of immigration status define essential constructs such as the family. Kraler argues that through eligibility criteria and conditions attached to admission, immigration policies define the family not only in terms of who is eligible to enter as a family member but also its qualitative characteristics.[56] He maintains that immigration policy in Europe formulates the public and private roles

48 Nash 2009.
49 Oberoi 2010, 231.
50 Morris 2003.
51 The notions of 'a proliferation of rights' statuses' and 'civic stratification' are used interchangeably in this paper.
52 Morris's empirical research includes Germany, Italy and the UK.
53 Lockwood 1996, 79.
54 Morris 2003, 94.
55 bid., 79.
56 Kraler 2010.

of family members and constructs family relationships as ones of dependency. Dependency is constructed, for instance, through not granting independent residency rights and only enabling family members to acquire an independent status over time.[57]

2.2
Presence as the Right to have Rights

If basing rights on citizenship or residency status means that many migrants are excluded, what should rights be based on? Bosniak observes that "the rights and recognition enjoyed by immigrants are usually understood to derive from either their formal status under law or their territorial presence".[58] She characterizes the status-based conception as the conviction that:

> "A person's rights are determined by the specific legal category she occupies in the country's immigration and nationality regime. The status of citizenship is understood to represent membership's culmination—the moment the individual is entitled to enjoy full rights and entitlements and duties—whereas alienage status of various kinds entails lesser rights."[59]

This conception is in line with Nash's assessment of current practices in Europe involving different sets of rights for different groups of people depending on citizenship/ immigration status.[60] Bosniak describes citizenship as the "normative benchmark" while "various locations short of citizenship are accorded incremental inclusion".[61] The idea is that "You are more entitled to rights and recognition as a lawful permanent resident alien than a visiting student or certainly than an irregular immigrant or a person detained at the border".[62]

By contrast Bosniak's notion of 'ethical territoriality' reflects the "conviction that rights and recognition should extend to all persons who are territorially present within the geographical space of a national state by virtue of that presence".[63] She outlines this territorial model of rights and recognition as follows:

> "The territorial conception of rights for immigrants treats a person's geographical presence itself as a sufficient basis for core aspects of membership. Instead of focusing on assigned legal categories, the territorial conception stresses the normative significance of the physical fact of presence in the national space. This presence is not necessarily tied to, or preceded by, political consent, although it may be. The territorial conception repudiates the notion of differential levels of inclusion, regarding the maintenance of partial membership statuses as illegitimate under liberal and democratic principles."[64]

The idea is that a person's presence in the geographical territory of the State triggers the obligation to treat them as "fully in".[65] Bosniak defends ethical territoriality on grounds of egalitarian and anti-caste commitments:

> "Ethical territoriality appropriately insists on treating membership as a matter of social fact rather than as a legal formality. And by opposing the imposition of less-than-complete-membership on classes of residents, ethical territoriality honors the egalitarian and anti-caste commitments to which liberal constitutionalism purports to aspire."[66]

Addressing the rights of women to freedom from intimate partner violence as a social fact rather than a legal formality leads to the decoupling of access to domestic violence services from immigration status. The approach of this paper employs Bosniak's

57 Ibid.
58 Bosniak 2007, 390.
59 Ibid.
60 Nash 2009.
61 Bosniak 2008, 2.
62 Ibid.
63 Bosniak 2007, 389-390.
64 Ibid., 391.
65 Bosniak, 2008, 3.
66 Bosniak 2007, 392.

territorial vision of rights and recognition as a yardstick.[67] Human rights cannot be based on citizenship as this means all non-citizens are second-class humans. Rights cannot be based on immigration status or else differentiation is the guiding principle, contra the vision of human rights. If rights are based on residence, undocumented migrants are excluded. This is not an acceptable omission from a human rights perspective. Bosniak writes of undocumented (irregular) migrants: "Irregular immigrants are [here] and hereness alone places them within the domain of rights-bearing subjects for many purposes. Being here is the right to have rights."[68]

These three theoretical concepts—of a tension between immigration control and human rights, a proliferation of rights' statuses and presence as the appropriate basis for rights—are employed in this paper to assess the empirical realities for women with insecure immigration status in abusive relationships in England and Sweden.

