

“THE LAW WAS AGAINST ME”

Migrant Women’s Access to Protection for Family Violence
in Belgium



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Summary

“I sometimes felt as if the law was against me. All went wrong [for me], while he got away with everything,” Ngalla A. sighed, while sipping her coffee in a Belgian cafe. After seven years of brutal abuse that included regular beatings and severe psychological pressure, Ngalla finally dared to report her partner to the police. “I felt confident then,” she said, “because of my papers.”

Ngalla, a 35-year-old failed asylum seeker from Cameroon, had not dared to seek help from Belgian authorities until she obtained a permanent residence permit, fearing that she would be deported and believing her husband’s threats that if she was deported, she would never see her two young children again. When she finally left her husband, Ngalla was confronted with waiting lists for shelters and social housing. Struggling financially to survive as a single mother, Ngalla lost custody of her children to her husband.

Ngalla’s experience of family violence is not uncommon in Belgium.¹ In Belgium almost 15 percent of women experience some form of partner violence in any given year, according to one survey.² While domestic violence and other forms of gender-based violence are clearly not confined to migrant communities, some migrant women in Belgium face particular difficulties in accessing protection. In particular, our research found that women who have recently migrated to Belgium for family unification or marriage and undocumented migrant women face specific challenges accessing protection.

The Belgian government has passed laws and policies to prevent, investigate, and prosecute acts of violence and to protect victims. A periodic National Action Plan that is revised every three to four years sets the agenda for federal and federated entities in the fight against domestic violence. The latest plan draws attention to violence against migrant women, particularly so-called honor-related violence, forced marriages, and

¹ “Stocktaking study on the measures and actions taken in Council of Europe member States to combat violence against women,” Council of Europe (Strasbourg: Directorate General of Human Rights, 2006), [http://www.coe.int/t/dghl/standardsetting/equality/o3themes/violence-against-women/CDEG\(2006\)3_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/o3themes/violence-against-women/CDEG(2006)3_en.pdf), p.8 (accessed January 5, 2012).

² Jérôme Pieters et al., “Experiences of Women and Men with Psychological, Physical and Sexual Violence” (Brussels: Institute for the Equality of Women and Men), 2010, http://igvm-iefh.belgium.be/nl/binaries/41%20-%20Dark%20number_NL_tcm336-102287.pdf (accessed December 19, 2011).

female genital mutilation. But there continue to be gaps in protection as well as arbitrariness in the treatment of some migrant women who suffer abuse. These must be addressed to ensure that all migrant women in Belgium benefit fully from legal protection.

Belgian law and policy recognizes that migrant women who arrive in Belgium to join their spouse, fiancé, or civil partner are particularly vulnerable if they experience abuse. Similarly to many European Union (EU) countries, migrant women who join a Belgian or EU national or long-term resident from non-EU countries are granted a conditional residence permit for three years. After their arrival in Belgium, most of these family migrants must wait six to twelve months before their application for family reunification is processed and they receive a provisional residence permit. If the relationship with the partner they joined ends before the probationary period of three years, they lose residency rights and must leave the country.

Human Rights Watch documented several cases in which women who came to Belgium from outside the EU as family migrants received an order of expulsion after they left abusive spouses. The fear that reporting violence and leaving a partner may jeopardize immigration status means that migrant women who experience violence at the hand of their partners may choose to endure the abuse until they have a more secure legal status.

In 2006 and 2007, the Belgian government sought to address this problem by introducing important clauses in the Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the “Aliens Act”). These legal changes allow migrants to retain residency rights if they come forward and report family violence. If migrant women prove they are victims of violence at the hands of their partners, the Aliens’ Office of the Interior Ministry will not withdraw their residence permit even if the relationship with their sponsoring partner ended within the probationary period.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requires governments that ratify it to ensure that victims of domestic violence with dependent residency are protected against removal so that they can apply for an independent residence permit. On September 11, 2012, Belgium signed the convention, but at this writing had yet to ratify it.³

³ Le Soir.be, “La Belgique signe la convention sur la lutte contre la violence à l’égard des femmes,” September 11, 2012, http://www.lesoir.be/actualite/le_fil_info/2012-09-11/la-belgique-signe-la-convention-sur-la-lutte-contre-la-violence-a-l-egard-des-femmes-937098.php (accessed September 25, 2012).

At present, Belgium takes a different approach to the one prescribed by the convention. Rather than allowing victims of domestic violence to apply for independent residence permits, it merely allows them to retain the residency rights that were granted on the basis of their relationship with the sponsoring partner even after the relationship ceases to exist.

This approach carries certain limitations. It does not protect family migrant women who flee violence when their application for family reunification is still being processed, or women whose violent spouse left the country after they sought help. Undocumented migrant women are also unable to benefit from the law.

Women who are family migrants also face obstacles obtaining evidence to establish that they are the victims of violence. Those married to Belgian and other EU nationals must also show that they are not dependent on public funds to benefit from the law. Furthermore the state fails to provide information to such women about their rights and the procedures by which they can secure their right, and thereby undermines the general effectiveness of the protection clauses. For example, it is difficult for family migrants to obtain advice on how they can leave an abusive partner without risking residency rights or what evidence would suffice. Women who are family migrants who leave a violent partner without informing the Aliens' Office face severe difficulties to appeal against an expulsion order even if they have obtained documentary evidence of violence against them.

Human Rights Watch documented cases like that of Ngalla A. in which family migrants underwent physical and mental abuse for years. Our research found that others become undocumented once they leave their abusive partner, unable to benefit from the abuse clauses due to gaps in the Aliens Act and limited access to information about their rights to a life without violence and procedures available to secure their rights.

Undocumented migrant women are among the most vulnerable and at the same time least visible group of survivors of family violence. Human Rights Watch documented cases in which the police, when alerted of incidents of domestic abuse, enquired about migrant women's status instead of protecting them from domestic violence and pursuing criminal investigations.

Survivors of abuse run the risk of being arrested and put in detention when seeking protection, which undermines confidence in the police and deters them from reporting

family violence. Ngalla A. was one of the women who told Human Rights Watch that she only dared to report her partner to the police after seven years of severe abuse after she formalized her immigration status and no longer risked deportation. Our research indicates that the threat of expulsion for undocumented migrants who are victims of violence undermines their access to protection.

Undocumented women who are victims of domestic violence have limited avenues for regularization of their status, particularly those without children. Unlike victims of trafficking, they cannot apply for a provisional residence permit on the condition that they cooperate in criminal proceedings against the perpetrator. They can request regularization of their status on humanitarian grounds but the law does not stipulate any criteria for this, and administrative practice shows that gender-based violence in Belgium is not an established criterion.

Shelters exist in Belgium for women escaping abusive relationships, but they have waiting lists and Human Rights Watch research indicates that some shelters deny access to undocumented migrant women, citing a lack of state funding for such women. Undocumented survivors of abuse cannot apply for public funds that are available to other victims of family violence to pay for shelters and support services. This jeopardizes undocumented women's safety, because they are forced to choose between returning to violent homes and living on the street.

Belgium has clear obligations under human rights law to protect women from violence, irrespective of the legal status of victim. Although Belgium has made significant progress to combat gender-based violence, it should take additional steps to fully protect the rights of migrant women victims. The government has passed important laws to better protect victims and punish perpetrators. It has also shown a willingness to put women's protection needs ahead of their migration status. With a few steps, however, its approach could be greatly improved.

Recommendations

To the Federal Government of Belgium

- Ratify and implement the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.
- Reaffirm the zero tolerance policy on domestic and other forms of violence against women without discrimination of any kind.

To the Federal Parliament of Belgium

- Reform the Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the “Aliens Act”) to ensure that irregular migrants can seek protection from domestic violence and legal remedy without risking deportation, including specifically by:
 - » Ensuring that undocumented migrant women who report gender-based violence are not questioned about their legal status or reported to immigration authorities.
 - » Suspending expulsion for irregular migrants who report domestic violence, until the resolution of criminal procedures against their abuser and until any application for residence has been finally determined.
 - » Issuing a new instruction on article 9bis of the Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the “Aliens Act”) to enable all undocumented abuse victims to apply for a residence permit on humanitarian grounds by explicitly including gender-based violence as an “exceptional circumstance.”
- Amend the protection clauses in articles 11 and 42 quater of the Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the “Aliens Act”) to allow all family migrants whose residency rights depend on their relationship with an abusive sponsor to apply independently for a residence permit, including:
 - » Applicants for family reunification who leave a violent partner or spouse while awaiting their permit;
 - » Migrants whose residence permit depends on the relationship with a short-term residence permit holder;

- » Migrants whose abusive partner left the territory or was expelled during the probationary period.

To the Federal Ministry of the Interior and Equal Opportunities

- Jointly with the state secretary for immigration, issue and publicize a protocol to the police making clear that they should not inform immigration authorities when undocumented abuse survivors seek help, so such individuals can enjoy their rights to immediate protection without fear of deportation.
- Prioritize the fight against domestic violence in the next National Security Plan and ensure vigorous implementation of Circulars 2006/3 and 2006/4. Particular measures to improve protection for abuse survivors of migrant origin should include, but not be limited to:
 - » Ensuring that police in migrant-populated areas have a special liaison officer with adequate training concerning domestic violence whose responsibilities include proactively reaching out to and cooperating with migrant communities to increase confidence in reporting violence, including among undocumented migrant women.
 - » Designating contact persons within migrant organizations to ensure regular interaction with the police and referral of victims of violence to protection, assistance, and rehabilitation services.
- Ensure that in the next National Action Plan—in collaboration with the state secretary for immigration, the minister of social affairs and public health, and the responsible Community and Region ministers—public funds are made available for all survivors of abuse to guarantee unrestricted access to women’s shelters and support services without discrimination.
- Involve migrant women’s organizations in drafting, implementing, and evaluating the next National Action Plan to address the particular obstacles for migrant women to seek help and get secure protection from domestic violence.
- Launch a publicity campaign, in collaboration with the Ministry of Justice and relevant Community ministers, to inform migrant women about their rights and the existing services for abuse survivors and dependent children including about the protection clauses and related procedures for family migrants. Publicize and broadcast material in minority languages and cooperate with migrant and women’s organizations in the development and outreach of the campaign.

To the Federal State Secretary for Immigration, Asylum and Societal Integration

- Promote reform of the Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the “Aliens Act”) to
 - » Amend the protection clauses in articles 11 and 42 quater of the law to permit all family migrants who are the victims of violence to apply independently for a residence permit, irrespective of income, including:
 - applicants for family reunification who leave a partner or spouse while awaiting their permit;
 - migrants who came to join short-term residence permit holders;
 - migrants who came to join long-term residence permit holders who have left the territory or been expelled.
 - » Suspend expulsion for irregular migrants who experience domestic violence, including family migrants whose residence has been terminated, until the resolution of criminal procedures against their abuser, and any application for residence, including appeals, has been finally determined.
- Issue a new instruction on article 9bis of the law entitling undocumented migrants to a residence permit on humanitarian grounds by explicitly including gender-based violence as an “exceptional circumstance.”
- Develop, together with the ministers of justice and interior, a circular that explains how migrant women with a dependent residence permit can benefit from the protection clauses in the law when escaping a violent relationship or marriage. This circular should be distributed widely to inform migrant women, their organizations, service providers, health practitioners, law-enforcement officials, and others working with migrants about the legislation and procedures, and stipulate that:
 - » Survivors of physical, psychological, sexual, and economic violence who leave violent spouses or partners during the probationary period can apply independently for a residence permit on grounds of domestic violence, regardless of the length of their relationship, their partner’s legal status, or income.
 - » Survivors can prove the violence by way of an official police report, medical report, restraining order, attestation of a shelter or psychiatrist, or other credible evidence. They should normally immediately submit this evidence to the Aliens’ Office when leaving a violent partner but the Office should consider later submissions where there is a reason for this.

- » Make it clear that survivors are not required to inform the Office before leaving a violent partner.
- » The Aliens' Litigation Council considers facts of violence submitted after it ended residency rights in any legal challenge to an expulsion order on that ground.
- Make available, in cooperation with the ministers of interior and public health, and the responsible Community and Region ministers, public funds for all abuse survivors and dependent children to guarantee unrestricted access to women's shelters and support services without discrimination.
- Collect and distribute information on how many migrants gained or retained rights to residency on grounds of gender-based violence, including how many claims were rejected and for which reasons, and how many decisions were annulled.
- Create a focal point within the Aliens' Office with responsibility for cases that involve gender-based violence and who can train and inform staff about migrants' rights to protection, including but not limited to immigration services including the Office itself, shelters, police, service providers, prosecutors, and migrant associations.

To the Federal Ministry of Justice

- Institute obligatory training on all kinds of domestic and family violence to prosecutors and judges in each jurisdiction.
- Promote, together with the Ministry of the Interior, the pending law-proposal on restraining orders against potential perpetrators of gender-based violence and, once the legislation is in place, ensure adequate monitoring and training to law-enforcement officials so that restraining orders are:
 - » Issued and enforced with due diligence and without discrimination on the basis of ethnicity, race, nationality, legal, or any other status.
 - » Granted on the basis on threats or suspicions of any kind of violence, not just physical abuse, and also to couples that do not formally live together.
- Continue collecting on an annual basis statistics on (preliminary) investigations, prosecutions, penalties imposed and ensure that they are widely published.

