



GUIDE TO THE EU VICTIMS' DIRECTIVE: ADVANCING ACCESS TO PROTECTION, SERVICES AND JUSTICE FOR UNDOCUMENTED MIGRANTS

NOVEMBER 2015



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

The Platform for International Cooperation on Undocumented Migrants (PICUM) is an international non-governmental organisation (NGO) that represents a network of 140 organisations working with undocumented migrants in 33 countries, primarily in Europe as well as in other world regions. With nearly 15 years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition and realisation of their human rights, providing an essential link between local realities and the debates at policy level. PICUM provides regular recommendations and expertise to policy makers and institutions of the United Nations, the Council of Europe and European Union, and has been awarded participatory/consultative status with both the United Nations and Council of Europe.

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FOREWORD

Every year around the European Union more than 70 million people are affected by crime – whether as direct victims or family and friends of victims. Those people come from all walks of life, all backgrounds, and they may or may not be recognised as citizens of the State they are victimised in.

Yet their suffering does not differ according to their residence status or country of origin. Victims do not suffer less because they are not citizens of the EU. Nor is their need for care and support, protection, access to justice and respectful and dignified treatment any less. Often, in fact, their needs are greater.

People living in an irregular situation are at a higher risk of victimisation. Their vulnerability often stems from their situation as undocumented migrants with uncertain status, and from practices and policies that deny their access to basic services and protection, in favour of immigration enforcement. Yet it also arises from being in a foreign country without their usual support networks and from a lack of knowledge of the government and administrative systems they are faced with.

In 2011, the European Union recognised that all victims need and are entitled to protection irrespective of their residence status. From November 2015, member states of the European Union (with the exception of Denmark) must ensure that the rights established in EU law are available to all victims and accessible in practice. Moreover, States must ensure the rights of victims in a flexible and individualised way which takes into account the specific needs of different victims.

Yet, as PICUM reports, access to these rights is particularly difficult for victims who happen to be undocumented

migrants. These groups face specific institutional and practical barriers which must be overcome if the EU Victims' Directive is to be fully and properly implemented, if it is to realise its aim of equal access and protection, to make a difference to the lives of undocumented migrants who suffer all manner of crimes every year, and to address impunity of perpetrators who exploit their vulnerability.

As PICUM shows, there are examples across the world where states and civil society have acted to remove barriers to support, justice and protection for these victims. Actions need not be costly or complex but solutions must to be explored in a consistent and comprehensive manner.

At a time when many hundreds of thousands of undocumented migrants reside within the EU already and others are making the difficult journey here, often from terrible situations of conflict, poverty and victimisation, our focus and the focus of politicians might be turned only to the resolution of the immediate crisis.

This is essential but we must not ignore, or leave to some distant future, their ongoing needs and fundamental rights, which includes their rights as victims. We must as individuals, civil society organisations, government authorities and as member states, act decisively to ensure that undocumented migrants are properly protected and can gain access to support where they have been victimised, that they can trust authorities and come forward to report crimes and that they are assisted through any proceedings – rather than being further victimised. PICUM's work, we believe, will help in supporting this joint endeavour.

Levent Altan

Executive Director, Victim Support Europe

I. WHY THIS GUIDE?

1. The Issue: Undocumented Migrants Who Are Victims of Crime Face Significant Challenges in Accessing Justice, Protection and Services

According to the European Commission, 30 million crimes are reported each year to the police in the EU.¹ More telling is what this number leaves out: the many crimes that go unreported. When crimes go systematically unreported, there can be no justice for victims, and perpetrators can continue to inflict harm with impunity. Such repeat victimisation and impunity for perpetrators characterises the experiences of men, women and children living in Europe in an irregular situation. The very language often used to refer to undocumented migrants – “illegal” – wrongly implies that they are not entitled to legal protection.

A number of institutional factors lead to the systematic underreporting of crime by undocumented migrants. These include immigration detection practices that put them at risk of arrest and deportation when seeking protection and justice, and fear among organisations working with crime victims that assisting them would be unlawful or criminal.² Immigrants whose residence status is tied to an employer or to a spouse may also be reluctant to report their victimisation because of the relationship of dependency – economic, emotional, administrative – with their persecutor. Going to the authorities for help in many cases does not yield greater protection or result in a proper investigation, and could lead to the loss of their immigration status or to deportation.

In 2013, civil society organisations in Greece reported that people without legal residence permits were known to be automatically detained upon their arrival at the police station, and issued with detention and deportation orders.

European Network Against Racism³

A confluence of factors also puts undocumented migrants at greater risk of victimisation, including social exclusion and economic disadvantage. This is in addition to attitudes, laws and policies that view migrants solely through the prism of their residence status, which give low priority to, and sometimes undermine, their safety and protection.

Undocumented migrants are often the targets of violence or discrimination based on racial and ethnic bias.⁴ Difficulties they face in accessing justice and support across the EU exacerbate their exploitation at work, at home, and on the streets. The people who exploit undocumented victims of crime know the barriers that exist and use them to deepen their exploitation.

“It is well known that most victims of hate crimes are reluctant to report, due to a variety of reasons. And if EU citizens feel apprehensive about going to the police to report hate crimes, one can only surmise what undocumented migrants must feel, knowing they are probably more likely to be deported than see justice.”

Pro Igual, Spain⁵

A host of practical obstacles also impede undocumented migrants’ access to protection and legal remedy through the justice system, including language barriers, poverty, social isolation, ignorance of their rights, and the absence of legal representation. What is more, their overrepresentation in the low-wage, informal economy presents challenges in a system that often requires documenting violations.

A NOTE ABOUT LANGUAGE

“Undocumented”, Not “Illegal”

In this report, the terms “undocumented” and “irregular” are used to refer to migrants in the EU who do not have a valid permit to enter, remain or work in the country in which they reside, as well as to those who are at risk of falling into irregularity for reasons such as domestic violence, workplace exploitation, job loss, administrative delays, expired documents or because they have been born “undocumented” in the EU by virtue of being born to undocumented parents.