67 Bosniak 2007; 2008.
68 Bosniak 2008, 2.

3.

EMPIRICAL METHOD

High ethical standards are crucial for research on violence against women,[69] and the research protocol gained ethical approval from the University of Cambridge Department of Geography (UK) ethics board and the Lund (Sweden) regional ethics board.

Qualitative data collection involved semi-structured interviews with women who had experienced intimate partner violence while having insecure immigration status and with professional stakeholders working in this area. The sample consisted of 87 individuals: 31 survivors and 56 professional stakeholders (18 survivors and 23 stakeholders in Sweden, 13 survivors and 22 stakeholders in England) and 11 thematic experts from European and international organizations. Interviewing survivors, specialist support service providers who had worked with many survivors with insecure status, other country-based stakeholders and experts from international organizations enabled the triangulation of information.[69]

The sample of survivors encompassed women who had experienced intimate partner violence while having insecure immigration status in England or Sweden and were between the ages of 22 and 48. They originated from 14 different non-EU countries: Afghanistan, Bolivia, Chile, Ecuador, Iran, Iraq, Morocco, Nigeria, Pakistan, Syria, Tunisia, Turkey, Yemen and Zimbabwe. Two thirds of the women interviewed had at least one child. Of the 18 women interviewed in Sweden, 13 had migrated for marriage, 3 to seek asylum and 2 to find employment. Of the 13 survivors interviewed in England, 8 had migrated for marriage, 1 to seek asylum, 1 to look for work, 1 to join her husband who had refugee status, 1 to be closer to her daughter who lived there and 1 who had been trafficked to England as a child for purposes of sexual exploitation. To arrange interviews with survivor participants, I worked closely with specialist support services, which acted as gatekeepers to access and helped ensure that the questions posed to individual women were appropriate and sensitive.

The professional stakeholders interviewed for this study were experts in or closely involved with the issue of intimate partner violence against women with insecure immigration status. They worked in a number of different types of organizations: front-line and umbrella non-governmental organizations (NGOs), local and national government or statutory agencies, political parties, the legal sector and European and international organizations. A purposive sampling method[70] was used to identify a core set of stakeholders by virtue of their roles in key organizations, and a snowball sampling method was then initiated to reach other important stakeholders.

The semi-structured interviews lasted approximately 40-50 minutes. Interpreters—who were professional support service providers themselves or approved by the gatekeeping organizations—were used for a third of the survivor interviews. The women were asked about their background, migration journey and immigration status, the dynamics of abuse they experienced, pathways out of abusive homes, their current situation and their future prospects.

Stakeholder interviews covered the same broad topics but also reflected the individual's particular roles and expertise. Specialist support service providers who work directly with survivors of intimate partner violence with insecure immigration status (n=19) were asked about trends in survivors' pathways out of abusive relationships in this context and their perspectives on immigration, intimate partner violence and

69 Fontes 2004; Jaquier et al. 2011.

70 Tansey 2007.

welfare laws and policies. Interviews with national political/legal stakeholders (n=13) focused on national legal and policy frameworks and the key challenges in addressing the issue of violence against migrant women. Representatives of political parties (n=14) were asked about their parties' policies and the background for these policies, including the public and political discourse in this area. Stakeholders working for European or international organizations (n=11) were asked about the strengths and gaps of the existing European and international legal and institutional frameworks.

Data analysis involved a full transcription of audio recordings of interviews (if consent was given for recording).[71] Thematic analysis, as described by Braun and Clarke,[72] was used to analyse the interview transcripts. This involved first taking notes about content and initial interpretive ideas, then assigning codes to meaningful aspects of the data, next sifting through codes and creating themes at different levels (themes, sub-themes and main themes) and finally discarding some data.

71 In a minority of cases where consent was not given, the data analysis was based on handwritten notes taken during and after the interview.