To the Ministers of Social Welfare, Public Health, Equal Opportunities, and Family of Flanders, Wallonia, the Francophone and German-speaking Community and all Community Commissions in the Brussels-Capital Region, and its State Secretary for Equal Opportunities:

- Make available, together with the Federal State Secretary for Immigration, Asylum and Societal Integration and the Ministers of Interior and Equal Opportunities, public funds for abuse survivors with irregular or insecure legal status to enable access to shelters and support services.
- Ensure there are sufficient specialized and safe shelters available for women and children, in accordance with European standards which require the availability of at least one family place in a shelter for every 10,000 inhabitants.
- Launch a publicity campaign to inform migrant women about their rights and the existing services for survivors of abuse. Publicize and broadcast material in minority languages and cooperate with migrant and women’s organizations in the development and outreach of the campaign.

To the European Union:

- The European Commission Directorate General on Home Affairs should continue regular funding streams for women’s organizations and for migrant and minority organizations in Belgium and the EU that address gender-based violence in their communities and remove requirements which limit funding to “legally residing third country nationals.”

To the Council of Europe:

- The Commissioner for human rights should take up the issue of migrant women’s access to protection from violence, regardless of their status, in Belgium and the Council of Europe region more broadly.

To the UN Special Rapporteur on violence against women:

- Monitor rights to protection from gender-based violence and justice for migrant women in Belgium, including concerns related to access to a women’s shelter, filing criminal complaints related to violence, or pursuing any other protective mechanism.

- Include the specific issue of migrant women’s access to protection from violence in the 2013 thematic report on state responsibility for eliminating violence against women.

To the UN Committee on the Elimination of Discrimination against Women:

- Ensure that the next periodic review of Belgium’s compliance with the Convention on the Elimination of All Forms of Discrimination against Women addresses the problems in law and practice relating to women’s access to protection and justice without discrimination, in particular migrant women with an insecure or irregular status.

Methodology

This report is based on research carried out in Belgium between July 2011 and December 2011. Field interviews were conducted in Brussels, Antwerp, Gent, Leuven, Liège, Hasselt, Mechelen, Leuven, and La Louvière. Human Rights Watch conducted 44 in-depth interviews with women who experienced domestic violence, including undocumented migrants, family migrants, Belgian citizens, and long-term residents of foreign origin. 29 women were of Turkish, Kurdish, Moroccan, and Algerian origin, while the remainder immigrated from Cameroon, Congo, Togo, Ghana, Iran, Brazil, Bosnia and Herzegovina, and Macedonia. The oldest woman was 43 years old, the youngest 23.

Interviews were carried out in Dutch or English by a female Human Rights Watch researcher and in French with the assistance of a female translator. Interviews in Arabic, Kurdish, and Turkish took place with the assistance of female interpreters provided by the interviewees themselves or by people assisting them. The majority of interviews took place individually in locations chosen by the women interviewed. In rare cases when children were present, care was taken to minimize the risk that they heard the interview.

Interviewees were identified with the help of shelter staff, social workers, lawyers, a doctor, and NGOs and institutions providing services to women or to migrants. All the women were informed of the purpose of the interview, its voluntary nature, and the goal and public nature of our reports and were told that they could end the interview at any time. All the women gave their oral consent to participate in the interview and were assured of anonymity. No interviewee received compensation for providing information. One woman was reimbursed for expenses she incurred while travelling for the interview. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, social, or counseling services. Pseudonyms have been used for all individuals interviewed.

Human Rights Watch conducted 28 interviews with officials, including twelve politicians, two public prosecutors, an investigative judge, five police officers, an official of the Federal Institute for the Equality of Women and Men, an official from the Flemish Office of General Wellbeing, an official from the Aliens' Office, and officials of different ministries at both federal level (the Ministry of Justice and the Ministry of Equal Opportunities) and at community or regional levels (The Ministries of Equal Opportunities, Social Welfare, Public

Health and Family). We also conducted 40 interviews with lawyers, academics, NGO activists, experts in women's or migrants' rights, shelter staff, social workers, and victim service officials. Some of these interviews were conducted by telephone.

This report focuses on domestic violence as a form of violence against women. It uses 'she' when describing victims and 'he' for perpetrators, while acknowledging that domestic violence is a universal phenomenon that takes place against both sexes, and across culture, religion, class, sexual orientation, gender identity, and age.

I. Legal and Policy Framework on Family Violence

Belgium is a federal state composed of three different non-geographic language communities (French, Dutch, and German) and different geographic regions (Wallonia, Flanders, and the Brussels Capital Region), each having a large degree of autonomy. The federal state and the six federated entities each have their own government and elected parliament, except for the Flemish language community and region, which have merged their governments. The federal government is ultimately responsible for Belgium's compliance with international human rights law to prevent and protect women, men, and children from domestic violence and punish perpetrators.

Belgium has developed a robust legal and policy framework to prevent and punish domestic violence and protect individuals. In 2010, the federal government launched its fourth National Action Plan on violence against women that includes a list of 120 measures designed to prevent and curb domestic violence.⁴ The plan is coordinated by the Institute for the Equality of Women and Men, an autonomous national public institution established in 2002 with the mandate to combat all forms of discrimination and inequality based on sex. The implementation of the plan is a shared responsibility, with federal ministers, communities, and regions all having a role to play.

Domestic violence was recognized as a crime in 1997 in the Penal Code, which included a number of provisions to enhance protection against domestic violence.⁵ When a person is charged with violence, the fact that the victim is a former or current spouse or partner is regarded as an aggravating factor in the sentencing process.⁶ Law-enforcement officials may search a residence on request of the victim.⁷

It is a general principle of law in Belgium that the police can arrest a person caught in the act of committing any criminal offence carrying a sentence of one year or more and detain

⁴ National Action Plan to Combat Domestic Violence between Partners and Other Forms of Family Violence, 2010-2014 (November 23, 2010).

⁵ Art. 410 of the Penal Code, as amended by the Law addressing Domestic Violence between Partners of November 24, 1997, also called the "Lizin law", after one of the Senators that initiated the law, Anne-Marie Lizin.

⁶ Arts. 398 to 405 of the Penal Code.

⁷ Arts. 46 and 49 of the Code of Criminal Procedure (CCP)

that person for a maximum of 24 hours.⁸ Where the police have serious grounds for believing that someone committed such a crime (*indices sérieux de culpabilité/ernstige aanwijzingen van schuld*), they can request the public prosecutor to grant an arrest warrant, also for 24 hours.⁹ The law does not state what evidence is required. This provision can also be used in domestic violence cases.

In 2003, the Onkelinx law, named after the then-minister of justice Laurette Onkelinx, was adopted to provide further protection to women at risk of domestic violence.¹⁰ The law, which does not contain a comprehensive definition of domestic violence, doubled the maximum prison term for assault and battery of a former or current partner and spouse from six months to one year.¹¹

By increasing the penalty to one year, an investigative judge can now apply the 1990 Law on Remand in domestic violence cases involving alleged assault of a partner by their spouse and issue an arrest warrant that allows for detention for a maximum of five days.¹² Within this period a judge sitting in a court known as the judicial council (Chambre de Conseil/Raadkamer) must decide whether to extend the detention by another month or release the alleged offender, including on condition that he refrains from contacting the victim.¹³ The alleged offender can only be detained or released on conditions, where there is serious grounds for believing that he committed an offence that is punishable by at least a maximum prison term of one year and if the sanction is “absolutely necessary” for public order, including to prevent a repetition of violence or threats of violence.¹⁴ Victims do not need to press charges against their partner in order to trigger the proceedings, except in where the allegations involve stalking.

The investigative judge can also release the alleged offender earlier on certain conditions, including that he refrains from contacting or approaching the victim for a maximum period of

⁸ Art. 1 of the Law on Remand of July 20, 1990, implemented on December 1, 1990

⁹ Art. 2. of the Law on Remand.

¹⁰ The Law on Assigning the Family Home to the Spouse or the Legal Cohabiter who is the Victim of Physical Crimes Perpetrated by his Partner and on the Amendment of art. 410 of the Penal Code of January 28, 2003, also called “Onkelinx law”, after then-Minister of Justice, Laurette Onkelinx.

¹¹ Art. 410 of the Penal Code.

¹² Arts. 3, 10 and 21 of the Law on Remand.

¹³ Arts. 21 and 35 of the Law on Remand.

¹⁴ Art. 16§1 of the Law on Remand. Arts. 327-1 and 331 (verbal threats) and art. 327-2. (oral threats) of the Penal Code

three months.¹⁵ The order can be issued within 24 hours and is served along with a suspended arrest warrant. If the alleged offender breaches the order, he will be arrested and detained while awaiting prosecution.¹⁶ Since the measure is a criminal sanction, victims must provide evidence to the prosecutor that the perpetrator either committed or threatened them with violence. The process ends if the victim is unable to provide this evidence, even if authorities have recorded previous incidents of domestic violence in the home.¹⁷

Prosecutors can also order non-contact bans as an alternative to prosecution.¹⁸ This practice has developed over time and is not prescribed in law, hence there are no sanctions if offenders break the non-contact ban order.¹⁹ Prosecutors can also use a procedure that enables them to reopen a case if the offender commits a new crime.²⁰

The Onkelinx law also contains a civil component that allows survivors of family abuse to request a judge to temporarily evict a partner from the family dwelling where they have committed murder, manslaughter, poisoning, physical or sexual violence, or an attempt to rape, or when there are serious grounds to show that such behavior exists.²¹ This right is not contingent on pressing charges or on conviction; a police report and a medical report indicating that the person has been subject to violence would be sufficient evidence.²² Neither the Onkelinx law nor the Civil Code specify the maximum duration of the temporary orders. The excluded spouse can challenge the temporary order in court.

In divorce proceedings the judge must first find the spouse guilty of committing the crimes before permanently excluding him from the family home.²³

¹⁵ Art. 35 of the Law on Remand.

¹⁶ Human Rights Watch interview with Martine Quitin, investigative judge, Brussels, November 27, 2011.

¹⁷ Isabelle Leclercq et al, "Restraining Orders as a Judicial Instrument in the Fight against Domestic Violence between Partners", Federal Service for Crime Policy, January 2012, http://www.dsb-spc.be/doc/pdf/DSB_Eindrapport_190112.pdf (accessed February 22, 2012), pp. 11-12.

¹⁸ CCP, Art. 216ter.

¹⁹ Human Rights Watch interview with Michael Carlier and Nathalie Franco, substitutes for the Public Prosecutor, Brussels, November 10, 2011.

²⁰ The procedure is known as *praetoriaanse probatie*. Human Rights Watch interview with Sahli Sivri, staff member of the Federal Service for Crime Policy, October 28, 2011.

²¹ Arts. 223 and 1479 of the Civil Code and Art. 1280 of the Judicial Code.

²² Belgian Advisory Council of Equal Opportunities between Men and Women, Advice no. 89, October 1, 2004, <http://www.raadvandegelijkekansen.be/media/products/52/706/89NdlGeweldopvrouwen.pdf> (accessed January 9, 2011), p. 11.

²³ Art. 1447 of the Civil Code.

The judge may only decide in extraordinary circumstances not to grant victims the right to remain in the family dwelling. Case law in Belgium indicates that these circumstances include those in which the removal of the perpetrator from the family home would have negative consequences for the family income or on the children.²⁴

An official circular issued in 2006 by the Minister of Justice and the Board of General Prosecutors sets out binding guidelines on domestic violence for police and prosecutors, based on a zero tolerance policy.²⁵ Each police zone and jurisdiction must have a single registration system for cases of domestic violence and install a special case officer for domestic violence. Actors working with victims of domestic violence told Human Rights Watch they had witnessed positive changes as a result of the circular, although some expressed concern that domestic violence was no longer regarded as a priority.²⁶

Gaps in Protection and Proposed Reforms

Despite some positive changes, women, including migrant women, continue to face challenges in protecting themselves and their children from domestic violence. In particular, there are gaps in the emergency protection framework to protect women at imminent risk.²⁷ These relate particularly to restraining and exclusion orders.

Under the Onkelinx law survivors of economic, verbal, and psychological violence cannot apply for a civil order to exclude the partner from the home. Unmarried women who cohabit with a partner but have not signed a formal cohabitation agreement are also ineligible for protection under the law.

In a 2004 comment on the law, the Belgian Advisory Council on Equal Opportunities for Men and Women indicated that civil procedures were time-consuming and arduous,

²⁴ Liliane Versluys, *Your Rights in your Relationship when Married or Living Together* (“Je rechten in je relatie bij huwelijk en samenwonen”) (Berchem: EPO publishers, 2008), p. 129.

²⁵ Circular letter no. COL4/2006 of the Board of Attorney Generals to the Appeal Courts (“COL 4/2006”), March 1, 2006, p. 3. The directive went into force on April 3, 2006.

²⁶ Human Rights Watch interview with Sandrine Hublau, lawyer, Brussels, October 12, 2011. Human Rights Watch interview with Zoë Genot, federal deputy of the Francophone green party Ecolo and responsible for gender and migration, November 18, 2011.