Indeed, while reliable and systematic data collection mechanisms on irregular migration have yet to be established in the EU, and data on undocumented migrants is therefore very limited, estimates indicate that the large majority of undocumented migrants enter the EU through regular channels – with a permit to study or work, to seek family reunification or to seek asylum – and later lose that status.⁶

PICUM does not use the term “illegal” to refer to an individual migrant or to any form of migration, because the term “illegal:

- › Implies criminality. A person can never be “illegal” and migration is not a crime.
- › Is discriminatory. “Illegality” as a status is only applied to migrants and is used to deny them their rights.
- › Has a real impact on policy and public perception. Inaccurate language leads society to accept that people labelled in this way should be prosecuted and punished.

Following the United Nations, the EU institutions and agencies (including the European Fundamental Rights Agency, Parliament, and the Commission) have taken positive steps espousing the use of the term “irregular migrants” in all official communications.⁷



The Use of the Term “Victim”

The EU Victims' Directive is about victims of crime, so the term “victim” by necessity will be used repeatedly in this guide. The unfortunate result may be an association in some readers' minds between victimhood and one's status as undocumented.

Undocumented migrants show significant resourcefulness, resilience and courage in leaving their countries of origin and coming to Europe. It is their relative social and economic precarity or

marginalisation that makes them susceptible to certain forms of discrimination and ill-treatment. The aim of this guide is not to feed into a narrative of powerlessness, but instead to frame the Victims' Directive as an opportunity for action and empowerment, by calling attention to the circumstances of undocumented migrants as well as their status as rights-holders and important social actors.

2. The Opportunity: The Victims' Directive Is a Tool to Address Impunity for Crimes against Undocumented Migrants and to Advance their Access to Protection, Services and Justice

“This directive is about minimum rights for victims, so Member States can, of course, go a step further if they wish. But those Member States who have no such provisions must guarantee the human beings of Europe – and by human beings of Europe I mean not only the citizens of Europe, but also all people, regardless of their residence status, who happen to be in Europe – a minimum basis to address the very specific needs they have as victims.”

Viviane Reding, Former Vice-President of the European Commission⁸

The *EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)*,⁹ or more simply the EU Victims' Directive, was adopted on 25 October 2012 and represents a landmark piece of legislation. By obliging member states to ensure certain basic rights to *all* victims of crime, the Directive prioritises individuals' dignity and safety above their administrative status. It therefore holds the potential to become one of the most significant legislative tools at the EU level to ensure their access to protection and support, and to address impunity for crimes against undocumented migrants.

Non-discrimination is at the core of the Directive, which requires that all victims of crime be treated with respect, be offered support services, have access to protection, and be given the opportunity to participate in the criminal

proceeding linked to their case. National criminal justice systems differ, so victims' involvement in the process will also differ. But the opportunity to participate, to the extent permitted by law, must be made effective for all victims. The Directive includes several provisions specifically addressing victims of gender-based violence, and underscores the importance of taking into account the best interests of child victims.

The Directive also tackles a number of practical barriers to access that are relevant to undocumented victims of crime and requires that officials in regular contact with victims receive appropriate training on how to adequately address their needs.

The Victims' Directive represents a vital opportunity for the migrants' rights movement to join the dialogue on victims' rights, underline the need to address impunity for crimes against migrant communities, and highlight the role of immigration control in curtailing access to rights and justice. It is an important opportunity to raise awareness, to foster understanding and build alliances with those committed to justice, human rights, and the rule of law, be it in the domains of gender equality, victim support, child rights, workers' rights, or others.

SPOTLIGHT

Legislation at the Council of Europe Level Affords Protection to Undocumented Victims of Gender-Based Violence

The EU Victims' Directive creates minimum standards on the rights and protections of *all* victims of crimes, irrespective of their residence status. The Council of Europe *Convention on preventing and combating violence against women and domestic violence* (or, the Istanbul Convention),¹⁰ which entered into force on 1 August 2014, is another European-level instrument that addresses the rights of victims – in particular, women who are victims of violence. The Istanbul Convention is a treaty, and treaties, once ratified, are enforceable. This is relevant in the case of Denmark, which opted out of the Victims' Directive and is therefore the only EU member to which the Directive does not apply, but which has chosen to ratify the Istanbul Convention.

The Istanbul Convention is the first legally binding instrument providing a comprehensive legal framework to prevent violence against women, to protect victims and to end the impunity of perpetrators. The Convention applies to all women regardless of migration status (Article 4) and takes into account the situation of women on spouse-dependent visas by requiring parties to make available independent residence permits to victims (Article 59). The explanatory report makes specific reference to women in an irregular situation and to the increased risk of violence they face, as well as to the difficulties and structural barriers they confront in overcoming such violence. The report also specifically calls on states to provide safe accommodation in specialized women's shelters.¹¹ In May 2015, an international group of independent experts, the GREVIO Committee, was established to monitor the Convention's implementation at the national level.

II. WHAT IS THE EU VICTIMS' DIRECTIVE?

1. The Substance: What Changes under the Directive?

The Directive is Legally Binding and Expressly Applies to All Victims of Crime, Irrespective of their Residence Status

The Victims' Directive replaces the *Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings* and, in many respects, represents a significant step forward for victims' rights in Europe. Unlike the Framework Decision, the Victims' Directive is a legally binding and enforceable instrument. In addition, the Directive *explicitly* applies to *all victims of crime*, including undocumented migrants. The Directive sets a common floor for EU member states: national governments are free to go further than the provisions of the Directive in supporting victims' rights and protections.

The official guidance note that accompanies the Directive emphasises member states' obligation to ensure that the "rights set out in this Directive are not made conditional on the victim having legal residence status on their territory or on the victim's citizenship or nationality," highlighting the particular importance of equal application of these rights in the context of racist and xenophobic hate crime, and acts of gender-based violence committed against undocumented migrants.¹²

The Directive recognises that victims who are not nationals of the country where they were victimised are "particularly vulnerable" or at "particularly high risk of harm" and might therefore need specialist support and legal protection, which "could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination in the case of rape or sexual assault, short- and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims" (Recital 38).