72 Braun and Clarke 2006.

4. RESULTS AND DISCUSSION

This section combines information about legal and policy frameworks with themes from qualitative interviews to analyse women's right to live free from violence in the context of insecure immigration status. The first part focuses on European and international professional stakeholders' perspectives on the tension between immigration control and human rights, which was a prominent theme in this set of interviews. This is intended to give a sense of the international context in which to situate the data from England and Sweden. The second part addresses national law and policy in combination with stakeholders' perspectives on these frameworks and how they affect women's right to live free from violence in the context of insecure status. The third part outlines a case study of a survivor's pathway of escaping intimate partner violence and offers some reflections on the focus topic from the individual-level perspective.

4.1 Tension between Immigration Control and Human Rights

Experts from European and international organizations repeatedly alluded to a tension between immigration control and human rights in relation to public and political discourse and the links between rhetoric and policy. A migration specialist at the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) described the crux of the issue as follows:

> "Migration is a very politically sensitive issue. And the markers of that discourse have nothing to do with human rights... It's national sovereignty, national security, law and order, morality... And when you have that perspective, then implementing things from a rights framework doesn't really happen."
>
> Migration specialist, UN Women, New York [P75][73]

This participant went on to argue that the tension exists in national immigration legislation and acts as a barrier to the implementation of human rights standards.

> "National [immigration] legislation is at variance with human rights standards because the perspective that you have is not essentially a human rights perspective. It is national sovereignty, national security, which oftentimes goes overboard, looking at these people as criminals... So there is a conflict or a tension between national sovereignty and the global movement of people and protection of people's rights across borders... that's one tension which leads to lack of implementation."
>
> Migration specialist, UN Women, New York [P75]

The idea expressed in this quote—that a discourse on migration that lacks a human rights perspective leads to the lack of implementation—is noteworthy. It points to a strong connection between how migrants are perceived, how migrants are talked about and policy outcomes that impact on migrants. In this way,

73 Quotes from stakeholder interviews are labeled with a tag that includes the participant's role, organization, and the location of the organization, followed by their participant number in the format [Pn].

anti-immigrant rhetoric can have concrete effects on individual migrants' experiences. Other stakeholders suggested that migrants' rights are not perceived to be a priority for international action:

> "It takes something really, really bad for anybody to mention anything on the abuse of migrants... it took Lampedusa in Italy before anybody said anything on migrants."
>
> Member, European Economic and Social Committee, Brussels [P82]

This quote raises a question relating to the response to the continuing refugee/migration management crisis in the Mediterranean, where the political will of European nations to work together and find a sustainable solution while saving the lives of as many people as possible is still lacking. From a human rights perspective, it is unjustified that nationality or immigration status would matter in a context where people are drowning. Yet the point made repeatedly by stakeholders is that migrants and migration are not generally addressed from a human rights perspective.

Offering a striking angle of the notion of a tension between immigration control and human rights, a staff member of the Platform for International Co-operation on Undocumented Migrants argued that governments harness the threat of violence against women as a tool of immigration control:

> "It's a policy-fostered type of destitution... for a woman, when we strip a woman of her right to go to the police, we strip her of her right to go to a women's shelter... we're in fact harnessing this threat, because then she'll go home, then others won't come. This is kind of the logic... it's harnessing the risk of the threat of violence against women as a tool of immigration control."
>
> Staff member, Platform for International Co-operation on Undocumented Migrants, Brussels [P83]

This quote evokes Sabates-Wheeler and Feldman's argument that governments use welfare systems as immigration control instruments.[74] It brings to mind the false choice faced by many women with insecure immigration status who have experienced intimate partner violence between continuing violence on the one hand and destitution and/or deportation on the other.[75] The next section on policy frameworks in England and Sweden explains how this false choice is created in the interplay between welfare and immigration policy.

4.2
Legality as a Basis for Rights

> "I suppose human rights legislation wasn't written with migrants in mind in particular."
>
> Policy officer, local government-led migration partnership, Yorkshire [P39]

Analysis of welfare and immigration policies in England and Sweden and national professional stakeholder interviews show that in both countries a distinction is made between documented and undocumented immigrants with regard to guaranteeing protection from violence.