²⁷ By the Vrouwen Overleg Komitee (VOK) and Vrouw & Maatschappij on national Women’s day of November 2002 and again on Women’s day of November 2011: “Eisenpakket Vrouwendag Leuven 2011. Krachtdadig tegen geweld”, communiqué of Vrouwen Overleg Komitee, Brussels, November 11, 2011: <http://www.vrouwendag.be/> (accessed November 28, 2011).

leading to delays. The council concluded that the law was particularly inadequate in protecting women in immediate danger.²⁸ NGOs assisting abuse survivors told Human Rights Watch that most victims first had to leave their homes to escape violence, often accompanied by their dependent children, before they were able to apply for permission to remain in the family home.²⁹

A 2009 survey carried out by the Federal Service for Crime Policy found that officers in several police zones wanted a clearer legal mandate to force potential offenders to leave a home in emergency situations.³⁰ A prosecutor can issue a non-contact order but only after the crime has occurred and has no means of enforcing the order. Some service providers told Human Rights Watch that victims were further endangered when they chose to report their partners to the police, and the partners were then only given a non-binding sanction.³¹

New legislation which will enter into force in January 2013 authorizes prosecutors to issue short-term restraining orders for a maximum of ten days against adults who pose a serious and immediate danger to the safety of their partner, children, step-children, parents, or parents-in-law.³² The offender faces a prison term of up to one year or a fine or both if he violates the order. Both victim and perpetrator should get counseling and other forms of support within 48 hours of the prosecutor's order.

The draft law also provides that within 24 hours of the initial order, the prosecutor must inform the Justice of the Peace about the order and send them all relevant documents and information. The judge must schedule a court hearing within ten days but will hear the

²⁸ Belgian Advisory Council of Equal Opportunities between Men and Women, Advice no. 89, October 1, 2004, <http://www.raadvandegelijkekansen.be/media/products/52/706/89NdlGeweldopvrouwen.pdf> (accessed January 9, 2011).

²⁹ Human Rights Watch interview with Hajar Siyahya, staff member of Vereniging voor Ontwikkeling en Emancipatie Moslims (V.O.E.M), Antwerp, September 15, 2011; Human Rights Watch interview with Maria Miguel Sierra, director of La Voix des Femmes, Brussels, September 19, 2011.

³⁰ Karel Berteloot et al., "Analysis of the Questionnaires on the Circular COL 2006/04 of the Minister of Justice and the Board of General Prosecutors concerning the Crime Policy on Intimate Partner Violence", Federal Service for Crime Policy, December 2009, : http://www.dsb-spc.be/doc/pdf/RAP_COL4_werkingsmiddelen_091216_def.pdf (accessed January 9, 2011), pp. 27, 30, and 53.

³¹ Human Rights Watch interview with four staff members the municipality's victim support service of Molenbeek, Brussels, September 20, 2011; Human Rights Watch telephone interview with Nancy Declercq, social worker of a foreigners support center in Oostende, January 11, 2012.

³² Law no. 5-539/5, "Loi relative à l'interdiction temporaire de résidence en cas de violence domestique," published in the Official Journal on October 1, 2012, entry into force on January 1, 2013. For text and legislative history see <http://www.senate.be/www/?Mlval=/dossier&LEG=5&NR=539&LANG=fr> (accessed October 4, 2012).

parties sooner if they or the public prosecutor request this either orally or in writing.³³ The judge can end the order or enforce it.

In addition to the gaps in protection from imminent harm, NGOs expressed concerns about the relatively low rate of convictions in domestic violence cases.³⁴ A 2009 evaluation of the Circular of 2006 also raised concern about the lack of training of law-enforcement officers. In one third of all 195 police zones there was no specially trained officer and one in four case officers stated there was no education on domestic violence offered in their police zone. The evaluation found a shortage of trained magistrates in the prosecutor's office, where at least one should undergo the voluntary training offered by the Institute for Judicial Education, and a lack of training among investigative judges.³⁵ The recently installed government has pledged to offer more education on domestic violence for law-enforcement authorities and health practitioners.³⁶

State Outreach to Women of Migrant origin

The government has sought to provide information and services to migrant women in connection with domestic violence. The Institute for Equality of Women and Men distributes a leaflet to organizations and actors working on family violence in 17 minority languages about their rights and available services. Each flyer includes a contact number for a volunteer who is able to speak that language and who can direct women to available services.³⁷ Service providers can hire state-funded interpreters for a set number of hours

³³ Law no. 5-539/5, Art. 5. § 1.

³⁴ "Eisenpakket Vrouwendag Leuven 2011. Krachtdadig tegen geweld", communiqué of Vrouwen Overleg Komitee, Brussels, November 11, 2011: <http://www.vrouwendag.be/> (accessed November 28, 2011). Figures provided to the minister of justice show that in 2009, 76 percent of all criminal complaints related to domestic violence were dismissed, found in parliamentary question no. 5-2356 of Sabine de Bethune of the Flemish Christian Democrat party CD&V concerning domestic violence between partners, May 18, 2011 ("Parliamentary question 5-5356), July 6, 2011.

³⁵ Karel Berteloot et al., "Summary Report. Evaluation COL 2006/04 of the Minister of Justice and the Board of General Prosecutors concerning the Crime Policy on Intimate Partner Violence", Federal Service for Crime Policy, December 2009, http://www.dsb-spc.be/doc/pdf/EVA_COL4_synthese_091216_NL_def.pdf (accessed January 9, 2011), pp. 16-18, 32-34.

³⁶ "Draft Declaration on General Policy", communiqué of the Federal Government of Belgium, December 1, 2011.

³⁷ Counseling services and hotlines are freely available 24 hours, seven days a week, but only in the three official languages. Another Francophone hotline exists that particularly reaches out to victims of domestic violence ('Ecoute Violences Conjugales'), which operates from Monday to Saturday from 9.00 to 20.00.

when working with minorities.³⁸ Some hospitals work with so-called “intercultural mediators” who speak minority languages and are funded by the federal government.³⁹

The latest National Action Plan includes policy proposals to address forms of domestic violence perceived to be prevalent in migrant communities, such as forced marriages, female genital mutilation (FGM), and so-called “honor-related violence.” Forced marriages, or attempts to force someone to marry, were criminalized by the Law of 25 April 2007.⁴⁰ FGM is criminalized in the Penal Code. Anyone who executes, facilitates, or encourages mutilation of female genitals, or attempts to do so, can be punished with a prison term.⁴¹ Health practitioners may, under certain circumstances, violate medical confidentiality if they suspect someone is in danger of FGM.⁴² Women and girls at risk of FGM in their home countries may apply for asylum. The government funds awareness raising and training projects targeting migrant communities in which FGM is assumed to be prevalent.

Several legislative initiatives have sought to address gaps in the existing protection framework to protect persons at risk of “honor violence.”⁴³ In 2009, the government formed a federal working group to study two pilot projects developed in the cities of Verviers (Wallonia) and Mechelen (Flanders). These projects piloted a special registration system for reports of honor-related violence to improve prevention, investigation, and prosecution. They bring together representatives of the Ministries of Justice and Interior Affairs, the Board of General Prosecutors, the federal and local police, and the Institute for

³⁸ The number varies across the country. Human Rights Watch only heard one complaint that the number of hours was inadequate.

³⁹ Intercultural mediators are interpreters who assist with communication difficulties arising from cultural differences as well as language differences. For more information see, http://www.health.belgium.be/eportal/Myhealth/PatientrightsandInterculturalm/Interculturalmediation/MediationByInternet/19067284_NL?fodnlang=nl (accessed October 1, 2012).

⁴⁰ 391sexies of the Penal Code, introduced by the Law concerning the Penalizing and the Broadening of Measures to Annul the Forced Marriage, April 25, 2007.

⁴¹ Art. 409 of the Penal Code.

⁴² Art. 458bis of the Penal Code.

⁴³ Honor-crimes have emerged on the political agenda after a young girl of Pakistani origin, Sadia Sheikh, was killed by her brother in 2007. In 2008, Federal Senate’s Advisory Committee for Equal Opportunities for Women and Men held hearings with experts on honor-related violence, resulting in a report with detailed recommendations called “The Problem of the Honor-related Violence in Belgium,” June 25, 2008, available in French and Dutch at the website of the Senate: <http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=67110093> (accessed December 15, 2011).

the Equality of Women and Men.⁴⁴ Further proposals to improve the protection framework for victims of honor-related violence are pending in the federal parliament and senate.

While NGOs working with victims in migrant communities agreed that targeted policies are necessary to address gender-based violence within their communities, some expressed concerns that the state's current outreach to women of migrant origin focuses too much on forced marriages, and "honor" killings, as well as forced veiling, issues that have received much political attention in European debates about immigration and integration.⁴⁵ They argued that singling out "honor-related" violence may send a signal that family violence is more common in migrant communities than the general population and thereby stigmatize men and women of migrant origin.⁴⁶ Furthermore policies are currently designed and implemented without sufficient consultation and therefore do not have community support.⁴⁷

Others warned that attributing domestic violence to migrants' culture can contribute to inadequate police responses. Police may not take individual migrant women's complaints of violence seriously or resort to cultural mediation instead of immediate protection.⁴⁸ Instead of a selective focus on particular forms of violence associated with specific migrant communities, NGOs said that the government should address migrant women's insecure immigrant status and socio-economic marginalization as both causes and consequences of violence.

⁴⁴ Margot Taeymans, Karel Berteloot, and Isabelle Leclercq. "Final Report. To a criminal law and policy concerning honor-related violence? An explorative study," Federal Service for Criminal Policy, October 2011, available in Dutch and French: http://www.dsb-spc.be/doc/pdf/EINDRAPPORT_EGG_111110_DEF.pdf (accessed December 15, 2011). See also an unpublished research by Anke van Vossolle and Elli Gilbert, "Scientific Research of Honor-related Violence in Belgium," Institute of Equality for Women and Men, January 27, 2012.

⁴⁵ On April 28, 2011, an overwhelming majority of the Belgian Parliament voted in favor of a nation-wide ban on face-covering in public space. "Belgium: Muslim veil ban would violate rights. Parliament should reject bill for nationwide restrictions," Human Rights Watch press release, April 21, 2011, <http://www.hrw.org/news/2010/04/21/belgium-muslim-veil-ban-would-violate-rights>.

⁴⁶ Human Rights Watch interview with Imane Bouzarmat, former Chair of Ella, expertise center for ethnicity and gender, Brussels, September 14, 2011.

⁴⁷ Human Rights Watch interview with Sophie Withaekx, researcher on 'honor-related violence' at Free University Brussels, September 12, 2011.

⁴⁸ Human Rights Watch interview with Maria Miguel Sierra, director of La Voix des Femmes, Brussels, September 19, 2011; with Sandrine Hublau, lawyer, Brussels, October 12, 2011; with Imane Bouzarmat, former Chair of Ella, expertise center for ethnicity and gender, Brussels, September 14, 2011; and with Modi Ntambe, chair of Support Group of African Women (SVAV) of the Council of African Communities RvdAGE/CCHB, Brussels, October 3, 2011.

In March 2012, the Institute for Equality of Men and Women recommended to all ministers involved in the National Action Plan on violence against women that the next Action Plan address family abuse victims with an irregular or insecure legal status.⁴⁹

⁴⁹ Human Rights Watch email correspondence with Marijke Weewauters, staff member Institute for the Equality between Women and Men, March 23, 2011.

II. Obstacles to Protection for Family Migrants

I feel like a prisoner. I don't want to depend on anyone. I don't want to be forced to live together for three years. They [Belgian politicians] talk a lot about the freedom of women and human rights, but it has no meaning. It's only on paper.

—Ermira S., family migrant and survivor of domestic violence, November 3, 2011.

Belgian law recognizes that migrant women who arrive in Belgium in the context of family reunification and who lack an independent residence permit are particularly vulnerable if they experience abuse. But the law is poorly implemented and contains gaps, particularly for recent arrivals whose permanent residency status is pending and for those whose partners have left Belgium.

Human Rights Watch documented several cases in which women who came to Belgium as family migrants received orders of expulsion and became undocumented after they left their abusive spouses. Our research suggests that the fear of expulsion for undocumented women who report their abuse to the police may inhibit them from reporting violence until they have a more secure legal status.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (which Belgium signed in September 2012) provides guidance where a migrant's rights are dependent on an abusive or violent partner. It states that state parties should ensure that:

Victims whose residence status depends on that of the spouse or partner as recognized by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The

conditions relating to the granting and duration of the autonomous residence permit are established by internal law.⁵⁰

And:

Victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognized by internal law to enable them to apply for an autonomous residence permit.⁵¹

The explanatory report of the Convention elaborates that independent (or autonomous) residency rights should be granted to victims of physical, sexual, psychological, verbal, and economic violence and to both married and unmarried partners whose relationship is recognized by internal law.⁵²

Family Reunification Legislation

Belgium's Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the "Aliens Act") does protect some survivors of abuse whose residence is dependent on their partner from losing their residency rights in the event of violence.⁵³ The law however contains gaps and is poorly implemented.

Belgium followed restrictive trends in neighboring countries such as France and the Netherlands when the federal parliament voted for a stricter law on family reunification in May 2011 that amended the Aliens Act. The act introduced new requirements, including income requirements for family reunification for Belgians and non-EU nationals. The law was passed despite objections of the Council of State.

⁵⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, opened for signature on May 11, 2011, http://www.coe.int/t/dghl/standardsetting/convention-violence/convention_EN.asp? (accessed December 13, 2011), Art. 59, para. 1.