The Directive Addresses Systemic and Practical Barriers to Access

The Victims' Directive addresses a number of systemic and practical barriers that limit access to justice that are of relevance to undocumented victims of crime. For instance, the Directive tackles language barriers by requiring that all victims be informed of their rights and of their case in a way they understand, that interpretation be provided during criminal proceedings, and that translations of essential documents be made available upon request. Recognising the information gap that often limits victims' access to assistance and support, the Directive puts the

Key Provisions of the EU Victims' Directive

All victims of crime are entitled to respect, dignity, basic rights and services, irrespective of their residence status:

- › The rights of the Directive apply without discrimination to *all* victims of crime, irrespective of their residence status (Article 1)
- › All victims of crime are entitled to be treated with respect, sensitivity and dignity by authorities (Article 1 and Recital 9)
- › Training must be provided for officials, including (but not limited to) police officers and court staff, to deal with victims in a sensitive and appropriate manner (Article 25 and Recital 61)

Undocumented victims have the right to be informed of their rights and their case in a way they understand and to participate in the criminal proceedings:

- › Victims have the right to be informed of their rights and their case in a way they understand, and to make a complaint in a language they understand or else with assistance (Articles 3, 4, 5, 6 & 7, and Recitals 26 & 34)
- › Victims have the right to be duly informed of their case, its status and any final judgment (Article 6)
- › Victims have the right to free interpretation according to their role in the criminal proceeding, and to translations of information essential to the exercise of their rights in criminal proceedings be available, upon request (Article 7)
- › Victims have the right to participate in criminal proceedings to the extent permitted by national law (Articles 10, 13 & 14, and Recitals 34 & 47)

Undocumented victims have the right to be informed of and to access free, confidential support services and protection measures, whether or not they reported the crime:

- › Victims have the right to be informed promptly of available support services (Article 4, Recital 21)
- › Victims are entitled to individual needs assessments and to specific protection measures for the most vulnerable (Articles 22-24, and Recitals 55-58)
- › Victims have the right to access tailored, free and confidential support services before during and after criminal proceedings (Articles 8 & 9, and Recital 37)
- › Victims are entitled to support services whether or not a formal complaint has been filed (Article 8)
- › Victims have the right to protection from secondary or repeat victimization, such as interim injunctions and restraining orders (Article 18, 19, 20 & 21 and Recitals 52-54)

onus on authorities to ensure that victims are properly and promptly informed of their right to services, and alerted of specific available services they may need, including legal aid, medical support and shelter.

The Directive Provides for Equal Rights for All Victims to Support Services

Significantly, the Directive codifies a stronger obligation to provide victims with access to free and confidential support services, including emotional and psychological support,

advice on financial and practical issues arising from the crime and on the risk and prevention of repeat victimisation. It should be underlined that this right to support services attaches to *all* victims of crimes, *whether or not they have reported the crime to the police*. This is important given the high level of unreporting among undocumented migrants. While the goal in the longer term is to address systemic factors deterring those who would otherwise go to the authorities for help, the Directive provides a right to victims support even for those do not reach out to the justice system.

2. The Scope: Who Is Covered by the Directive? What Kinds of Crimes Are Included? Where Must the Crimes Have Occurred?

The rights and protections of the Victims' Directive apply to all victims of crimes committed in the European Union, no matter the victim's residence status (Article 1), and to criminal proceedings taking place in any member state within the Union (Recital 13), with the exception of Denmark, to which the Directive does not apply (Recital 71). This includes crimes that occur at the border or in detention, as well as criminal proceedings in the EU for crimes that occurred outside of EU territory (also known as extra-territorial offences), where national law provides for this.

The Directive's definition of "victim" is expansive (Article 2): it includes anyone who has suffered physical, *mental or emotional or economic* harm caused by a criminal offence. The definition of "victim" also includes the family members of someone whose death was caused by a criminal offence. Many of the rights and protections of the Directive do not depend on the victim reporting the crime to the police, or on his or her participation in the criminal proceedings or cooperating with any criminal investigation. In particular, the right to support services extends to all victims of crime, as

well as to family members, even where homicide is not the crime (Article 8). And the Directive makes clear that one's status as a victim does not depend on whether a perpetrator is identified, apprehended, prosecuted or convicted (Recital 19). That being said, for crimes that are reported, national laws will vary in the rights they attribute to victims in the context of criminal proceedings (see, e.g., Recital 20; Article 11).

The Directive only applies to offences that rise to the level of crime. What constitutes a crime is generally a matter of national law. The EU Victims' Directive ensures that all victims of crimes, however, can expect to be treated with respect (Article 1) and have access to the same baseline of rights and services.

Crimes can occur in virtually any setting. The Victims' Directive is, therefore, a cross-cutting tool for addressing migrants' victimisation, whether it occurs on the street, at school, at home, or in their place of work – and whether it is at the hand of an intimate partner, an employer, a stranger or an official.

Gender-Based Violence

The Directive underscores the particular needs of victims of gender-based violence – which it recognises as a form of discrimination – and notes that women who are victims of such violence and their children often need special support and protection “because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence” (Recital 17). Under Article 9, specialist services that member states must provide include shelters or other safe accommodation to prevent retaliation, intimidation or repeat victimisation; and integrated support for victims of sexual violence, gender-based violence, or violence in close relationships, including trauma support and counselling.

The majority of undocumented women arrive in Europe with regular, but often highly dependent, migration status and become undocumented for reasons outside their control.¹³ Lack of an independent residence status presents a significant challenge to these women, and increases the likelihood that they will face violence or exploitation by intimate partners or employers.