In Sweden, survivors of intimate partner violence who are legally resident in a municipality have access to support services to enable them to leave abusive relationships. This is because access to welfare state provisions is based on residence as opposed to a specific immigration status. The Swedish Social Services Act 2001 stipulates that local government must provide support to women and children who have experienced violence. As I have argued elsewhere,[76] while this means that most women who experience violence in Sweden have access to basic services to enable them to leave violent relationships, undocumented migrants are not protected. Undocumented women in Sweden are not legally resident, thus the benefits system does not cover them and most shelters are not able to house survivors from this group.[77]

74 Sabates-Wheeler and Feldman 2011.
75 Voolma 2018.
76 See Voolma 2018.
77 Ibid.

In England, not only are undocumented migrants formally excluded from public funds and thus publicly funded domestic violence services but there is a trend of criminalizing undocumented migrants. The 2014 UK Immigration Act, for example, is aimed at tackling 'illegal immigration', including restricting undocumented migrants' access to the criminal justice system, to housing and to health care.

A number of stakeholders in England expressed a conviction that the Immigration Act 2014 is likely to have broader effects not only on undocumented migrants but also on "all sorts of other migrants as well because they're not going to understand the [Bill's] nuances" [P39]. A Policy Officer at a local authority-led regional migration partnership in Yorkshire explained these effects:

> "If you're a new refugee you might fear that this is going to impact you and it might stop you from registering with your GP or apply for social housing that you are entitled to because you just feel this wave of hostility towards you that you see in the press and restrictions on your access to things."
>
> Policy Officer, local authority-led regional migration partnership, Yorkshire [P39]

4.3
Basic Rights on Probation

Apart from the broad legal-'illegal' distinction, a specific policy issue that is common in England and Sweden for survivors of intimate partner violence with insecure status is the spousal visa probationary period.[78] Women who enter these countries on spousal visas in order to join their spouses or fiancés (in Sweden, unmarried partners are also eligible but the relationship must be 'serious') are subject to a probationary period of residency. This period is five years in the UK and two years in Sweden, and if the relationship breaks down in this period they lose their right to remain and become subject to deportation.

78 See ibid. for a fuller discussion of the effects of the spousal visa probationary period.

The spousal visa probationary period can be seen as an example of the immigration policy constructing dependency in family relationships.[79] Most of the survivors interviewed for this study entered Sweden or the UK on spousal visas—and one on a refugee reunion visa—to join their husbands.[80] Writing about the legal dependency on their sponsor of migrant women suffering intimate partner violence, Kraler argues that: "In this, the state's legal framework reinforces asymmetric power relations within families and contributes to the vulnerability of women to be exploited and controlled by their families".[81]

An exemption to the deportation rule exists in both countries for survivors of domestic violence, stipulated by the 2002 UK Domestic Violence Rule and the 2005 Swedish Domestic Violence Rule. These exemption rules enable survivors of domestic violence to apply for an independent residence permit during the probationary period—a crucial correction to draconian immigration laws. However, the burden of proof for survivors is too high in Sweden, with survivors needing to provide evidence of 'serious enough and repeated violence' and a 'substantial relationship duration'.[82] Furthermore, even in the UK where the evidentiary requirements are not as high, qualitative research shows that many women do not know about the exception and remain with their abusive partners due to fear of deportation.[83]

The quote in the title of this paper ("Love is not a passport to Sweden") is from an interview with a representative of the Swedish National Organization for Women's Shelters and Young Women's Shelters, who was quoting a former Swedish Minister justifying the existence of the spousal visa probationary period. The concern that spousal visas should not be used purely for the purpose of obtaining a residence permit/citizenship ought not to obscure the real danger that women experiencing intimate partner violence may be in—a situation that is exacerbated if women feel trapped by the threat of deportation built into the spousal visa probationary period.

79 Kraler 2010.
80 See Voolma 2018 for the story of this survivor who entered the UK with her daughter on a refugee reunion visa.
81 Kraler 2010, 58.
82 Burman 2012.
83 Voolma 2018.