⁵¹ *Idem*, Art. 59, para. 2.

⁵² *Idem*, Explanatory Report, paras. 301-305.

⁵³ Law of 15 December 1980 relating to the access to the territory, residence, establishment and removal of foreigners (the "Aliens Act"), as amended by the Act of July 8, 2011.

The new law allows the authorities to withdraw a migrant's residence permit if her relationship with her spouse or partner ends during the first three years she is present in Belgium. Prior to the changes, the probationary period was two years. If the couple is still living together after three years, the incoming migrant will receive permanent residency rights that can only be withdrawn in cases of fraud or bogus marriage, or in the interests of public order, national security, or public health. During the first three years that she is in Belgium, a migrant woman's residency rights are therefore dependent on her relationship with her sponsoring partner, which inhibits her freedom to leave her partner in cases of domestic violence.

Municipalities rely on the police to check that an applicant for residency is indeed living with her spouse at the address where she has been registered during the probationary period.⁵⁴ Other than during the first six months, when an application is being processed, these checks are not carried out on a systematic basis. Police checks tend to take place only when there is a suspicion that a couple has separated.

If a municipality finds out that the migrant no longer lives at the registered address, the municipality informs the Aliens' Office, an administrative body that currently falls under the jurisdiction of the Federal Ministry of Interior, and the Aliens' Office can order the migrant to leave Belgium. Human Rights Watch documented several cases where women were issued with expulsion orders but we did not document any cases where the expulsions had been carried out.

A resident permit will not be withdrawn if a family migrant can prove that she left her partner or spouse during the three-year probationary period as a result of domestic violence, specifically rape, assault and battery, or physical injuries caused by poisoning. Family migrants married to nationals from non-EU countries are covered by article 11 and those married to Belgian or other EU nationals are covered by article 42 quater, which also protects dependent children.⁵⁵

⁵⁴ Circular letter of June 21, 2007, which went into force on July 4, 2007 ("Omzendbrief van 21 juni 2007 betreffende de wijzigingen in reglementering betreffende het verblijf van vreemdelingen ten gevolge van de inwerkingtreding van de wet van 15 september 2006").

⁵⁵ Articles 11 and 42 quater §44) of the Aliens Act.

These clauses were introduced in 2006 and 2007 after Belgium transposed two European directives into national legislation to enable family abuse victims to obtain the necessary protection from authorities without fearing the loss of residence rights or deportation, even in the event of the dissolution of the marriage or the relationship during the probationary period.⁵⁶

Since changes introduced in September 2011, the Aliens' Office must now take a wide variety of factors into account before terminating residency rights or ordering expulsion. These include the applicant's age, health, family and economic situation, social and cultural integration, and the strength of their ties to their country of origin.⁵⁷ The failure to do so can lead to the decision being overturned on appeal.

All actors working with victims of domestic violence told Human Rights Watch that the position of migrant women had greatly improved after Belgium introduced the protection clauses. But several obstacles remain for women to claim their rights, both in law and in practice.

Applicants for family reunification who are still waiting for their residence permits do not benefit from the protection clauses. Undocumented migrants, and migrants whose residency rights depend on relationships with short-term residency holders, like students or those on a fixed-term work permit, are also ineligible for protection under the Aliens Act if they suffer domestic violence.

The Belgian government has failed to inform migrants at risk of domestic violence or even victims themselves about the law and related procedures. Human Rights Watch found that many migrant women receive an order of expulsion after they left their abusive spouse.

⁵⁶ Provisions for family reunification by EU-nationals are regulated by European Parliament and Council Directive 2004/38/EC on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States, April 29, 2004, transposed in art. 42quater on May 10, 2007, going into force on June 1, 2008. These provisions are more generous than the conditions for family reunification by third country nationals, which are regulated by Council Directive 2003/86/EC on the Right to Family Reunification, September 22, 2003, transposed in art. 11 §2 on October 6, 2006, going into force on June 1, 2007.

⁵⁷ Arts. 11 and 42quater §4(4) of the Aliens Act, as amended by the Act of July 8, 2011 that entered into force in September 22, 2011. There are additional factors listed in Art. 42quater (concerning migrants who came to join an EU or Belgian national) than in Art. 11 (concerning migrants who came to join a third country national). In the former, the minister must also consider the applicant's length of stay in Belgium, their age, and their ties with their home countries before terminating their residency permit, factors that are not mentioned in the latter article.

The complex nature of the procedures and poor coordination among government bodies provide part of the explanation.

Where migrant women receive an expulsion order, they have only 30 days to appeal to the Aliens' Litigation Council, an independent administrative body that reviews decisions by the Aliens' Office.

The council can set aside the order of expulsion if the Aliens' Office failed to follow the correct procedures (including the wider criteria introduced in September 2011), to adequately investigate all facts related to the abuse, or to provide the reasoning for its decision to end residency rights.⁵⁸ The council cannot evaluate the facts themselves, or take new facts into account when requested to set aside an expulsion order. The risk of expulsion continues to exist and family migrants are not systematically protected from family violence.

Gaps in the Protection Clauses

Exclusion of Recently Arrived Migrants

Family migrants who have applied for residency on the grounds of family reunification but who have not yet obtained residence are ineligible for protection under the Aliens Act even in cases of violence. This is because the law only allows family abuse survivors to retain residency rights originally granted to them by virtue of their family reunification. It does not, as prescribed by the Council of Europe Convention, permit migrants who are family abuse survivors to apply for independent residency rights.

Within eight days of arrival in Belgium, family migrants must register and request a residence permit on grounds of family reunification at the municipality where they will reside with their partner. The municipality will either immediately issue the family reunification card or, in the case of a migrant applicants residing in Belgium, a registration

⁵⁸ The Aliens' Litigation Council ("Conseil du Contentieux des Etrangers (CCE)/ Raad van Vreemdelingenbetwisting (RVV") annulled several decisions in which the Aliens' Office failed to carefully investigate the indications of violence or motivate its decision, e.g.: RvV/CCE Case No. 35.640, December 10, 2009; Case No. 36.480 of December 22, 2009; Case No. 36714 of January 7, 2010.

certification which is valid for six months.⁵⁹ This certificate permits migrants to legally remain in Belgium while their applications for residence are being processed.

If the Aliens' Office decides that a couple residing in Belgium fulfills the criteria for family reunification, it issues a residence permit that is conditional on cohabitation with the partner or spouse, referred to above.⁶⁰ The Aliens' Office must complete the investigation into the application within six months, but this period may be extended to a maximum of one year when it concerns migrants joining non-EU nationals. During this period the municipality of residence should check, among other things, whether the couple lives together.⁶¹ If the incoming migrant leaves a violent home before she receives her residence permit, she risks expulsion as her claim for residency is cancelled.

Human Rights Watch documented four cases in which women with registration certificates, but not residence permits, left their abusive spouses. Three of them (two of whose cases are detailed below) received orders to leave the country. All became undocumented when their appeals against the expulsion order were unsuccessful. The fourth woman (whose case is detailed below) returned to her violent husband to prevent expulsion.

Ermira S. from Macedonia was 17 years old when she was forced to marry a Belgian of Albanian descent. Four months after her arrival in Belgium, by which time she had turned 18, and before she received her residence permit, she fled the violent home. Her husband, who she alleges was involved in the Albanian mafia, beat her on a daily basis and often raped her. Ermira escaped after her husband pointed a gun at her and threatened to kill her. The police registered her complaint and took her to a shelter, where she lived for eight months.⁶²

In the meantime, Ermira's husband went to the municipality to remove her from the civil register and later divorced her in Macedonia. On January 18, 2007, Ermira received a letter

⁵⁹ Since the latest amendments of the Aliens Act in May 2011 opportunities have been restricted to apply for family reunification with a non-EU national on a tourist visa in Belgium. Migrants seeking to join non-EU nationals are expected to apply from their home countries.

⁶⁰ Article 40ter and 40bis of the Aliens Act stipulates these and additional conditions for family reunification for third country nationals joining Belgian and EU nationals, and article 10 for them seeking to join long-term residence holders from third countries.

⁶¹ In practice, several municipalities fail to do the cohabitation check within the 6 month period, Human Rights Watch interview with Els Verhoustraete, staff member of the department family reunification of the Aliens' Office, Brussels, October 18, 2011.

⁶² Human Rights Watch interview with Ermira S., Liège, November 3, 2011.

from the municipality advising her that it had ended the process of family reunification. Ermira's lawyer immediately informed the Aliens' Office that she had fled from her husband because of domestic violence and provided a police report and testimony from the shelter in support of these allegations. Despite this, a year later, the Aliens' Office ordered her to leave the country.

The Aliens' Litigation Council rejected Ermira's request for the setting aside of the Office's decision. It confirmed that family migrants who have a registration certificate but not a residence permit cannot benefit from the protection clause in the Aliens Act.⁶³ It stated that in those cases, the Aliens' Office is not, in fact, ending someone's residency rights but, rather, is not granting such rights in the first place and, therefore, the person in question cannot be allowed to *retain* residency rights that they never had. When her request for regularization on humanitarian grounds was also rejected, Ermira became an undocumented migrant. She currently lives on the €300 (US\$397) per month that she earns working in the informal economy. Ermira said: "First I was hit by my boyfriend, now by the law."

Salma S. is a 29 year-old Moroccan who came to marry a Belgian diplomat four years ago.⁶⁴ She told Human Rights Watch that two months after her arrival, her husband tried to convince her to work as a prostitute and started isolating her, forbidding her to contact anyone without his permission, and depriving her any pocket money. After four months of verbal abuse and after a violent fight, Salma decided to leave him. Three days later, on May 25, 2007, Salma received a letter from the Aliens' Office that it had ended the family reunification process and ordered her to leave the country within two weeks.

Salma appealed to the Aliens' Litigation Council informing them about the violence she had experienced, but it confirmed that she could not claim residency under the protection clause because she had not received her residency permit by the time she left the family home.⁶⁵ Four years later Salma still lives in the shelter without papers or resources.

As a consequence of the gap in protection, some family migrants choose to return to violent homes until their legal status is secure. On October 8, 2011, Human Rights Watch

⁶³ Human Rights Watch gained permission to read the decision of the Aliens' Litigation Council. Cased number withheld.

⁶⁴ Human Rights Watch with Salma S., La Louvière, September 27, 2011.

⁶⁵ Cased number withheld. In November 2011 her legal councilor wrote Human Rights Watch that her second request for regularization on grounds of humanitarian reasons was still pending.

spoke to the sister-in-law of Gökce A., a Turkish woman who had migrated that summer with her 12-year-old son of Turkish nationality to join her Dutch husband of Turkish origin. Three months after her arrival, Gökce fled to her sister-in-law to escape domestic violence. After one week, Gökce returned to her husband because she feared expulsion. Her sister-in-law explained why she had returned:

What else can she do? She has no choice. She's got a son, who now attends school here. He cannot return to Turkey. I told her to be sweet to him [her husband], until she has her F card [residence permit]. Also the lawyer told me that she'd better return to her husband and wait with filing a complaint until she has her papers.⁶⁶

Exclusion of Women Whose Violent Partner Moves Abroad

Under Belgium's Aliens Act the extension of residence permits for spouses of existing residents is linked to the original relationship. It does not protect women migrant victims of domestic violence married to nationals of other EU countries or nationals of non-EU countries who leave Belgium (thereby terminating the residency rights of both).

Under the law, migrant women married to EU nationals who are not from Belgium can be expelled together with their partner if the latter loses residency rights or leaves the territory during the first three years.⁶⁷ In practice, the same problem exists for migrant women whose violent partner is a national of a non-EU country.⁶⁸

Verica M., a 25 year old from Macedonia, joined her Dutch husband (of Macedonian background) in Belgium in January 2010. She told Human Rights Watch that she immediately experienced severe physical and psychological violence at the hands of her husband and in-laws who also forbade her to work or enroll in job training or language courses.⁶⁹ In March 2011, she managed to escape and reported her husband to the police. Staying in a shelter, she found a job and began to study Flemish. Her lawyer sent the police report together with a medical report and a shelter statement to the Aliens' Office to

⁶⁶ Human Rights Watch interview with sister in law of Gökce A. (name withheld), Brussels, October 8, 2011.

⁶⁷ Aliens Act art. 42quater§1, no. 1 and 2.

⁶⁸ Human Rights Watch email correspondence with Sabrine Dawoud, legal counselor for Kruispunt Migratie-Integratie, December 15, 2011.

⁶⁹ Human Rights Watch interview with Verica M. (pseudonym), [location withheld], November 9, 2011.

request the exemption from expulsion on grounds of the protection clauses. In the meantime the public prosecutor's office had started criminal investigations against her spouse, who then moved back to the Netherlands.

On July 5, 2011, the Aliens' Office decided to end Verica's residency rights and ordered her to leave the country within 30 days. It acknowledged that she had shown evidence of the violence, but argued she could not benefit from the protection clauses because her husband had left the country.⁷⁰

Verica unsuccessfully appealed the decision to the Aliens' Litigation Council, which upheld the expulsion order in December 2011. She told Human Rights Watch that she feared "honor-related" violence from her husband's family in Macedonia if she returned to there. When we contacted Verica later, she had returned to Macedonia. She did not know whether her husband had been convicted for his crime.