Abusive partners often intentionally misinform women who depend on them for their status, and threaten them with deportation or losing custody of their children or tell them they will be entitled to no state help for housing or subsistence. This leads women to be fearful of any state intervention, and also means that when state agencies do intervene they must be aware and well informed themselves to gain their confidence, and undo the myths the abusive partner may have perpetuated.

SPOTLIGHT

Telling the Stories of Undocumented Survivors of Violence in the United States

Two short films, “Don’t tell anyone (*No le digas a nadie*)” and “Rape on the Night Shift” document the abuse faced by undocumented women and girls, and their reluctance to report these crimes, even in a country whose laws provides an avenue for regularization for victims of violence.¹⁴ In “Don’t tell anyone (*No le digas a nadie*),” Angy, a young undocumented woman who was sexually abused for four years by her mother’s former partner, explains her fear of reporting the crime because of the risk of being deported, on the one hand, and the difficulty, on the other, of knowing that, should she report it, her “path to citizenship” would be tied to that very abuse.¹⁵ Angy is now an advocate for young undocumented immigrants, and provides advice through an online publication responding to legal questions posed by young undocumented migrants.¹⁶

The film “Rape on the Night Shift” profiles twenty-one undocumented women who work as cleaners of hotels, malls and other shopping outlets who were sexually harassed or raped while working the night shift. Working the night shift allowed some of these women to tend to family or to work a second job during the day – but also exposed them to attacks from security guards, co-workers, managers or building supervisors. Many survivors did not report the crimes committed against them because of fear of losing their job or that they wouldn’t be believed.¹⁷

Undocumented women are often the victims of acts of physical and sexual violence, which are criminalised in all member states,¹⁸ as well as other forms of abuse that may be less visible. For instance, in Italy undocumented women who are falsely accused by their employer of having committed workplace theft are arguably victims of the crime of slander (*calunia*), under Article 368 of the Italian Penal Code. Article 570 criminalises the failure to meet obligations of family assistance, and may well be violated in those cases when parents or spouses deprive an undocumented woman of the basic means of subsistence or, in the case of divorce, fail to provide maintenance or child support. Article 572 criminalises maltreatment by family member or cohabitants; Article 582 makes it a crime to deprive another a personal freedom; and Article 583 *bis* criminalises the mutilation of female sexual organs. These provisions of the Italian Penal Code shed light on the ways in which the treatment of undocumented women – no less than of women, generally – is captured by national criminal law.

Children

Another category of victims given particular attention in the Victims' Directive is children. Under the Directive, the best interests of the child must be “a primary consideration,” consistent with the United Nations Convention on the Rights of the Child, not only when the child is the victim of a crime (Article 1), but also when he or she is affected by a crime (committed, for instance, against a parent or sibling - Recitals 14 and 38). Child victims, alongside victims of gender-based violence, are listed as those likely needing specialized support and protection because of repeat victimization.

The barriers to protection and justice facing undocumented migrants equally affect all children in an irregular migration situation – that is, undocumented children, as well as those whose status is regular but who have a parent who is undocumented. Undocumented children are often unable

to obtain protection and justice because of restricted access to services and the risk of facing detention and possible deportation as a result of seeking help. Children in an irregular migration situation face the additional risk of being separated from their parent as a result of reporting a crime to the authorities. Even in countries where child welfare and protection services are available to all children, regardless of their residence status, undocumented parents may still be reported to the immigration authorities, and therefore still face the risk of deportation.

“We received a call from the PMS Centre (Centre psycho-medico-social) about a girl who was highly disturbed at school. Her mother was an undocumented woman from Brazil who was living with a Belgian man, and that man was abusing her daughter. When the mother found out, she wanted to file a complaint to the police but the man threatened her and told her that if she denounced him, she would be deported. The PMS Centre contacted the Youth Service of the police and explained the situation and asked if there would be any consequence with the Foreigners' Office because of the mother's residence status. We can't always ensure that police won't denounce the undocumented woman to the authorities.”

Infor-Etrangers, Belgium¹⁹

Where the perpetrator – for instance, a parent's partner, a landlord or employer – controls a child's housing situation, and assistance is needed to secure other accommodation to exit a violent situation, such assistance is rarely provided in a way that allows the child to continue to live with her undocumented parent because undocumented parents are considered ineligible for this support, and the child on her own does not qualify as an independent recipient.

The result is that children can be placed in alternative care situations and separated from their parent(s) when it is not in their best interests.

SPOTLIGHT

EU and National Level Efforts to Improve Information about Violence against Children and Coordination of Child Protection Services

In 2015, the European Commission published guidelines on integrated child protection services,²⁰ aimed at promoting the best interest of the child in all contexts, addressing disparities in the level and quality of responses among member states, and improving transnational and cross-border cooperation and coordination in service provision. The guidelines include ten principles based on a child-rights approach underscoring the best interests of the child, non-discrimination, child participation, and the right to life. They accompany a Reflection Note prepared as a background for the 2015 European Forum on the Rights of the Child that recognises undocumented children as among those facing an increased risk of violence – which includes physical and mental harm – because of their circumstances.²¹ The Commission also co-funded a project, concluded in August 2015, to harmonise data collection at the national level to better determine the incidence of child abuse and neglect and to permit comparisons between and within countries. The system promotes the use of methods that ensure data remains anonymous, and that keep this information in the hands of those who have an ethical duty to protect its confidentiality. Toolkits, training modules and guidelines are available on the project's website. www.can-via-mds.eu

At the national level, local initiatives called Multi-Agency Safeguarding Hubs (MASHs) have arisen in a substantial number of local authority areas in England and Wales to facilitate information-sharing and coordination across agencies, with the ultimate goal of improving the timeliness and quality of their response to children in need.²² Under this model, which is not provided for under UK law but is actively promoted by the UK Government,²³ a variety of local authorities and service providers – social workers, police officers, health care, education, probation officer and other professionals who work with young offenders – work under the same roof and pool information about at-risk children. Referrals are triaged, with urgent cases dealt with promptly. Police have had a central role in developing the MASH model, and generally take a victim-centred approach; indeed, in a MASH, the emphasis among all actors is on child protection. The opportunity for professionals to share information and intelligence as well as skills in a MASH increases the likelihood of undocumented children having their protection concerns investigated meaningfully. Immigration authorities are not partners and will not systematically be informed about a child or parent's status. However, undocumented children's limited access to social support services, and the lack of any guarantee that their immigration status will not lead to enforcement measures and possible deportation, or separation from an undocumented parent, curtail their ability to fully benefit from this system.