4.4

Proliferation of Rights' Statuses

It is the No Recourse to Public Funding (NRPF) requirement applied to people with insecure immigration status in the UK that evokes Nash's notion of a proliferation of rights' statuses[84] and Morris's work on civic stratification[85] more clearly. Survivors of domestic violence subject to the NRPF rule have no entitlement to most welfare benefits, tax credits or housing assistance provisions that are state-funded. As domestic violence services in the UK are financed through public funds, survivors with insecure status do not have access to these. The NRPF rule applies to all individuals with insecure immigration status, including people on spousal, student and work visas, refused asylum seekers and visa 'over-stayers'. Morris writes that, "this connection between public funds and security of residence that opens up the possibility that delivery of social rights can be harnessed as a vehicle of control and as a means of monitoring those lawfully present".[86] In addition, she argues that the elaboration of differentiated rights for different categories of noncitizens also enables the exercising of state control.

After a two-decade campaign led by Southall Black Sisters, a specialist non-profit organization working to support Asian and Afro-Caribbean women survivors of gender-based violence, the UK Government introduced the Destitution Domestic Violence (DDV) Concession in 2012 to enable migrant spouses subject to the spousal visa probationary period with NRPF the right to access benefits and social housing for three months while they apply for permanent residency. While the DDV Concession is regarded as an important development by specialist support service providers,[87] it only applies to survivors on spousal visas so other survivors with insecure immigration status are still excluded from protection and support. A survey conducted by the Campaign to Abolish No Recourse to Public Funds showed that during the three-month period November 2012 - January 2013, 64 per cent of survivors of domestic violence with an insecure immigration status (n=242) approaching specialist services for support did not qualify for the DDV Concession.[88]

The difficulties of supporting survivors with insecure immigration status subject to the NRPF requirement was a main theme in interviews with support service staff in England. Staff at a specialist domestic violence support service with expertise in supporting migrant and ethnic minority (MEM) women talked about not being able to accept refuge survivors who do not have recourse to housing benefit and what the options might be for these women:

> Participant A: "To come here, it's accommodation-based and somebody has to pay their rent. So unless someone agrees to pay their rent, we can't take them in terms of our service provision..." Participant B: "Sometimes you've got other options when maybe they can come out of the (domestic violence) situation and maybe go to another family member's house or they've got some sort of security. Because I'm working with someone now who's left the domestic violence but she's living at someone's house."
>
> Staff group interview, specialist MEM domestic violence support service, Yorkshire [P37]

Nash's prognosis that "in practice there are quite different sets of rights for different persons of different status"[89] seems a fitting assessment of the situation regarding women's access to domestic violence services to enable them to leave violent relationships in England. While the main distinction in terms of access to safe accommodation and subsistence support in Sweden is between documented and undocumented migrants, the proliferation of rights' statuses for women survivors of violence in England is

84 Nash 2009.
85 Morris 2003.
86 Ibid., 80.
87 Voolma 2018.

88 Southall Black Sisters 2013. In 2013, the United Nations Committee on the Elimination of Discrimination against Women recommended that the UK should "Extend the concession to the 'no recourse to the public funds' policy to all women who are subjected to gender based violence and exploitation" (UN CEDAW 2013, 10).
89 Nash 2009, 1080.

more elaborate and includes: citizens and permanent residents who have access to services; survivors on spousal visas who have access if they can prove they are eligible under the DDV Concession; women with insecure status on other visas who are not eligible for services; and undocumented survivors who are not only not eligible for services but are criminalized and under constant threat of deportation.

An Advocacy Officer at a housing and support service for vulnerable women in London discussed how restrictive policy goes hand-in-hand with problem-driven public and political rhetoric on migrants in the UK:

> "It just seems like these people have just violated some rules, rather than that they have a right, just as we do, to basic kind of safety and security. I think [human rights and immigration] are obviously intrinsically linked. I think the problem is that people... try and blur that connection to make it easier for certain political agendas... even though your husband has been abusively violent to you, you might even have children here, you still have to prove that you have a right to remain in this country."
>
> Advice and Advocacy Officer, housing and support service for vulnerable women, London [P43]