Obstacles to Protection for Migrant Women with Dependent Residency Rights

There are several practical and procedural barriers to accessing protection without fear of losing residency rights when these rights depend on the relationship with a violent spouse.

Fear about Reporting Violence

Research shows that only small numbers of abuse survivors report violence to the police. A survey for the Institute for Equality of Women and Men carried out between 2008 and 2009 by the Universities of Gent and Liège among more than 2000 people, indicated that on average only 14 percent of all female survivors of domestic violence file an official complaint with the police, with the figure slightly higher (17.9 percent) when the abuser was a spouse or other partner.⁷¹ Some of the reasons mentioned for not reporting violence were shame, fear of retaliation, and lack of confidence that reporting will make a difference.⁷² The findings were not disaggregated according to ethnicity, gender, or legal status.

⁷⁰ Cased number withheld.

⁷¹ Jérôme Pieters et al., "Psychological, Physical and Sexual Violence", pp.55, 166.

⁷² Ibid., p. 51.

Women who are family migrants have a strong negative incentive not to seek justice: if they go to the police and press charges during the first three years, they put their residence status at risk.

Interviews conducted by Human Rights Watch suggest that spouses and family members may use this legal dependency to further control migrant women. Human Rights Watch spoke to women who had been threatened with deportation and the loss of custody of their children, if they did not obey their partners.⁷³

Siham R. told us that her family-in-law held her in captivity for nearly six months. They told her that she could either remain silent about the domestic violence she experienced at the hands of their son, or return to Morocco. Siham managed to escape from the violent home and found that her in-laws had removed her from the municipality's alien register, with the intention of abandoning her in her home country during a holiday. Siham, who was still married when we spoke to her, became undocumented when the Aliens' Office subsequently ended her application for family reunification. She currently lives with her sister and her sister's husband in Belgium. She said: "My husband only wants me to return to Morocco; as if he can decide over my legal rights to stay".⁷⁴

This real or perceived fear of deportation deters some women from seeking help from the police. An example is Essi, a thirty-seven-year old woman from Togo and mother of a two-year old daughter of Belgian nationality passed on by her Belgian father.

Essi told Human Rights Watch she is regularly molested by her husband's 14-year old son, who has a mental disability and who broke her nose, but she has never registered a complaint. She said: "I did not want to cause any problems. Even today, I am very dependent on my husband for my papers. I don't have a permanent job, and my husband gets the family allowances. I do not want to aggravate the situation."⁷⁵

⁷³ Human Rights Watch interview with Gönül D., Gent, February 14, 2011. Also stated in Human Rights Watch interviews with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011, and in telephone interviews with a staff member of shelter De Roselaere, August 24, 2011 and with a staff member of victim support service of the Centre for Social Care de Mare, August 24, 2011.

⁷⁴ Human Rights Watch interview with Siham R., Brussels, October 24, 2011.

⁷⁵ Human Rights Watch interview with Essi A., Antwerp, September 16, 2011.

Service providers said that many migrant women chose to endure domestic violence for several years until they had more secure residency rights rather than report it to the authorities and risk expulsion.⁷⁶ A staff member of a victim support service in a migrant-populated area of Brussels said:

Most women just live through the violence. We inform them about their rights, but we cannot guarantee that they won't be expelled if they separate. The majority choose to stay with their husbands until they get their own permit.⁷⁷

This impression was corroborated by the testimony of two police officers, who said they receive few complaints from women during the first three years after their arrival.⁷⁸ Several women said their negative perceptions of police in their home countries also made them reluctant to report violence to the police in Belgium.⁷⁹

Insufficient Evidence

Lawyers and NGOs assisting abuse survivors said that obtaining documentary evidence of the violence forms one of the biggest obstacles to invoking legal rights to protection and justice without risking residency rights. In addition to the fear of expulsion, isolation puts many migrant women beyond help that may be available, with the result that they may fail to obtain the required evidence.

Women interviewed by Human Rights Watch were sometimes so isolated that they did not know anyone else beyond their spouse, in-laws, or neighbors. Without friends or relatives to talk with, not speaking the local languages, and not understanding how the Belgian

⁷⁶ Human Rights Watch telephone interview with Liesbeth Jacoby, women's relief home Het Zijhuis, August 25, 2011. Human Rights Watch interview with Leïla Chaudry, social and legal assistant in Point d'Appui, Liège, October 10, 2011 and follow-up telephone call on December 7, 2012. Human Rights Watch telephone interview with Marc Wynants, coordinator of Centre for Social Care De Kempen. August 17, 2011.

⁷⁷ Human Rights Watch interview with four staff members the municipality's victim support service of Molenbeek, Brussels, September 20, 2011.

⁷⁸ Telephone interviews with Frank van de Walle, case officer for domestic violence in the police zone Gent, August 16, 2011; with Eddy de Baere, chief inspector police zone Sint-Gilles-Waas/Stekene and before also of Gent, August 19, 2011.

⁷⁹ Human Rights Watch interview with Derya A., Brussels, September 15, 2011.

society is organized, many endured violence for years. Some were not even allowed to call family, visit doctors, or could only do so in the company of their husband.⁸⁰

Deniz K., for example, is a 23-year-old migrant woman from Turkey who was forbidden to leave her home for seven months. She told Human Rights Watch that she was beaten every day by her in-laws and sometimes by her spouse. Deniz showed us scars she said she obtained when a glass was thrown at her. She also told us that she suffers from defective hearing in one ear that she attributes to the physical violence.

When Human Rights Watch spoke to her, Deniz said she was worried that since she lacked a medical or a police report, the Alien's Office would not believe her:

It's inhumane. In what kind of era do we live? I really could not stand it there for another three years. I've lived through a lot of violence, I even don't hear well anymore on my left ear due to the beatings. But I don't have proof. I came to marry my love, I really wanted and still want to stay with him, but I could really not bear more beatings and humiliations, as if I was a slave.⁸¹

A staff member of the Aliens' Office said that survivors of psychological violence face particular difficulties in obtaining sufficient evidence, even though they are also eligible for the protection clauses.⁸² A social worker from a shelter in Brussels explained: "How to show that they don't get any pocket money, that they are not allowed to work, to leave the home, or to call their families? Sometimes I advise women to stay with their partners until they have gathered proof of physical violence."⁸³

There is no guidance in the law or elsewhere as to what constitutes sufficient evidence to benefit from the protection clauses of the law. A staff member of the Aliens' Office said that it usually requests a police report, a medical record documenting any injuries caused

⁸⁰ Human Rights Watch interviews with Fatma L., Gent, September 23, 2011; with Saida M., La Louvière, September 27, 2011; with Karima L., Brussels, September 21, 2011.

⁸¹ Human Rights Watch interview with Deniz K., Gent, November 11, 2011.

⁸² Human Rights Watch interview with Els Verhoustraete, staff member of the department family reunification of the Aliens' Office, Brussels, October 18, 2011.

⁸³ Human Rights Watch interview with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011.

by the violence, and a declaration from shelter staff. Even though any of these documents may suffice to take advantage of the protection clauses “the more evidence the better.”⁸⁴

In a case on May 28, 2010, the Aliens’ Litigation Council rejected an appeal by a Moroccan woman against her expulsion due to a lack of evidence, even though she had submitted to the Aliens’ Office a police report and a shelter report that documented the violence. According to the Aliens’ Office, the woman failed to prove she was a victim of domestic violence because the public prosecutor had dropped charges against her spouse. The Council considered the conclusion of the Aliens’ Office reasonable.⁸⁵

This strict reading of the law would make it very hard to take advantage of the existing right to retain residency rights, given that only few abuse survivors report violence and even fewer perpetrators are prosecuted for the crimes they committed. Moreover, the Aliens’ Office will often already have withdrawn migrant women’s residency rights before legal proceedings against the perpetrator were started or communicated to the Office.⁸⁶

Late Submission of Evidence Results in Loss of Residency Rights

Migrant women whose immigration status is dependent on their partner and who leave a violent home without first informing the Aliens’ Office risk losing their residency rights on the grounds that the relationship no longer subsists. They can seek to challenge the termination of residency rights within 30 days by appealing to the Aliens’ Litigation Council. But lawyers told Human Rights Watch that such appeals rarely succeed in cases where the evidence of violence is presented to the Aliens’ Office after the residency rights have been terminated.⁸⁷

Merlen A., a 26-year-old Roma woman from Macedonia, lost her residency rights when she fled the violent home. Merlen was twenty when she immigrated to Belgium to join her husband, a Macedonian national with long-term Belgian residency on February 17, 2008. She told Human Rights Watch that when she got pregnant, her husband started beating

⁸⁴ Human Rights Watch interview with Els Verhoustraete, staff member of the department family reunification of the Aliens’ Office, Brussels, October 18, 2011.

⁸⁵ RvV/CCE, Case No. 44119, May 28, 2010.

⁸⁶ Human Rights Watch email correspondence with Sabine Dawoud, legal counselor for Kruispunt Migratie-Integratie, November 3, 2011.

⁸⁷ Human Rights Watch interview with Armelle Philippe, lawyer, Brussels, October 5, 2011.

her, including on her abdomen. Several times, the neighbors called the police when they heard her scream for help, but Merlen never dared register a complaint for fear of risking the relationship with her husband on whom she depended both financially and legally. She was not aware that she would need this police report to request an extension of her residency rights when she finally left her husband.⁸⁸

On August 27, 2009, the Aliens' Office informed Merlen that it had withdrawn her residence permit because the municipality had found out that she no longer lived with her husband. Merlen's lawyer appealed against the decision to the Aliens' Litigation Council, but the council rejected the appeal on the grounds that Merlen should have informed the Aliens' Office before leaving the home.⁸⁹

In the case of Havva K., the Aliens' Litigation Council confirmed that anyone who leaves a violent home must inform the Aliens' Office about the abuse before it decides to withdraw the residence permit in order to benefit from the protection clause.

Havva is a 24-year-old Turkish woman who suffered for almost three years from severe psychological and some physical violence after she moved in with her in-laws and her husband, whom she alleges is a well-known criminal. Her parents disowned her when she got married without their consent. She recalled: "They always say that Europe is fantastic, but it turned out to be the opposite. I was never allowed to leave the house ... He yelled at me almost every day. If we had a fight, he would beat me ... One time he hit me in my face, cracking the corner of my mouth...."⁹⁰

On May 15, 2011, five months after Havva left the violent home and one and a half years after she had received her family reunification card, the Aliens' Office terminated her residency rights and ordered her to leave the country within a month. Shelter staff took Havva to the police station to file a formal complaint against her husband. This report was then given to the Aliens' Office. Because the evidence was submitted after her residency was terminated, the council rejected Havva's appeal. Havva, who was not aware of her duty to inform the council, now lives in Belgium without papers.

⁸⁸ Human Rights Watch interview with Merlen A., Brussels, October 29, 2011.

⁸⁹ Human Rights Watch gained permission to read the decision. Cased number withheld. Merlen was in a legal process to claim regularization on humanitarian grounds when this report was written.

⁹⁰ Human Rights Watch interview with Havva K., Brussels, September 30, 2011.

Human Rights Watch is also aware of cases where violent partners informed the municipality that their wives no longer lived with them.⁹¹ The municipality then removed these women from the civil registry, sometimes without enquiring about the reasons for their departure as required by law, and informed the Aliens' Office.⁹² The Aliens' Office consequently ended these women's residency rights before they, or people assisting them, had been able to inform the Office about the violence they had experienced.

The refusal of the Aliens' Office to consider evidence of violence submitted after women leave the home and of the Alien's Litigation Council to consider evidence submitted after residency rights are terminated undermines protection for migrant women who are subjected to domestic abuse. As Indra Janssen, legal officer of an integration center in Brussels, summarized: "It is a miracle if women meet the right people at the right moment who can transfer them to the institutions and convince them to file a complaint."⁹³

Additional Income Requirements

Even women who have informed the Alien's Office within the required period of time and submitted evidence of violence may still not benefit from their right to protection without risking expulsion. According to the law, survivors of family abuse who came to join a Belgian or EU national must not only prove they were victims of violence at the hands of their partner but also that they are employed, self-employed, or have 'sufficient means of subsistence' for themselves and their family members to prevent them from becoming dependent on state welfare. They must also demonstrate that they and any dependent children are covered by health insurance.⁹⁴

Farah Ch. is a 25-year-old Moroccan woman who joined her Belgian husband in 2009. She recalled:

⁹¹ Human Rights Watch interviews with Selvi D., Liège, September 28, 2011; with Armelle Philippe, lawyer, Brussels, October 5, 2011; with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011; with Monica Pereira of Abraço, Brussels, October 4, 2011; with Leila Chaudry, social and legal assistant in Point d'Appui, Liège, October 10, 2011.

⁹² Art. 37 of the Royal Decree concerning the Access to the Territory, the Residence, the Settlement and the Removal of Foreigners of October 8, 1981.

⁹³ Human Rights Watch interview with Indra Janssen, legal councilor, Foyer, Brussels, October 19, 2011.

⁹⁴ Art. 42quater §4. The law does not define what comprises sufficient means of substance. It should at least equal the minimum income on which the Belgian state provides social support to poor individuals.

