

WRITTEN SUBMISSION
**Newborns in international migration situation:
protection gaps and coping mechanism**

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This written submission falls within the discussion of the Working Group 1 and identify **newborns as a specific group of vulnerable children** affected by international migration **outside protection channels**.

Working Group 1 – The International Legal Framework

5 - What are the main gaps in States parties compliance with their legal obligations under the current international framework applicable to all children in the context of international migration? (*What are the **specific gaps in the international legal framework leaving key groups of vulnerable children affected by international migration outside protection channels and measures?***)

Introduction

About 18 % of the migration population under 20 is between 0 and 4 years old. There are different configurations under which newborns may end up being involved in international migrations:

- Certain babies are born in the country of origin of their mother and travel with her / their father / another caregiver
- Other babies were conceived and born during the migratory journey, in transit countries or during the journey (in the desert, in a patrol or a migrant boat as it happens in Europe¹).
- Some babies were born in the country of arrival and their father is a foreigner in that country
- Babies may also be born in the country of arrival from a father who is a national of this country
- Certain babies are also abandoned during the migratory journey and grow in the country of transit or destination

Of course, newborns involved in South – South and South – North migrations do not receive the same kind of treatment and do not face the same kind of obstacles.

The 6 millions of babies² involved in international migrations have specific protection needs compared to older children:

- Babies are completely dependent on their mother / father / parent / caregiver for all their basic needs
- They can not express themselves which clearly complicates best interest of the child determination (BID)
- They are directly affected by their mother's health condition when they are breastfed and are thus particularly vulnerable to transmissible diseases

However, international and national legal frameworks do not sufficiently take into account these particular protection needs.

This written submission will then focus on migrant newborns in South – North migration, and will particularly look at the situation in Europe. This paper aims at providing an overview of the existing protection gaps that affect newborns in international migrations, and will give some ideas of coping mechanism.

A. Protection gaps:

1. Access to accommodation

¹ *Second group of migrants arrives*, Times of Malta, May 27 2012, available at <http://www.timesofmalta.com/articles/view/20120527/local/136-illegal-immigrants-arrive.421414>

² GMG, Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, Geneva on 30 septembre 2010, available at

The difficulties for parents to be properly accommodated may have dangerous effects on newborns. Some babies live in particularly unhealthy environment and are directly affected by overcrowding situations. In Sweden, a Medecin du Monde team “*came across several babies who had been overfed to avoid them waking the other occupants*”³. This situation is not isolated.

2. Access to health services

- Lack of maternal and baby care: Newborns face specific health risks that are not sufficiently addressed in European countries. Recent scientific researches focus on the impact migrations have on newborns⁴. They tend to show that migrant newborns are at greater risk of pathological and preterm birth than the rest of the population. Such a discrepancy may be explained by the very bad organization of maternal care and the insufficient “*dissemination of relevant information*”⁵ in many countries.
- Lack of proper care for mothers with HIV: Babies may be contaminated by their mother’s diseases. In Europe, mothers with HIV /AIDS often lack proper medical care “*including (...) intravenous treatment to stop mother-to-baby transmission*”⁶.
- Penalization of assistance and fear of deportation: The fear of being deported may also prevent illegal female migrants to seek medical care in public health offices, which has detrimental effects on their proper health and the one of their baby. In Germany for instance, undocumented mothers who seek medical care for their baby “*run a serious risk of deportation*”: to have access to health services, they need to ask for a temporary suspension of deportation and then need to inform “*authorities about their names and addresses*”⁷. Many of them prefer not to ask for medical care and are maintained excluded of the health system with their newborns.
- The lack of long term assistance: As noted in the above mentioned PICUM report, assistance is provided for very limited periods of time by local authorities, whereas women with newborns and small babies are likely to necessitate long-term assistance and continuous follow-up of their situation.
- Financial limitations to health-care: Newborns can be denied access to health because of their parents’ financial situation. In the UK, pregnant women can be prevented from delivering in public hospitals if they can not pay for it. Many of them prefer to give

³ Access to health-care for undocumented migrants in 11 European countries, 2008 survey report, Médecin du Monde, septembre 2009, p. 64, available at http://www.episouth.org/doc/r_documents/Rapport_UK_final_couv.pdf

⁴ See, among others, *Migration Experience of Pregnant Women and Iodine Deficiency Disorder in Newborns in Nan Province, Thailand*, Volume 17, number 2, 2009, available at http://www2.ipsr.mahidol.ac.th/Journal/index.php?option=com_content&view=article&id=60:vol17-no2-02&catid=38:vol17-no2&Itemid=66 and *Newborns at risk and migrant woman*, *Pediatric Research* (2010) **68**, 353–354, available at <http://www.nature.com/pr/journal/v68/n5-2/abs/pr2010904a.html>

⁵ *Migrants’ Newborns Characteristics in a Neonatal Intensive Care Unit (NICU) in Greece*, *International Journal of Caring Sciences* 2012 May-August Vol 5 Issue 2, p. 162, available at <http://www.caringciences.org/volume005/issue2/12.Migrants%27%20Newborns.pdf>

⁶ Access to health care for undocumented Migrants in Europe, PICUM report, 2007

⁷ Access to health care of undocumented migrants in Europe, PICUM report, 2007, p. 42

birth at home⁸, increasing the risk of post natal problem for their baby. Emergency care may also be denied once the baby was born: according to a PICUM report, in Italy, a 13 months Nigerian baby was denied emergency care because her father, unemployment, has not renewed its health card⁹.