Housing

Crimes can also occur against undocumented migrants in connection with their living arrangements. Because they are typically excluded from state-subsidised housing, undocumented migrants find themselves on the margins of the private housing sector, where they face often overcrowded and substandard conditions, disproportionately high rents and greater risk of exploitation, including threats and physical abuse by unscrupulous landlords.

In addition, laws penalising the renting of private accommodation to undocumented migrants result in further marginalisation. For instance, Dutch law contains a provision obliging those who shelter irregular migrants to inform the authorities,²⁴ and all but five member states have laws imposing penalties on landlords who rent to undocumented migrants.²⁵ On 14 May 2014, the United Kingdom passed a law disqualifying undocumented migrants from renting accommodation, and imposing fines on landlords who knowingly rent to them.²⁶ The use of private rented accommodation to detect undocumented migrants increases the administrative burden on landlords and fuels discrimination against foreign-looking tenants. In most countries housing-related infractions are administrative offences for which there may be recourse to housing authorities or tribunals, but in some cases abuses may rise to the level of crimes. Undocumented migrants are, however, less likely to report complaints to housing authorities or, for the worst abuses, to the police because of possible retribution by their landlord and repercussions arising from their irregular status.

Racist or Xenophobic Violence

Undocumented migrants are often the victims of crimes motivated by racism, xenophobia or related intolerance.²⁷

Anti-migrant sentiment and lack of accountability for racist violence can fuel attacks on migrants. Tensions stemming from social and cultural differences can be aggravated in periods of economic hardship – and by political rhetoric that demonises migrants and feeds fears of their encroachment on local values and social benefits.²⁸

Violent Attacks on Migrants Reported in Greece

In September 2015, Amnesty International reported violent attacks on migrants in Greece by a large group of individual wielding bats and shouting slurs and “Go back to your countries!” Police did not intervene until after the attacks.²⁹

Employment

Undocumented residents also confront criminal violations in the workplace. Often working in low-wage and precarious sectors where violations of labour laws are more likely to occur, their residence status, isolation and fears about immigration control can increase their exposure to abuse by employers and supervisors.³⁰ Few undocumented victims lodge complaints against an employer because they could lose their job, and risk being arrested or deported. Denouncing an employer is also difficult because of the need to furnish proof, since the informal economy rarely provides documentation. The lack of controls and inspections in private homes, and the remote nature of many agricultural and food production sites mean that there is little state intervention or inspection of some of the sectors in which undocumented migrants are often employed.³¹

Under EU law, member states (with the exceptions of Denmark, the United Kingdom and Ireland)³² are required to implement national laws criminalising severe labour

exploitation.³³ In particular, according to the Employer Sanctions Directive, member states are obliged to ensure that employers may be held liable for employing third-country nationals in an irregular situation under particularly exploitative working conditions. In spite of these obligations, there is compelling evidence that access to justice is largely a fiction for exploited migrant workers in the EU.³⁴

One problem is that, while there is general familiarity with crimes on the extreme end of severe exploitation (such as trafficking, forced labour and slavery) that involve coercion, there is less understanding of – and thus attention given to – the much more common forms of exploitation that occur among poor and marginalised workers who labour under conditions of exploitation not because they are coerced, but because their circumstances give them no other choice.³⁵ Under the Employer Sanctions Directive, the criterion for criminal conduct is “particularly exploitative working conditions”, defined as working conditions “where there is a striking disproportion compared to the terms of employment of legally employed workers, which, for example, affects workers’ health and safety, and which offends against human dignity.” Such conditions are criminalised in most EU member states to protect the right of workers to decent working conditions.³⁶

Detention

“It is in the nature of immigration detention to create risks of this sort of abuse. It is in the nature of incarcerating people outside the safeguards of the legal justice system to put people in this highly exposed and vulnerable situation and this creates the risk of abuse. Additionally, in the UK, many of the services running detention centres and escorting detained migrants are contracted by private security companies, which complicates the oversight.”

Jerome Phelps, Director of Detention Action³⁷

Undocumented migrants are also victims of crimes committed against them while in detention facilities. In these conditions of extreme social segregation, access to a legal representative may be the only link to the outside world, and provide the only safe opportunity to report complaints of abuse or sexual assault inside detention facilities. Migrants who do not have legal representation face significant hurdles in advocating effectively for their own rights and safety while in custody. Detained migrants who have no financial means rely on legal advice provided by a small number of NGOs. But not all countries in Europe allow civil society access to detention centres.³⁸ Even when cases of abuse have been exposed, there is a lack of accountability and prosecution.³⁹

3. The Process: Monitoring the Implementation of the Directive at National Level – Holding Member States Accountable for their Obligations under the Directive

Ensuring that the Directive Is Adequately Reflected In National Law

Unlike some EU instruments (such as regulations), the Directive is not self-executing. This means that, to be effective at the national level, EU member states have to take steps to implement the Directive in a process called transposition, which can require making changes to existing law or passing new laws. Member states were given until 16 November 2015 to transpose the Directive into national law.

SPOTLIGHT

Tool to Monitor Transposition

PICUM developed a tool⁴⁰ to monitor the transposition process of the Victims' Directive across EU member states, which allows organisations to map national law implementing the Directive against the key provisions of the Directive related to undocumented migrants' rights.