It was a catastrophe. The marriage was not like I had imagined it to be, it was a big surprise. I came for marriage, study, and eventually children, but I ended up being locked up in the home. I was not even allowed to go outside to breathe fresh air. I sometimes wanted to die.⁹⁵

In August 2010, the violence escalated and Farah left. Her lawyer immediately informed the Aliens' Office and submitted a police report, a statement from her social worker, and a medical report to support her claim for residency rights on grounds of the protection clause. But on February 23, 2011, the Aliens' Office ended her rights to residence, sending her an order of expulsion for July 19, 2011. In its letter it stated that she could not benefit from the protection clause because she did not have health insurance and was dependent on welfare. She recalled the moment when she was told to leave the country:

The police came to my door and explained to me I had to leave. They said 'you look fine now. Buy a ticket now and leave, or we will send you to a detention center for migrants'. They also told me to go fight my legal procedure in Morocco, not here.⁹⁶

According to Farah's lawyer, as of August 2012, her appeal to the Alien's Litigation Council remained pending and she had been given temporary work authorization, renewable monthly.⁹⁷ But despite now meeting the income requirements, the Alien's Office has refused to reopen the case, her lawyer said.

NGOs pointed out that the income requirement is a particular barrier for survivors of abuse, particularly single mothers with dependent children and women from non-European countries. The director of a Women's Center in Brussels said:

Work, work, work, that's the most important. But for many women it is extremely difficult to find work immediately after they have left their

⁹⁵ Human Rights Watch interview with Farah Ch., Brussels, September 22, 2011.

⁹⁶ Human Rights Watch interview with Farah Ch., Brussels, September 22, 2011.

⁹⁷ Email to Human Rights Watch Armelle Philippe, Farah's lawyer, August 12, 2012.

husbands. They don't speak the language, have no education and are sometimes too traumatized....⁹⁸

⁹⁸ Human Rights Watch interview with Ria Willem, director, Open Deur/Porte Ouverte, Brussels, September 30, 2011. This was also stated by Leila Chaudry, social and legal assistant in Point d'Appui, Liège, October 10, 2011.

III. Obstacles to Protection for Undocumented Women

They say there is a zero tolerance for domestic violence, but no single campaign ever mentions the [situation of] women without papers. The law does not protect women without papers. They are treated as foreigners whose immigration needs to be halted, rather than as vulnerable people who need to be protected.

—Monica Pereira, Coordinator of Abraço, Brussels, October 4, 2011

Undocumented migrant women, including those who lost residency rights as a result of escaping violence, may risk deportation when they seek help from the police, and even if they are entitled to receive protection, many do not know this and continue to fear deportation. The real or perceived risk of deportation may create almost insurmountable barriers for undocumented victims of domestic violence to seek help and protection and can expose them to further abuse and exploitation. It also leads to impunity for perpetrators.

Undocumented women who are victims of domestic violence have limited avenues for regularization, particularly those without children. Unlike victims of trafficking, they cannot apply for a provisional residence permit on the condition that they cooperate in criminal proceedings against the perpetrator. They can request regularization on humanitarian grounds. Under article 9bis of the Foreigners Law, the minister responsible for migration, currently the state secretary for immigration and asylum, has the discretion to grant residence to individuals in “pressing humanitarian situations,” if exceptional circumstances justify such a request.⁹⁹ The law does not stipulate any criteria. But a 2009 ministerial instruction on the humanitarian exception does not mention domestic violence in Belgium and administrative practice shows domestic violence in Belgium is not an established criterion.¹⁰⁰ Those who have children who are EU nationals can benefit.

⁹⁹ Aliens Act, article 9bis.

¹⁰⁰ Instruction regarding the application of former Article 9.3 and Article 9bis of the Aliens Act, July 19, 2009 <http://www.kruispuntmi.be/uploadedFiles/Vreemdelingenrecht/Wegwijs/verblijfsstatuten/Humanitair/instructie%20regulatie%2020090718.pdf> (accessed October 5, 2012). For an analysis of administrative practice, see: ECRE, Complementary Protection in Europe, July 2009, p.20, <http://www.unhcr.org/refworld/pdfid/4a72c9a72.pdf> (accessed May 28, 2005).

Fear about Reporting Violence

The Aliens Act makes an unauthorized stay in Belgium a criminal offence, punishable by a fine and a prison term of between eight days and three months. Where individuals are apprehended by the police within three years after a first arrest, they can be imprisoned for up to a year and receive a fine of up to €1000 (US\$1314).¹⁰¹ The police must report anyone suspected of an illegal stay to judicial and administrative authorities, including the Aliens' Office that can then order deportation.¹⁰² Human Rights Watch could not establish whether police officers make exceptions for survivors of abuse who seek help or whether they consistently report them when they discover that their residency is unauthorized.

Women who are staying illegally in Belgium and are victims of domestic abuse were particularly difficult for Human Rights Watch researchers to access. Few were willing to expose themselves to the risk of expulsion. Data is currently not kept about how many undocumented women experience domestic violence and how many report the violence to authorities. Staff working with undocumented migrants told Human Rights Watch that the risk of deportation impedes many from reporting violence.¹⁰³ Human Rights Watch was told by an activist:

An enormous fear exists [among undocumented women] of being expelled.
Sometimes women call me out of bed because the situation escalated.
Then I go to the police with them, as their interpreter and social assistant.
But it always takes me a lot of effort to convince them to go.¹⁰⁴

Interviews conducted by Human Rights Watch suggest that some women without legal authorization to remain in Belgium would rather endure violence than risk expulsion. Dvora K. from Togo told Human Rights Watch that she was in a relationship with a long-term resident from Cameroon who psychologically and verbally abused her, beat her from

¹⁰¹ Art. 75 of the Aliens Act.

¹⁰² Arts. 14, 21 and 44/5 of the Law on the Post of Police.

¹⁰³ Human Rights Watch interviews with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011; with Monica Pereira of Abraço, Brussels, October 4, 2011; with Leila Chaudry, social and legal assistant in Point d'Appui, Liège, October 10, 2011; with Suzanna Monkasa, President of the Belgian Network of Women Immigrants and of Foreign Origin, REFI.oe, Brussels, September 12, 2011; and telephone interview with a staff member of the victim support unit of a police zone in Brussels, September 28, 2009.

¹⁰⁴ Human Rights Watch telephone interview with Elena Perez, head of gender department of Maison de l'Amérique Latin, December 9, 2011.

time to time, and forced her to have sexual intercourse with him in exchange for the keys to his apartment. Dvora explained why she has not reported the abuse to the police:

What can I do? I cannot go to the police to report it. He knows what it takes for me to go the police, so he uses it to do his own thing ... Going to the police is impossible for me. I believe they will tell me that I don't have any papers and have no right to stay.¹⁰⁵

Ngalla A. only reported the abuse she experienced for seven years when she received permission to remain in Belgium on the grounds of her Belgian children. She explained how her partner used her precarious legal status to control her:

After I lost my papers, I had to do everything: clean the house, cook, etcetera ... He never allowed me to take a break. He started beating me, at least twice a week. After a while, I even had to sleep on the floor while being pregnant ... My partner had papers, I had none. He always threatened that he would make sure that I was sent home if I would tell anyone about it [the violence]. I was afraid that no-one would believe me anyway and that I would lose my children, so I stayed.¹⁰⁶

Aïcha L., a 36-year old mother from Morocco with two undocumented children, was afraid to leave her home for more than two years, fearing she would be arrested. Her husband, who was often 'verbally aggressive' with her, blamed her for the financial problems at home and eventually abandoned her and their new-born daughter and two-year old son.¹⁰⁷

Staff members of a migrant support group said that by putting immigration status ahead of women's protection, authorities fail to guarantee rights to protection and non-discrimination for undocumented survivors of abuse, fostering a culture of impunity. One activist said: "Public campaigns promote the zero-tolerance on the aspect of violence, but this is not at all true for undocumented women."¹⁰⁸

¹⁰⁵ Human Rights Watch interview with Dvora K., Antwerp, October 4, 2011.

¹⁰⁶ Human Rights Watch interview with Ngalla A., Antwerp, September 15, 2011.

¹⁰⁷ Human Rights Watch interview with Aïcha L., Antwerp, October 4, 2011.

¹⁰⁸ Human Rights Watch telephone interview with anonymous staff member of Cap Migrants, Liège, December 8, 2011.

Inadequate Police Response

Victim support groups in some cities told Human Rights Watch about their concerns that the police sometimes fail to respond adequately or appropriately to complaints by undocumented survivors of abuse. Human Rights Watch documented two cases in which the police failed to take prompt action to protect undocumented migrant women who reported violence. Instead, they asked them for identification, including their residence permits.

Gisele M., a Brazilian woman who arrived in Belgium in 2003, became undocumented when her tourist visa expired. One year later, she met her Brazilian partner, also undocumented. They began to live together and she became pregnant with her daughter. She told Human Rights Watch that during her pregnancy her partner beat her at least three times a week, including in her abdomen.

On November 18, 2007, the couple had a fight and Gisele's partner stabbed her in her neck with a fork. When Gisele went to the police for help, they did not arrest her partner or investigate the case. Instead, they required Gisele to provide her identification and prove lawful residence. When she could not show that, they accompanied her home so that she obtain her passport [with the overstayed visa] before taking her to the hospital to receive medical attention for the stab wound. While she was treated by a neurologist for injuries and other medical problems caused by the violence, the police handed her an order to leave the country within five days.

Gisele recalled how shocked she was about the police response:

I had expected that the police would be the same as in Brazil: when a guy beats a girl he goes to prison. Here, I did not receive any protection. The first thing they did is taking away my passport and run to get an expulsion card ... I felt as if I was nobody, as if we do not have any rights. They should have protected me and arrested my husband but they did not do anything. He could really have killed me, lots of things had happened already before I went there to seek protection.¹⁰⁹

¹⁰⁹ Human Rights Watch interview with Gisele M., Brussels, October 31, 2011.

Gisele's husband continued to beat her up after she separated from him. One day when he was drunk he slapped Gisele with his bare hands in her face and took the baby and smacked her on the floor, while threatening to kill them and then himself. The last time he attacked her she sought help from the Brussels-based NGO Abraço that brought her to the hospital where she was treated for her injuries. She said: "I did not go to the police anymore, why would I?"

Sueli A., also from Brasil, overstayed her visa in 2004. She was detained in a removal center when she sought police protection from violence at the hands of her Portuguese husband, whom she had met in 2006 and married two years later. When she sought help from the violence Sueli was undocumented following a failed application for family reunification. In her case, the municipality had suspected a marriage of convenience and halted the application process, forwarding the case to the prosecutor for criminal investigation.¹¹⁰

In the meantime, Sueli had submitted a request for humanitarian regularization under article 9bis of the Aliens Act. This request was still pending on May 31, 2010, when she went to the police to seek help from her violent husband who had assaulted her and threatened to kill her.¹¹¹ The same day, Sueli was detained.

Sueli was detained for two and a half months until she won her case against the Aliens' Office that had deprived her of her liberty despite the pending request for regularization.¹¹² Having no access to public funds or social housing, she returned to her husband who was never prosecuted for his crimes. When he continued assaulting her, she sought help from an NGO instead of the police. Sueli, who is still undocumented, tries to survive as a single mother from two under-paid jobs as a domestic worker.

¹¹⁰ Art. 79bis of the Aliens Act of 1980 penalizes with a prison term and a fine anyone who forces - or attempts to force - someone into a marriage with the aim to obtain residency rights. Foreigners risk losing residency rights and being deported. Criminal investigations can take one to two years.

¹¹¹ Sueli A. agreed to speak with Human Rights Watch but eventually cancelled the interview. She gave no indication that she objected to her case's inclusion in the report. We also interviewed a staff member of the NGO where Sueli sought help when she fled the violent home a second time after she had been released from the detention center.

¹¹² Human Rights Watch gained permission to read her file, including the verdict, from the NGO that assisted Sueli after she fled the violence and during the procedures. On June 9, 2010, the district court of Brussels ordered the immediate liberalization of Sueli, because the Aliens' Office had neglected its obligation to scrutinize her request for regularization before making the decision to expel her. Moreover, it had failed to take into consideration her marriage with an EU national before depriving her of her liberty. The Aliens' Office appealed the courts' decision but on July 27, 2010 the Court of Cassation rejected the appeal.

NGOs and social workers accompanying undocumented migrant women to the police told Human Rights Watch that they noted that the police were often unwilling to register complaints and pursue criminal investigations when complaints were made by undocumented women.¹¹³ One activist from a group working with undocumented Latin American women said that even when she was able to convince women to report violence, they were sometimes mistreated by the police:

Very often the reaction of the police officer is highly unprofessional, even unjust. ‘So you want to be put in a removal center, *madame*? Is that what you want? You cost us a fortune lady, just take your stuff and go back.’ Can you imagine? The police should protect, not intimidate.¹¹⁴

Police officers interviewed by Human Rights Watch in Gent, Brussels, and Antwerp insisted, however, that women’s nationality or legal status does not interfere with their rights to protection.¹¹⁵ In the words of one police officer: “We also prioritize safety for undocumented women and we act.”¹¹⁶ Staff working with irregular family abuse victims however confirmed that it often depends on individual officers as to whether women are adequately protected.¹¹⁷

¹¹³ Human Rights Watch interview with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011 and with Monica Pereira of Abraço, Brussels, October 4, 2011. Telephone interview with Nancy Declercq, a social worker of a foreigners’ support center in Oostende, January 11, 2012.