3. *Legal vacuum and stateless babies*

Some babies end up being stateless as they are born in specific places in which no legislation apply. Babies born in international water are sometimes not registered in any country and become de facto stateless. A baby who was born on a migrants' boat off Malta in 2008 could not *“be registered in any country, while twins born within minutes of their mother having been flown to Malta from the same boat by an AFM helicopter have been duly registered”*¹⁰. In Germany, the newborn child will only receive a birth certificate if the mother holds a valid residence permit. If he do not have this birth certificate, *“it will be possible that the child is taken away from her as the parenthood is not proved”*¹¹.

4. *Babies in detention centres*

In order to maintain family unity, babies are sometimes detained together with their mother / parent when the latter is found to be in an irregular situation. Authorities are very often not assessing the vulnerability quickly enough to protect correctly babies. According to a PICUM report¹², in Malta, pregnant women and babies may be detained upon arrival. After giving birth, women are sent back together with their newborns in the detention centers where they live in very harsh conditions for extensive periods of time.

Baby care is also clearly insufficient in detention centre. In August 2012, a baby died in the French detention centre of Mayotte¹³.

6. *Abandoned babies*

Some desperate migrant mothers abandon their unwanted newborns, often in unsafe places. According to the BBC, an *“increasing number of babies born to Central Asian migrant*

⁸ *Access to Primary Health Care for migrants is a right worth defending*, Migrants Rights Network report, January 2010

⁹ *Health Care*, PICUM Newsletter, May 2010, p. 6, available at http://picum.org/uploads/archives/nl_en_01-05-2010_0.pdf

¹⁰ *Migrants' babies in legal limbo after rescue*, Times of Malta, 10 August 2012, available at <http://www.timesofmalta.com/articles/view/20120810/local/migrant-s-baby-in-legal-limbo-after-rescue.432321>

¹¹ *Access to health care of undocumented migrants in Europe*, PICUM report, 2007

¹² *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM report, 2008, p. 63

¹³ *Mayotte, bébé mort en rétention : la mère accuse l'Etat d'avoir voulu étouffer le drame*, Migrants Outre Mer, August 23 2012, available at <http://www.migrantsoutremer.org/Mayotte-apres-la-mort-d-un-bebe-le>

*workers are abandoned in Moscow maternity hospitals*¹⁴. This phenomenon is often linked to human trafficking, sexual exploitation and poverty.

Some women are forced to leave their child by their exploiter, who wants them to keep on working as sexual slaves or prostitutes.

Others leave their child in order to find a job, thinking they will be able to take their baby back once their economic situation improves. Depending on the national legislation in the country, mothers may lose their parental right on their child.

B. Coping mechanism

- *Creation of special accommodation centres for women with babies.*
- *Reorganization of maternal care*
- *Creation of centres to prevent abandonment of babies:* In Russia, a temporary shelter was founded in 2009. Women who recently delivered are accommodated and the social workers try to “*persuade Tajik and Uzbek women not to abandon their babies*¹⁵”. In Italia, a service called “*cradle for life*” was inaugurated in 2007 to assure protection of abandoned newborns¹⁶. This system enables mothers to leave anonymously their babies in a safety clinic, in order to prevent newborns to be unsafely abandoned. The UN Committee on the Rights of the Child criticized this new system, arguing that it violates art. 7 of the CRC.

C. Existing legal framework

- Article 12, paragraph 2, of the *Convention on the Elimination of All Forms of Discrimination against Women* and the Committee's general recommendation No. 26 (2008) on women migrant workers require States parties to **ensure to women appropriate services** in connection with pregnancy, confinement and the **post-natal period**.
- The UNHCR Revised Guidelines on *Applicable Criteria and Standards relating to the Detention of Asylum-Seekers* (hereinafter, the UNHCR guidelines) affirm that as a general rule, **the detention of nursing mothers should be avoided**.
- *The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules), provide that the health screening of women prisoners shall determine, inter alia, the reproductive health history of the woman, including current or recent pregnancies, **childbirth and any related reproductive health issues**
- The detention of children violates the *Convention on the Rights of the Child* as it undermines the principle of the best interests of the child, the right of the child to be detained only as a measure of last resort and their right not be punished for the acts of their parents (art. 2, para. 2).

¹⁴ *Mothers tempted to abandon their babies*, BBC News, 18 July 2010

¹⁵ Op cit.

¹⁶ *Newborn baby abandoned, anonymity is assured*, Pratiche Sociali, July 30 2012, available at <http://www.pratichesociali.org/?p=1186>