In member states that have not taken steps to transpose the Directive into national law, civil society should continue to work for the passage of measures ensuring that the benefits of the Directive accrue to all victims of crime, irrespective of their residence status. In member states that have transposed the Directive, civil society can play a vital role in calling attention to the inadequacy of any

measures adopted in assuring the rights and protections guaranteed in the Directive, in pushing for additional measures where they are needed to achieve equal access or for amendments to existing measures that conflict with those guarantees, and, as we will see later, in documenting any gaps between the law and the situation on the ground.

Ensuring that the Directive's Provisions Are Effective, in Practice

The Victims' Directive requires effective implementation, which means it not only has to be properly transposed: everyone covered by the Directive *in principle* must also be able to benefit from its protections equally *in practice*. Because, as we have seen, undocumented migrants tend to be disadvantaged in their capacity to access protection, justice and services, the state is obliged to close this inequality gap through additional practical measures.

It is not enough for the state to claim that the law doesn't discriminate against undocumented victims on its face; EU member states must address discrimination at both individual and structural levels and take proactive measures to ensure equality and non-discrimination in reality.

Where violations of undocumented victims' rights occur, there is recourse to legal remedy at the national and EU levels. At the national level, violation by officials of the Directive's provisions or member states' failure to properly transpose the Directive can be challenged in national courts.⁴¹

SPOTLIGHT

Victims' Rights Alliance

The Victims' Rights Alliance (VRA) is a coalition of fourteen victim support and human rights organizations in Ireland⁴² formed to ensure that the Victims' Directive was implemented correctly and in a timely manner, "with all victims of crime in mind."⁴³

In 2013, the VRA set out to assess the adequacy and availability of victim support services by gathering the experiences of victims, as a way of giving concrete guidance to legislators in Ireland on the transposition of the Victim's Directive "from a victims and human rights perspective." Several VRA member organizations circulated a questionnaire to victims of crimes (which, consistent with the Directive, includes family members of someone who died because of a crime), and 117 victims responded: 63 of these were homicide victims, 18 were victims of rape or sexual assault, and 36 were victims of road traffic collisions.⁴⁴ The results of this research highlighted gaps in the provision of information, support and protection to victims of crime, and to widespread perceptions among victims of intimidation and re-victimisation by assailants or their families, the media, and the criminal justice system itself.⁴⁵

Recognising that the Directive is silent on how information should be provided to victims, the VRA provides in its report a detailed chart setting out information currently provided to victims, information that should be provided to victims, and the manner in which it should be provided at each stage of the criminal process, and indicating which competent authority should be providing that information in the Irish context. More generally, the VRA has provided a forum for connecting various stakeholders, including domestic and European government, with victim support advocates. In May 2015, Frances Fitzgerald, Ireland's Minister for Justice and Equality, invited the VRA to a roundtable to present its views on the draft law to implement the Victims' Directive. On 15 July 2015, the Criminal Justice (Victims of Crime) Bill 2015 was published by Ireland to implement the Victims Directive, incorporating VRA input – but failed to include specific provisions stating that the bill's provisions would apply regardless of residence status. The Immigrant Council of Ireland, a VRA member, followed up by contacting legal experts to obtain a "legal gaps analysis" establishing which legal and policy changes are necessary to ensure that migrant victims of crime are adequately protected in Ireland, consistent with the Directive, to provide an evidence-base for ongoing advocacy.

Data Collection and Monitoring

Data collection is addressed in Article 28 of the Directive, which requires member states, by 16 November 2017 (two years after the deadline for transposition) and every three years thereafter, to provide the Commission with data showing how victims have accessed the rights set out in the Directive.

Recital 64 specifies what type of statistical data should be provided, including at least the number and type of crimes reported and, if known and available, the number of victims, and their age and gender. Significantly, such statistical data can come from health and social services, victim support

organisations, restorative justice services and other organisations working with victims. Member states are also encouraged to focus on the prevalence of particular forms of crimes, such as gender-based violence, and on how these victims are assisted and protected.⁴⁶

Migrants' rights organisations can be instrumental in this process, as well as in gathering data about undocumented victims they encounter who *do not* come into contact with the justice system, and whether their rights to protection and services are respected.

At the EU-level, the European Commission closely monitors the transposition process to ensure that it is timely and correctly implements EU law to obtain the intended results. The Commission publishes an annual report summarizing how EU law has been transposed, including data on the number and type of infringements by country and sector and can also institute infringement proceedings against any member state not complying with the standards of the Directive.⁴⁷ Infringement proceedings can also be triggered by the submission of a complaint by any person or entity residing in a member state indicating a violation of EU law by

national authorities. The Commission assesses the merits of the complaint and, if it decides it is well founded, initiates infringement proceedings against the member state, and may later bring the case before the European Court of Justice.⁴⁸ If the Commission is successful, the member state has to take all actions to remedy the violations.⁴⁹ By carefully documenting breaches of the Directive and keeping copies of official documents, frontline actors can provide the Commission with the proof it needs to take action.

III. HOW TO ENSURE THAT THE RIGHTS AND PROTECTIONS OF THE DIRECTIVE APPLY EQUALLY TO UNDOCUMENTED VICTIMS OF CRIME, IN PRACTICE

The Victims' Directive requires effective implementation. This means that equality for undocumented migrants under the law is not enough: member states are required to take action to address structural discrimination in a way that guarantees the rights and protections of the Directive to all victims, in practice. This section provides practical guidance on how this can be achieved.

1. Ensuring that Irregular Migrants Can Access Protection, Justice and Legal Remedy without Risk of Deportation

Safe Reporting

The rights and protections provided for in the Directive are empty if undocumented victims of crime do not dare to avail themselves of them for fear of deportation. Essential to ensuring access to justice, then, is ensuring safe reporting.

Ensuring safe reporting means prioritising the safety and rights of victims above the enforcement of immigration rules.