The following survivor case study reflects the proliferation of rights' statuses from an individual perspective and highlights another theme for consideration in relation to the tension between immigration control and human rights: the fluidity of immigration statuses. The case study elucidates a complex immigration trajectory involving several changes in legal status over a 15-year period. The experiences of several of the other 30 survivors interviewed as part of this research chimed with aspects of this case study, but this is a particularly complex case and should be read as an illustration of the individual-scale perspective on the tension between immigration control and human rights rather than as representative of the experiences of survivors of intimate partner violence with insecure immigration status as a group.[90]

90 For other survivor case studies and survivor interview data from the same research, see Voolma 2013; 2017; and 2018.

4.5
A Survivor's Story

When Nisan[91] (age 30, residing in Sweden, from Turkey [P25]) was 15 and still living in Turkey, she was kidnapped and raped by her then boyfriend and his friends. It was also at this time that her father's abuse towards her, which had started in early childhood, escalated. Her mother told her brother, who was living in Sweden, that his sister would either be killed by the father or kill herself. The brother arranged a visit visa for Nisan, and her mother took her to Sweden, telling her they would be there for three months until everything went back to normal and they could return to Turkey. However, her mother actually left her in Sweden with no way to return.

Nisan's visit visa was valid for three months and, as her family did not renew it after that, she continued living in Sweden undocumented. After 18 months someone reported her to the police and they came to her brother's house to deport her, but she was not there.

When Nisan had been in Sweden for a few years, her uncle who was a lawyer advised her to tell her story to the police and apply for residency, but lie about when she had entered the country. She applied as an asylum seeker, but the police wanted proof of when she had arrived. She did not get an answer about her status until she was 20, at which point she was refused. Her only option was to go back to Turkey or wait for four years and apply again (at the time she had already been in Sweden for five years). She waited four years, without papers.

Within those four years a lot happened: She got in contact with a women's organization, she got all her papers from the Turkish police and the hospital. She went to the migration board again and told them the truth, but the board did not believe she had been in Sweden for 10 years.

> "They said, 'you are lying, you haven't been here for ten years, there's nothing proving that... according to law, you are not here'... If

91 Not her real name.

you're paperless you are not getting any help, not even from the migration board."

Nisan's family then encouraged her to marry a man from Afghanistan she had been seeing. He was a Swedish citizen and Nisan eventually got permanent residency on the basis of this marriage. However, the relationship became abusive: "He was sick in the head; he would threaten me and do all this sick stuff and we weren't even married anymore". Her husband raped her and she went to hospital where she was encouraged to go to a women's shelter.

At the time of the interview Nisan was going to school, living in a student flat during term-time and staying with a friend during the holidays. She was hoping to become a Swedish citizen in a few months' time. Based on having moved through a number of migrant categories, from undocumented to asylum seeker, back to undocumented, to spousal visa holder to permanent residency and now waiting for citizenship, Nisan talked about 'degrees' of rights for different categories of people:

> "It's like degrees, if you are paperless you don't have any right to get anything. If you are asylum seeker you would get a little help but not that much either because they are not sure which city you'll stay in. If you have permanent residency, you can get more help, but it takes a lot of time."

4.6
The Fluidity of Migration Categories

The last quote in Nisan's case study, which discusses the 'degrees' of rights for different categories of migrant survivors of violence, evokes the concept of a proliferation of rights statuses[92] and civic stratification.[93] Nisan's experiences also highlight the fluidity of migration categories. The labels of 'temporary visitor', 'undocumented migrant', 'asylum seeker', 'failed asylum seeker', 'spousal visa holder' and 'permanent resident' could all be used to describe Nisan's status at different points in her life in Sweden. However, these categories do not adequately reflect the experiential side of Nisan's precarious journey to permanent residence. Static labels conceal complexity of lived experience and the reasons for entering and moving out of different migration categories. In public and political discourse, migrants are often described as belonging to one migrant group or label, or perhaps two (e.g., asylum-seeker and then refugee). The empirical fluidity of migration categories—and the potential that the same person could move through several, even six, categories as Nisan did—is not widely recognized.