¹¹⁴ Human Rights Watch telephone interview with Elena Perez, head of gender department of Maison de l’Amérique Latin, December 9, 2011.

¹¹⁵ Human Rights Watch telephone interview with Lutgardis van Rompaey, case officer and head of victim support unit of the police of Antwerp, August 25, 2011. Human Rights Watch telephone interview with Sylvie Klaus, case officer of the service victim support of a police zone in Brussels, September 28, 2011.

¹¹⁶ Human Rights Watch telephone interview with Pierre Roelants, case-officer within the criminal investigation department of Antwerp, August 17, 2011.

¹¹⁷ Human Rights Watch interviews with Monica Pereira of Abraço, Brussels, October 4, 2011 and with Maria Miguel Sierra, director of La Voix des Femmes, Brussels, September 19, 2011.

IV. Access to Shelters and Services

When they saw my papers they told me, “You don’t have any income and you have children, here you have to pay. We cannot accept you.”

—Rachida B., survivor of violence, September 28, 2011.

Women without papers are also human beings. Everyone is equal before the law. The government should help them as well (...)

—Hajar Siyahya, staff member of an NGO working on domestic violence, September 15, 2011.

Differences exist between Flanders, Wallonia, and Brussels in the way shelters and other specialized services for family violence survivors are organized and funded. This chapter shows the need for more specialized shelters and a restructuring of funding schemes to ensure access to shelters for all women, regardless of legal status.

Shortage of Shelters

Time and again, policy makers, shelter staff, and police officers told Human Rights Watch about the inadequate number of shelter beds for victims of domestic violence.¹¹⁸

European standards prescribe that the number of shelter places for survivors of family abuse should be in the range of one “family place” (defined as one adult plus the average number of children, which is 1.79 in Belgium) per 7,500 to 10,000 inhabitants, a ratio which can be adjusted based on the actual need of victims.¹¹⁹ Specialized women’s

¹¹⁸ Human Rights Watch interviews with Marijke Weewauters, staff member Institute for the Equality between Women and Men, September 14, 2011; with Helen Blow, Office of General Wellbeing (SAW), Antwerp, September 15, 2011; with Ria Willem, director, Open Deur/Porte Ouverte, Brussels, September 30, 2011. Telephone interviews with Marc Wynants, coordinator of Centre for Social Care De Kempen. August 17, 2011; with an anonymous social worker of women’s shelter in Gent, August 31, 2011; and with Pierre Roelants, case-officer within the criminal investigation department of Antwerp, August 17, 2011.

¹¹⁹ Liz Kelly and Lorna Dubois, *Combating Violence Against Women: Minimum standards for Support Services*, Council of Europe, Directorate General of Human Rights and Legal Affairs, 2008, [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf) (accessed April 6, 2012), p. 18.

shelters as opposed to those for homeless people, moreover, should have staff who are trained to offer support that goes beyond providing a safe place to stay.¹²⁰

There is no centralized management of shelters in Belgium; instead, they fall under the responsibility of the regions. In Flanders, thirteen regional centers for social care run different types of shelters and offer services for survivors of domestic violence, including counseling, social and legal aid.¹²¹ Each social care center has its own reception center that conducts an intake session with survivors of abuse and then transfers them to one of the shelters in Flanders: there are seven shelters for survivors of family violence and 17 other women-only shelters. The latter accept women who escape domestic violence but also women with other socio-psychological problems and, unlike the former, do not have secret addresses, making them less suitable for domestic violence victims who can be subject to new threats and violence if an abusive partner locates them. The total capacity across both types of shelters is 318 beds for women and their dependent children.¹²²

In 2006, the most recent year for which figures are available, Flanders' two types of women's shelters together were unable to meet between 66 percent and 69 percent of the demand for shelter by women seeking refuge for domestic violence.¹²³ Given the demand for spaces by victims of domestic violence and its current capacity, Flanders needs hundreds of extra shelter beds to meet European standards for domestic violence refuges.¹²⁴

In Wallonia and Brussels Capital Region, shelters are run by different groups, including some NGOs that are funded by local governments. Survivors of abuse, or people assisting them, must directly contact each group to ask for a shelter bed. There are only three

¹²⁰ The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Explanatory Report, para. 133.

¹²¹ The Centers are regulated by a protocol of March 23, 2011:

http://www.vvsg.be/sociaal_beleid/wonen/daklozen_en_thuislozen/opvang/documents/protocolvvsgsaw.pdf (accessed 23 November, 2011).

¹²² Evelien Demaerschalk and Koen Hermans, *Clarity in supply of Flemish home care* ("Aanbodverheldering Vlaamse thuiszorg") (Leuven: Lucas), 2010, p. 39.

¹²³ Helen Blow and Gerard van Menxel, "Partner violence and homelessness" ("Partnergeweld en thuisloosheid") in Kris De Groof and Tina De Gendt, eds., *Chances to succeed. An integrated approach to intra-familial violence* ("Kans op slagen. Een integrale kijk op geweld in gezinnen") (Leuven: LannooCampus), 2007, p. 114.

¹²⁴ According to Wikipedia, in 2010, the Flemish region (which excludes Flemish inhabitants living in Brussels) had 6,251,983 inhabitants. This means it would need to offer at least 625 shelter places to meet the European standard. This would amount to more than 1250 shelter beds, because a shelter place is defined as one adult plus the average number of children (which is 1.79 in Belgium).

specialized women’s shelters for survivors of family violence, with a total capacity of 102 beds. The Walloon government offers voluntary training to the social workers of 13 other women’s shelters, which receive women with a wider range of problems.¹²⁵ There are 12 shelters in Brussels for homeless women and mothers but these have no secret location, which as noted above makes them less suitable for victims of domestic violence.¹²⁶

The Brussels Capital Region and Wallonia appear to comply with the numerical requirements under European standards, but here shelters do not always provide the required safety, counseling, and psychological support or empowerment to victims of domestic violence.¹²⁷

Even though the insufficient number of shelter places is a structural problem for all abuse survivors, it has differential consequences for women of migrant origin, who are disproportionately represented in the shelters.

According to statistics from the Flemish Office of General Wellbeing, 44 percent of the women staying in shelters in Flanders in 2006 were of migrant origin.¹²⁸ No comparable statistics exist for Wallonia or Brussels.

There are several reasons for this overrepresentation. First, women of migrant origin, particularly newly-arrived migrants, lack social networks and access to information about the available services that can offer help before the violence escalates. Secondly, they have fewer networks and financial means to find alternative accommodation when they leave the home to seek safety.¹²⁹ Zohra K., a 40-year-old woman from Morocco, returned to

¹²⁵ In Wallonia, shelters are governed by a Decree of February 12, 2004 (“Décret relatif à l’accueil, l’hébergement et l’accompagnement des personnes en difficultés sociales”). Funding is regulated by art. 34, no. 2 of the implementation protocol of June 3, 2004, <http://wallex.wallonie.be/index.php?doc=255&rev=253-5324> (accessed November 28, 2011).

¹²⁶ The Francophone Community Commission’s shelters are governed by a Decree of May 27, 1999 (“le décret du 27 mai 1999 relatif à l’octroi de l’agrément et de subventions aux maisons d’accueil”) and its application protocol of July 20, 2000 (“l’ACCCF 2000/279”). The bi-lingual shelters are governed by an order adopted in 2002 by the Common Community Commission (“Ordonnance relative aux centres et services de l’aide aux personnes”), November 7, 2002.

¹²⁷ Human Rights Watch interview with Josiane Corruzi, director, Solidarité Femmes et Refuges pour Femmes Battues, La Louvière, September 27, 2011, and follow-up telephone interview on December 6, 2011.

¹²⁸ Cited in Helen Blow and Gerard van Menxel, “Partner violence and homelessness,” p.115.

¹²⁹ Human Rights Watch interview with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011.

her abusive husband after escaping violence, explaining: “I had no work, no money, and was pregnant ... Where else could I go?”¹³⁰

Thirdly, women of migrant origin generally have lower incomes and are therefore less able to find housing when transitioning out of shelters. Only 6.2 percent of housing in Belgium is subsidized.¹³¹ This is much lower than the European average of 17.3 percent.

Finally, research shows that persons from ethnic minorities face discrimination when seeking housing in the private sector.¹³² In the words of the social worker: “Even if they can afford it [housing] they face discrimination in the housing sector: if you’re a black woman with three children, there is only a small chance that landlords will accept you.”¹³³ Women of migrant origin consequently tend to stay in shelter for longer periods, causing waiting lists for other survivors.

Some women returned to violent homes when they could not access a shelter. One such woman was Hayet T., a 29-year-old Moroccan woman who left her husband after eight years of a violent marriage. The first time she sought help, the shelter staff could not offer her a bed immediately and Hayet went home. She explained:

She [the social worker] advised me to stay with family until she could help me, but I did not have family here. I reasoned that I could perhaps sleep for two days in the car but not for a week. I wanted to stay in our own house, so I went home.

When the violence escalated again, Hayet and her two dependent children (both with Moroccan nationality) spent five days in a hotel before they could access a shelter. Hayet says: “I did not feel safe there, because he would follow me and wait in a café until he saw

¹³⁰ Human Rights Watch interview with Zohra K., la Louvière, September 27, 2011.

¹³¹ http://www.armoedebestrijding.be/cijfers_sociale_huisvesting.htm (accessed May 3, 2012).

¹³² Centre of Equal Opportunities and Opposition to Racism, “Discrimination and Diversity, annual report 2010”, June 21, Brussels, 2011, pp. 74-76; Fourth Country report on Belgium, European Commission against Racism and Discrimination, Directorate General of Human Rights and Legal Affairs, Council of Europe, May 26, 2009. http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_04/04_CbC_eng/BEL-CbC-IV-2009-018-ENG.pdf, pp. 24-28.

¹³³ Human Rights Watch interview with Yamina Zazaa, social worker for the Centre de Prevention des Violences Conjugales et Familiales (CPVCF), Brussels, September 29, 2011.

me.” When Human Rights Watch spoke to Hayet, she was still on a waiting list for a shelter with a secret address.

Other women had to stay in mixed shelters for homeless people, described as a “horrible place for a woman”, until a bed was available in a specialized shelter.¹³⁴ Other women had to rely on the help of others. Merlen, a 26-year-old Roma woman from Macedonia had just given birth when she escaped domestic violence. When all shelters said they were fully occupied, Merlen and her baby eventually stayed with her lawyer for three months.¹³⁵

Other women faced problems when transiting out of the shelter. Selvi D., a 23 year-old Turkish woman escaped a violent marriage after one year.¹³⁶ She recalled the moment when the shelter asked her to leave after six months:

I started to cry, explaining that I had no place to stay. I begged them to let me stay for one more week, or one more night. But I had to leave ... In Turkey, we always speak about Europe and its human rights. But I don't believe in your human rights. I had to live on the street, while I was beaten. He is guilty, not me!

Exclusion of Undocumented Migrant Women

Undocumented migrant women who escape domestic violence face structural and practical barriers to access shelters and specialized services. Shelters generally do not serve undocumented women, because they cannot receive reimbursement from the state.

Belgian authorities fund the salaries of shelter staff, training, and the operating costs. Survivors of domestic violence must contribute to their and their children's lodging expenses, food, and other services.¹³⁷ Women who have insufficient resources can apply for financial support from their municipality's Public Social Welfare Center, but they must

¹³⁴ Human Rights Watch interview with Bouchra S., Brussels, October 2, 2011.

¹³⁵ Human Rights Watch interview with Merlen A., Brussels, October 29, 2011.

¹³⁶ Human Rights Watch interview with Saliha D., Liège, September 28, 2011.

¹³⁷ In Flanders, the day rate has been fixed from 1 July 2011 until 30 June 2012 at a maximum of €24.51 (32\$) and €15.08 (19\$) for children younger than 12 years old. Prices may be lower, depending on the expenses of the shelter. For Wallonia and Brussels, prices differ between the shelters, depending on the services they offer. Prices vary between €10 (\$13, without meals) and €20,- (26\$, including meals), and contributions may not amount to more than 2/3rd of victims' salary.

be registered in the Aliens Register to do so.¹³⁸ Most centers exclude women without papers—women who generally have no resources to afford a shelter themselves—from receiving public funds.¹³⁹

The shortage of shelter places, especially in Flanders, and the lack of state funding for irregular migrants make shelters reluctant to accommodate undocumented women who escape domestic violence.¹⁴⁰ Josiane Coruzzi, director of a women’s shelter in Wallonia, said she must refuse approximately ten requests each year:

I am not going to mince words. Maybe other shelters would not tell you this, but we just don’t accept women without papers ... When a woman without papers arrives, I am forced to tell her I can’t accept her. I simply cannot afford it.¹⁴¹

Some shelters make short-term exceptions for women who need urgent help. But they can only accept one or two women and their dependent children, because they are not reimbursed by the state for costs incurred while accommodating them. Several staff members also told Human Rights Watch that they give preference to women who have a reasonable prospect of getting residency rights, to whom they can offer long-term psychological and social support.¹⁴²

The inability and unwillingness of shelters to accommodate undocumented migrant women jeopardizes the safety of extremely vulnerable women, some of whom return to their abusers when they find they have no alternative place to stay.¹⁴³ Others end up living

¹³⁸ Art. 3 of Law concerning the Right to Societal Integration, May 26, 2002, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2002052647 (accessed May 2, 2012).