Law enforcement can be allies in advancing the interests of undocumented victims of crime from the ground up. There is growing recognition of the vulnerability of migrant populations to crime as well as the obstacles they face in the criminal justice system,⁵⁰ which can compromise the

effectiveness of law enforcement. Cultural differences and language barriers can also lead to misunderstanding and suspicion on both sides. Civil society organisations can act as bridges between the police and communities, helping to create relationships of trust and mutual understanding. This can in turn provide the foundation for a more collaborative approach that opens the way to safer reporting.

National or local laws and policies that criminalise people solely on the basis of their residence status undermine this principle, and create confusion and uncertainty for police officers, who may be unsure of what to do in the face of apparently conflicting duties.

The European Fundamental Rights Agency has provided guidance to member states on specific steps they can take to ensure that immigration enforcement doesn't undermine undocumented migrants' fundamental rights, including the right to access justice – for instance, by making it possible

for reporting to occur anonymously or semi-autonomously and for undocumented migrants to reach out to the police through intermediaries such as a specially designated official or organisations providing legal or humanitarian support.⁵¹

SPOTLIGHT

Local Authorities Promote Safe Reporting

In **Amsterdam**, the police created a policy of their own initiative called “*Veilige Aangifte*” (Safe Return) according to which they informed undocumented migrants of their rights and enabled them to report crimes in secure ways. The unit visited migrant support centre Wereldhuis every third Wednesday of the month to meet with a group of undocumented migrants and answer questions on key topics such as lodging a complaint, getting a protection order, and taking a case to court.

The Amsterdam police's policy will be rolled out across the country in 2016, and was formally espoused in the official explanatory note accompanying amendments to the criminal law adopted by **the Netherlands**. The explanatory note underlines that, in the Netherlands, victims' rights apply to all victims, regardless of their residence status. Undocumented migrants therefore have the right to file a complaint and participate in criminal proceedings, as well as to access support services, including Victim Support Netherlands, the Centres for Sexual Violence, and medical assistance. This is a positive development, although it is unfortunate that safe reporting and assurances about access to justice for undocumented migrants appear only in the explanatory note and not in the law itself.

In the United States, a large number of localities have taken steps,⁵² either formally or informally, to limit the assistance they give to federal immigration authorities seeking to detain and deport irregular migrants.⁵³ One notable example is the City of **San Francisco**, which declared itself a “City and County of Refuge” in 1985. The City's mayor, responding at the time to increased immigration from Central America, signed a resolution declaring that no city department would “discriminate against” or “jeopardize the safety and welfare of law-abiding” Salvadorans and Guatemalans because of their immigration status. This resolution was followed in 1989 by a bill, passed unanimously, forbidding the use of city funds or resources to assist the enforcement of federal immigration law, or to gather or disseminate information about people's immigration status in the city, unless required by statute, regulation or court decision. The law also prevented city officials, including police, from stopping, questioning or arresting “any individual solely because of the individual's national origin or immigration status.”⁵⁴ Similar policies have been adopted at the state level in the US. For instance, the State of **Oregon** passed a law in 2007 preventing police in Oregon as well as any state agencies from using agency resources to pursue immigrants whose only violation of law is being undocumented. Cooperation is permitted for persons arrested for or charged with a criminal offence.⁵⁵

Tools and Strategies

- **Member states should codify safe reporting policies in national laws, and ensure that there is legal recourse in the event of violations.**
- **Local and regional authorities in member states should consider the variety of models that have been used by jurisdictions to ensure safe reporting – in some cases, over many decades – in North America and elsewhere.**
- **Police forces should appoint a special liaison officer in migrant-populated areas to liaise with the community and increase confidence in reporting crimes, especially among migrant women. Contact persons should be designated within migrant organisations to ensure regular interaction with the police and referral of victims to protection, assistance and rehabilitation services.**

Detection Practices that Do Not Deter Access to Justice and Other Basic Rights

Arresting migrants in or near basic service providers, such as schools or hospitals, belongs to those measures which have the most severe impact on the fundamental rights situation of migrants in an irregular situation.

European Agency for Fundamental Rights⁵⁶

Immigration detection and enforces practices take a number of forms: identity checks, workplace inspections, large-scale raids, searches in places of accommodation, and the policing of sites where migrants are likely to be

present.⁵⁷ Police inspections are known to occur, for instance, at schools, medical facilities, counselling centres, churches or other places where migrants seek help or essential services. Not only do such inspection practices deter migrants from seeking essential services, they also corrode their trust in the police and therefore contribute to the under-reporting of crime.

Police Conduct Inspections Outside Service Providers' Offices

The Asociación para la Protección e Integración de la Mujer (PRIM, a Spanish organisation that provides a range of services supporting the protection and integration of women in situations of vulnerability, shares its offices with several other NGOs in a building owned by local authorities next to a busy urban hub where a number metro lines, trams and buses converge. Because of the services offered by the various associations, migrants and other foreigners seeking help to address a range of issues, including regularisation, employment, health care, and counselling, regularly visit the building. According to PRIM staff, “Police have been placed in front of our windows, at the entrances to metro and bus and request documentation to our users, and have recently made arrests.”

Broad sweeps by law enforcement targeting migrants based on racial or ethnic profiling are also counter-productive to building trust in these communities. Migrants have described such encounters as “frightening, humiliating or even traumatic.”⁵⁸ Understandably, these experiences inform migrants’ reluctance to go to authorities when they are victimised.

In France, for instance, there is evidence that police use ethnic profiling rather than behaviour to conduct disproportionately frequent identify checks among youths of African or Arab heritage who live in economically disadvantaged areas. According to Human Rights Watch, young people they interviewed described “identity checks [as] the sharp edge of their broader experience of discrimination and exclusion in French society.”⁵⁹

National law sometimes requires authorities providing education, shelter or health, as well as private citizens (including landlords) to become agents of detection by obliging them to report undocumented migrants to immigration authorities.⁶⁰ This risks impeding undocumented victims’ access to those very services they are entitled to under the Directive, and those sites where they are most likely to find information and support.