Basing rights on immigration status is thus problematic because it assumes that this status is 'static' and also that it is 'deserved'. For instance, curtailing the rights of undocumented migrants may be based on an assumption that these individuals have deliberately defied the legal system and thus made a conscious choice to step outside of the status of a rights-bearing subject. In reality, a survivor of intimate partner violence may, as part of the abuse, not be in control of her travel documents and may become an 'over-stayer', and thus 'illegal', if the perpetrator refuses to renew her visa. At least seven survivors interviewed for this study were undocumented or 'over-stayers' at some point during their time in England or Sweden. A Policy Officer at a local authority-led regional migration partnership in Yorkshire revealed that most 'illegal' immigrants are in fact people who have overstayed their visa for one reason or another:

> "One of the things that we do point out in our trainings actually that changes people's perceptions is what an illegal, if you like, immigrant is. Because, it's a perception that it's just people coming in through Calais or undocumented in lorries, that kind of thing. And actually the majority of people who are classed as illegal have just simply overstayed their visa and not got their papers in order."
>
> Policy Officer, local authority-led regional migration partnership, Yorkshire [P39]

92 Nash 2009.
93 Morris 2003; Lockwood 1996.

She confirmed that migrants change statuses often and that it is easy to become an 'over-stayer'.

> "Migrants... well they change statuses all the time as well. It's very easy to become an over-stayer, for example. And slipping into that category suddenly changes your service access and people are worried about declaring what their status is."
>
> Policy Officer, local authority-led regional migration partnership, Yorkshire [P39]

The following extract from an interview with a Migration Adviser at the UN Office of the High Commissioner for Human Rights elucidates the problems with basing legal protection on migrant categories:

> "When applying legal protection on the basis of categories we should be aware that no longer if they ever were, are these categories enough or mutually exclusive... A woman could be smuggled, trafficked, an asylum seeker and an economic migrant at various points in the journey and sometimes at the same time. Categorization does not allow for the fluidity of contemporary migration patterns... what you are doing is setting up a hierarchy of vulnerability and that's something that the human rights framework does not do."
>
> Migration Adviser, UN Office of the High Commissioner for Human Rights, Geneva [P73]

This quote offers a compelling critique of the status-based conception of rights. Recognizing that migrants commonly move between different immigrant categories, and that an individual migrant becoming 'illegal' could be the result of victimization rather than a deliberate and conscious decision to disobey the law, brings to mind the unsettling thought expressed by Bunch in relation to women, that "as long as any group can be denied its humanity, we are all vulnerable to human rights abuse".[94]

94 Bunch 1995, 12.

4.7
Temporary Assistance Based on Presence

But can we reasonably expect States to protect and support all survivors of intimate partner violence in their territory, thus basing rights on presence as proposed by Bosniak's conception of 'ethical territoriality'?[95] The Director of a UK national violence against women charity based in London shared a perspective that can be used to start to tackle this question:

> "Somebody who has chosen Britain as a place where they wish to come and invest their hard-earned income in order to improve their education, I'm not expecting them not to have a relationship when they're here, and I'm certainly not going to hold them responsible if they're in a relationship and their partner is abusive. And I see no reason whatsoever why it isn't possible to provide, even in those circumstances, some temporary assistance that allows them a breathing space to get safe. I'm not necessarily saying if you come here on a student visa you should end up getting leave to remain in this country on a permanent basis...we're constantly told that we're living in a globalized world, but only some bits of it appear to be global and we really need to start re-thinking how we frame social policy in a globalized economy."
>
> Director, national violence against women charity, London [P32]

The idea here is that it is not out of the question to expect migrant women of different statuses to be afforded access to assistance to enable them to leave abusive relationships. It is noteworthy that this stakeholder emphasizes temporary assistance and makes a clear distinction between providing essential support services to survivors of violence and granting them permanent residence. Additionally this interviewee's

95 Bosniak 2003.

insistence that it is irrational to expect migrants to somehow avoid being exposed to intimate partner violence highlights the problematical justification the Home Office offers for the existence of the NRPF policy that "migrants coming to the UK should be able to provide for themselves financially without relying on benefits from the state".[96] While it may be tenable to expect migrants with insecure status not to *plan* to rely on benefits, it is not reasonable, as the interview quote suggests, to expect migrants to somehow avoid being in need of temporary assistance as a result of intimate partner violence. In line with the emphasis by this interviewee on the need to reframe social policy in a globalized economy, it can be said that the issue of intimate partner violence against insecure immigration status provides a cogent illustration of the need for social policy to be re-thought in the context of international migration trends

96 UK Home Office 2015b.

5.