¹³⁹ Human Rights Watch email correspondence with Marianne De Canne, staff member of the Service Intra-Familial Violence of the Public Social Welfare Centre of Antwerp, November 14, 2011.

¹⁴⁰ Human Rights Watch telephone interviews with a social worker of women’s shelter in Gent, August 31, 2011; a social worker of women’s shelter in Roeselare, August 24, 2011; and a social worker of a women’s shelter in Mechelen, August 12, 2011.

¹⁴¹ Human Rights Watch interview with Josiane Coruzzi, director, Solidarité Femmes et Refuges pour Femmes Battues, La Louvière, September 27, 2011, and follow-up telephone interview on December 6, 2011.

¹⁴² Human Rights Watch interview with Ria Willem, director, Open Deur/Porte Ouverte, Brussels, September 30, 2011. Human Rights Watch telephone interviews with a social worker of a women’s shelter in Leuven, August 23, 2011, and a social worker of a women’s shelter in Antwerp, August 25, 2011.

¹⁴³ Human Rights Watch interview with Gisele M., Brussels, October 31, 2011; Human Rights Watch telephone interview with Nancy Declercq, social worker of a foreigners support center in Oostende, January 11, 2012.

on the streets, being denied legal work, financial support, social housing, and education.¹⁴⁴ According to shelter staff interviewed by Human Rights Watch, these women are easily caught up in a new spiral of violence and exploitation.¹⁴⁵

One undocumented woman from Ghana told Human Rights Watch that when she escaped a “very violent” partner who threatened to kill her she could not find any place to stay nor access psychological help and ended up living on the street or with friends. She said: “I am a victim of physical and psychological abuse who came out to seek for help, but [now] I am even suffering more.”¹⁴⁶

Even undocumented women with children sometimes have no alternative but to live on the streets. Although undocumented families with children are eligible to seek refuge in centers run by Fedasil, the federal agency for the reception of asylum-seekers,¹⁴⁷ Fedasil has insufficient capacity to meet the demand and has refused to accept irregular families with children since April 2009.¹⁴⁸ In 2010, the United Nations High Commission for Refugees (UNHCR) criticized Belgium for its failure to accommodate nearly 7,000 asylum-seekers.¹⁴⁹ Belgian labor courts have repeatedly ruled that the Public Social Welfare Center should provide support to irregular families with children.¹⁵⁰

Human Rights Watch’s evidence corroborates the findings of other research that undocumented women with children escaping a violent home do not know about their right to shelter and support, relying instead on friends, religious, or non-government

¹⁴⁴ The Flemish government recently adopted a new education decree that makes legal stay a condition for adults to register for civic integration and language courses or adult education, Art. 41.1 no. 4 of the Education Decree of June 22, 2011.

¹⁴⁵ Human Rights Watch interviews with Bijou Banzaa, social worker of a shelter in Liège, le Collectif Contre la Violence Familiale et l'Exclusion (C.V.F.E.), Liège, September 28, 2011; and with Josiane Corruzi, director, Solidarité Femmes et Refuges pour Femmes Battues, La Louvière, September 27, 2011, and follow-up telephone interview on December 6, 2011.

¹⁴⁶ Human Rights Watch email correspondence with Jarmay I., January 12, 2012. Jarmay gave permission to cite the correspondence we had with her and her social assistant, but was unable to be interviewed.

¹⁴⁷ Art. 57 §2 of the Organic Law on Public Social Welfare Centres, and its implementation by Royal Decree of June 24, 2004.

¹⁴⁸ Public Social Welfare Centre and Refuge (“OCMW en Opvang”), December 13, 2011
<http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=777> (accessed January 11, 2011).

¹⁴⁹ “UN Condemns Conditions for Asylum-Seekers”, *De Standaard*, November 30, 2010,
<http://www.presseurop.eu/en/content/news-brief/410181-un-condemns-conditions-asylum-seekers> (April 13, 2012).

¹⁵⁰ Kruispunt Migratie-Integratie, “Newsletter Immigration Law and International Private Law”, September 3, 2010,
http://www.kruispuntmi.be/vreemdelingenrecht/detail.aspx?id=12512#2.____Illegaal_verblijvende_gezinnen_met_kinderen:_recht_op_OCMW-steun_indien_geen_materi_le_opvang (accessed November 24, 2011).

organizations for help.¹⁵¹ Yasmina U., a 36-year-old Moroccan mother of a baby boy, ended up living on the street when escaping a violent home.¹⁵² Yasmina became homeless when her partner, who was “often” violent with her, abandoned her during her pregnancy. She lived on the street until child protection took away her baby. She eventually found support from an Islamic association and regained custody of her son.

¹⁵¹ Human Rights Watch interview with Aïcha L., Antwerp, October 4, 2011; Human Rights Watch interview with Merlen A., Brussels, October 29, 2011. Human Rights Watch interview with Yasmina U., Antwerp, September 26, 2011. Ines Keygnaert et al., *Hidden Violence is a Silent Rape: Prevention of Sexual Violence against Refugees & Asylum Seekers in Europe: a Participatory Approach Report* (Ghent: ICRH- Ghent University), 2008.

¹⁵² Human Rights Watch interview with Yasmina U., Antwerp, September 26, 2011.

V. Belgium's Human Rights Obligations

Belgium has clear obligations under human rights law to act with due diligence to protect women's human rights to live free from violence, to non-discrimination, and to effective judicial remedies. This duty extends to protection from violations by both state and non-state actors and regardless of victims' legal status.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Belgium on July 10, 1985, requires all state parties to take appropriate measures to eliminate discrimination against women, including by private actors.¹⁵³ The CEDAW Committee, the UN body that monitors implementation of the Convention, stated in General Recommendation 19 that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, and is thus prohibited under article one of the Convention.¹⁵⁴ It stated that “state parties have a due diligence obligation to prevent, investigate, prosecute and punish acts of gender-based violence” and may be held responsible for private acts if they fail to do so.¹⁵⁵

Human rights obligations to protect women from violence apply equally to migrant women with insecure or irregular immigration status. Article 2 of the International Covenant on Civil and Political Rights (ICCPR), to which Belgium became a state party in 1983, provides that all states must ensure all ICCPR rights “to all individuals within its territory” and “without distinction of any kind”, including race, color, sex, religion, national or social origin.¹⁵⁶ It thus imposes a clear obligation on governments to protect any person's rights to be free from inhuman, cruel, or degrading treatment, including from domestic

¹⁵³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, entered into force September 3, 1981, and ratified by Belgium on July 10, 1985. In communications received on 14 September 1998 and 8 July 2002, the Government of Belgium informed the Secretary-General that it had decided to withdraw its reservations made upon ratification with respect to arts 7 and 15, §2 and §3, respectively.

¹⁵⁴ UN Committee on the Elimination of Discrimination against Women, General Recommendation 19. Violence against Women (Eleventh session, 1992), UN Division for the Advancement of Women. Department of Economic and Social Affairs, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (accessed January 5, 2012).

¹⁵⁵ *Ibid.*

¹⁵⁶ International Covenant on Civil and Political Rights, adopted December 16, 1966, ratified by Belgium on April 21, 1983, <http://www2.ohchr.org/english/law/ccpr.htm> (accessed January 5, 2012), art. 2.

violence;¹⁵⁷ to non-discrimination on the base of sex, among other grounds;¹⁵⁸ to life;¹⁵⁹ and to an effective remedy.¹⁶⁰

The European Convention on Human Rights (ECHR) likewise obliges state parties to ensure the equal enjoyment of all ECHR rights in the respective states, including protecting any person residing in their territory from torture or inhuman or degrading treatment or punishment, and the right to life.¹⁶¹

In 2002, the Committee of Ministers of the Council of Europe issued a recommendation on the protection of women against violence, also addressing the particular situation of immigrant women.¹⁶² It urges member states to ensure that legal, social, and medical assistance and remedies are available, without discrimination, to all victims including immigrant women.¹⁶³ It also recommended specific campaigns targeting immigrant women, and to grant independent residence permits in cases where they are victims of domestic violence.¹⁶⁴

The Parliament Assembly of the Council of Europe called upon governments in a 2009 Resolution about migrant women’s risk to domestic violence to “do everything in their power to ensure that *all* women living in their territory have access in law and in practice to the relevant victim protection and rehabilitation facilities”.¹⁶⁵

These and other recommendations were formalized in the new Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,

¹⁵⁷ Ibid., art. 7.

¹⁵⁸ Ibid, art. 26. The state’s duty to treat all individuals equally before law and to ensure non-discrimination has also been laid down in articles 2, 3, and 16.

¹⁵⁹ Ibid, art. 6.

¹⁶⁰ Ibid., art. 2.

¹⁶¹ Convention for the Protection of Human Rights and Fundamental Freedoms, adopted November 4, 1950, ratified by Belgium on 14 June 1955, arts. 1,2,3. <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm> (accessed January 5, 2012).

¹⁶² Council of Europe Recommendation Rec (2002)5 of the Committee of Ministers on the Protection of Women against Violence, adopted April 30, 2002, <https://wcd.coe.int/ViewDoc.jsp?id=280915> (accessed March 27, 2010).

¹⁶³ Ibid., nos. 23 and 24.

¹⁶⁴ Ibid., nos. 64 and 59.

¹⁶⁵ European Parliamentary Assembly Resolution 1697 on Migrant Women: at particular risk from domestic violence, adopted on November 20, 2009, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta09/eres1697.htm> (accessed December 14, 2011).

adopted by the Committee of Ministers on April 7, 2011. It underlines the duty of state parties to create a comprehensive legal framework to prevent violence, to protect victims, and to punish perpetrators.¹⁶⁶ As noted above, Belgium signed the convention in September 2012, but at time of this writing, had yet to ratify it.

Article four of the convention writes that “measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, ages, state of health, disability, marital status, migrant status, or any other status.”

In addition to the prohibition of discrimination, article 12 requires parties to prevent gender based violence in the first place and change gender stereotypes, prejudices, and practices. It states that all preventive measures should address and take into account the needs of vulnerable persons, which the explanatory report to the convention makes clear include persons of national or ethnic minority backgrounds and undocumented migrants.¹⁶⁷

The convention also addresses the insecure legal status of family migrants, obliging state parties to ensure that “victims whose residence status depends on that of the spouse or partner as recognized by internal law are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage of the relationship,” while giving them the opportunity to obtain the suspension of expulsion proceedings initiated in relation to their previous dependent residence status.¹⁶⁸

The UN special rapporteur on violence against women similarly wrote after her country visit to the Netherlands in 2006 that they should be granted independent residence, regardless of whether they prove the violence with an official police report, medical report, a statement from a women’s shelter, or any other means. She argued for a maximum

¹⁶⁶ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, opened for signature on May 11, 2011, <http://conventions.coe.int/Treaty/EN/Treaties/HTML/DomesticViolence.htm> (accessed December 13, 2011).

¹⁶⁷ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 12§3, and Explanatory Report art. 12, para. 87.

¹⁶⁸ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 59.

probationary period of two years, regardless of income.¹⁶⁹ The Parliamentary Assembly of the Council of Europe recommended one year.¹⁷⁰

On undocumented migrants, the rapporteur stated they should have “full access to state protection against violence, including filing criminal complaints relating to violence, applying for restraining orders, accessing a women’s shelter or pursuing any other protective mechanism irrespective of their legal status and without fear of deportation.”¹⁷¹

Although Belgium has made significant progress to combat gender-based violence, it should take additional steps to fully protect the rights of migrant women victims. The government has passed important laws to better protect victims and punish perpetrators. It has also shown a willingness to put women’s protection needs ahead of their migration status. With a few steps, however, its approach could be greatly improved.

¹⁶⁹ Report of the special rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to the Netherlands, A/HRC/4/34/Add. 4, February 7, 2007, pp. 25-26.

¹⁷⁰ Resolution 1697.

¹⁷¹ Report of the special rapporteur on violence against women, p. 26.

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“THE LAW WAS AGAINST ME”

Migrant Women’s Access to Protection for Family Violence in Belgium

In spite of recent immigration law reform, family migrants in Belgium face continuing obstacles to protection. Income and evidence requirements make it hard for women whose immigration status is dependent on abusive partners to retain their residence permits if they leave the family home. Women who fail to inform the immigration authorities in time risk loss of residence permits and expulsion. The law excludes women who have applied but not yet received a residence permit and those whose partner has left Belgium. In some parts of Belgium the capacity of shelters for victims of domestic violence fails to meet demand.

Undocumented migrant women experience particular difficulties in seeking protection. Unlike legal family migrants, they are not covered by the protection clause recently added to the immigration legislation. While undocumented women can apply for regularization on humanitarian grounds, domestic violence in Belgium is not an established criterion. Fear of deportation makes them reluctant to report violence to the police or otherwise seek help. Shelters in some parts of Belgium refuse to accept women without papers, citing limited resources.

“The Law Was Against Me” calls on the Belgian government to build on the system already in place to ensure that it offers protection from violence for all migrant women, regardless of circumstances or legal status. It makes concrete recommendations to the authorities on improving residence permits, encouraging migrant women to report violence to the police and improving access to services.