CONCLUSION

A tension between immigration control and human rights can be clearly seen in national policy approaches that tie basic rights[97] to immigration status. The legal-'illegal' distinction and the proliferation of rights' statuses identifiable in England and Sweden with regard to migrant women's access to basic services of safe accommodation and subsistence support are reflective of the aim of immigration control being prioritized over human rights. The findings in this paper about the fluidity of immigration categories suggest that status-based systems of rights' provision cannot guarantee to women inclusive access to their right to live free from violence. Basic rights[98] need to be based on presence as opposed to residence (Sweden) or permanent residence/citizenship (England).

As such, the general policy recommendations for EU Member States are as follows:[97][98]

- To provide time-limited domestic violence services (safe accommodation and financial support) to all survivors of intimate partner violence in their territory, regardless of immigration status.

- To abolish requirements of family migration, which construct dependency in a way that prevents survivors of violence from leaving abusive relationships, such as probationary periods for spousal visas that threaten deportation.

It is not unreasonable to expect EU Member States to provide time-limited safe accommodation and financial support to all survivors of intimate partner violence in their territory who need it. Especially considering that both Sweden and the UK have strong welfare states and well-established domestic violence support service systems, the gaps in the response to a particularly vulnerable group of survivors of intimate partner violence are not acceptable. While the policy changes that would be necessary to close these gaps/contradictions are unlikely in the current hostile political context as regards immigration and migrants' rights in both England and Sweden, the following recommendations should be considered:

England

- For England and the UK, the data point to the need to abolish the No Recourse to Public Funding (NRPF) requirement for people with insecure immigration status, which presents survivors with a false choice between continuing violence and destitution. As this will take time, the Destitution Domestic Violence Concession should be extended in the interim beyond spousal visa holders to all survivors of domestic violence subject to NRPF. The final step before the eradication of NPRF could be an exemption for all survivors of domestic violence, regardless of immigration status, from the NRPF requirement.[99]

- The findings also call for the abolition of the spousal visa probationary period, which prevents women from leaving abusive relationships for fear of deportation. While the probationary period exists, its length of five years is unjust and should be changed back to the pre-2012 period of two years.

97 Shue 1996.
98 Ibid.
99 Austria, Canada, Denmark and the United States have all introduced exemptions for survivors of domestic violence from NRPF requirements (Siddiqui 2013).

Sweden

- Findings in relation to Sweden also call for the removal of the spousal visa probationary period. In the interim, the criteria for the protective rule, which aims to enable women on spousal visas to leave violent relationships, must be reformed. Evidence from the claimant that she and/or her children have been subjected to domestic violence should be sufficient.

- The findings concerning undocumented women in Sweden highlight the need for reform to enable survivors regardless of immigration status to access support services without fear of apprehension. This could involve earmarked funding to shelters for supporting undocumented survivors and a guarantee of non-disclosure to immigration authorities on behalf of services.

The findings discussed in this paper highlight the need to reconcile the aim of human rights with the reality of international migration dynamics. Morris writes that: "While the language of rights promotes a sense of ethical certainty, the study of rights in context reveals a greater potential fragility".[100] In the current political context of anti-immigrant sentiment sweeping Europe, and panic about how many (or rather, how few) migrants and refugees to 'let in', we must not lose sight of what happens to migrants who are already 'here'. As Bosniak expressed concisely: "Being here is the right to have rights".[101]

100 Morris 2003, 95.
101 Bosniak 2008, 2.

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UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

UN WOMEN

220 East 42nd Street
New York, New York 10017, USA
Tel: +1-646-781-4400
Fax: +1-646-781-4444

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