2. Ensuring a Victim-Centred Approach

Related to the principle of putting individuals’ safety and protection ahead of the enforcement of immigration rules is the importance of ensuring a victim-centred approach. Core to any initiative intending to advance the cause of access to justice for undocumented migrants should be a recognition that all victims of crime should be viewed as victims first, with their needs dictating the services and protection they obtain. A victim-centred approach also requires taking seriously victims’ reasons for turning – or not turning – to the justice system for help.

Victims provide a variety of reasons for choosing not to report a crime to the police, including their perception that the incident wasn’t serious enough, that the police wouldn’t or couldn’t help, fear of reprisals, and fear or dislike of the police, among others. In the case of migrants, one must

Tools and Strategies

- **Member states should ensure that immigration detection and enforcement practices do not undermine undocumented migrants’ fundamental right to access basic services, or their right to information, protection and support as victims.**
- **National and local authorities should use all means necessary to prevent discrimination, including by ending the damaging practice of racial and ethnic profiling. This includes ensuring that all stops are done on an objective basis, and are documented to allow resort to the court system in instances of discrimination or abuse.**
- **Civil society should continue to call attention to the harmful impact of these practices, which undermine access to justice by criminalising migrants.**

add the risk of losing their status (if they are reporting the conduct of the one on whom their status depends), of being deported, of being humiliated or of not being taken seriously. Victims who do report crime also do so for a variety of reasons, including a sense that it was the right thing to do, that the offender should be brought to justice, to recover property or its value, to stop it happening again, for insurance reasons, to get help, or to obtain compensation.⁶¹

A victim-centred approach recognizes that knowing about their rights is not enough to ensure that people exercise them. Undocumented victims of crime need to have confidence in the system, and that it can put them in a better place than they are – or, at least, that it won’t leave them worse off.⁶²

Tools and Strategies

- Member states should adopt a victim-centred approach that prioritises the needs and perspectives of victims. This includes recognising and taking seriously undocumented victims’ reasons for turning – or not turning – to the justice system for help, and considering avenues for regularization where immigration status stands in the way of accessing protection, support and justice.

3. Ensuring Officials Receive Training to Identify Undocumented Victims of Crime, and to Respond Appropriately to their Needs

The Victims’ Directive specifically provides for the training of officials who come in contact with victims of crime so that they can identify victims and their needs, and “deal with them in a respectful, sensitive, professional and non-discriminatory manner” (Article 25). Victims also have a right to an individual assessment by people trained to recognise those needing special protection measures. The Directive calls on states to support and work with civil society to achieve this.

SPOTLIGHT

Civil Society Works with Police to Improve Access to Justice

Independent law centre **Immigrant Council of Ireland** has held meetings with senior level police and other statutory bodies to encourage long-term policy change and to remove barriers preventing migrant women from accessing justice.⁶³

Training officials should have the goal of informing them of migrants’ rights under the Directive, and providing instruction on how to identify and address their needs. Such training should also help them to better *identify who*

is a victim in the first place. Police officers trained to view migrants as *offenders* first may have difficulty changing their mindset to view, and respond to, them as victims. Outside of the more familiar settings, authorities may struggle to identify crimes involving pernicious but less well-understood forms of exploitation, such as those that occur in the workplace (see section II.2, above). They may also fail to properly attribute crimes committed against migrants to hate, discrimination or other forms of bias forbidden by national law.⁶⁴

Training for officials who come into contact with victims should also entail instruction on how to treat victims in an appropriate, respectful and dignified manner. Such skills relate to the way practitioners communicate with victims, the language they use, and their overall manner. This means understanding victims’ needs, generally, but also requires an understanding of the particular challenges faced by people living in an irregular situation. Organisations that work with migrants can play an important role in building these “soft skills.”

Finally, training should emphasise the non-discriminatory core of the Directive: *all* victims of crime should benefit equally from protections and rights of the Directive, whatever their immigration status. This means, for instance, ensuring that restraining orders are issued and enforced

with due diligence and without discrimination on the basis of residence status. It also means confronting the detrimental effects of racial profiling and ethnic bias in dealing with migrant communities, which undermine trust and deter individuals from seeking help from the authorities.

SPOTLIGHT

EU Guidance on Police Training

In 2013, the **European Fundamental Rights Agency**, in cooperation with the Association of European Police Colleges, the European Police College and their networks of national police academies, published a police training manual to promote a human rights-based approach to policing and to foster trust between police and the communities they serve. The manual underscores the rights to non-discrimination, dignity and life, and includes practical activities to illustrate the application of key concepts in practice dealing with issues like non-discriminatory policing in diverse societies with sizable migrant populations.⁶⁵ The **Council of Europe** has also produced a guide on police training concerning migrants and ethnic relations, with the stated aim of promoting “in the police service the equal and fair treatment of all members of the public according to their individual needs” by “combating all forms of discrimination.”⁶⁶

Tools and Strategies

- **Member states should ensure that training is provided for all officials who come in contact with migrants in an irregular situation (i.e., police officers, court staff, prosecutors and judges) on vulnerabilities linked to their immigration status, how to identify and support undocumented victims of crime in a respectful and sensitive manner, how to engage effectively with migrant communities in the interest of improved safety and reporting, and how to connect them with appropriate support services. This training should be complemented by guidelines, recommendations, and an exchange of best practices.**
- **Training should emphasize non-discrimination and equality as the cornerstones of the Directive and the importance of equal protection for victims, such as by ensuring that restraining orders are issued and enforced with due diligence and without regard to the victim’s residence status.**
- **Civil society can support policymakers in instituting mandatory training for police, immigration authorities, prosecutors, and judges on the specific rights, experiences, and challenges facing undocumented victims of crime.**

4. Ensuring Undocumented Migrants Are Empowered with the Information Needed to Exercise Their Rights

The Directive puts the onus on states to raise awareness among victims and the public of their rights, through awareness-raising campaigns, research and education, and cooperation with civil society.

It is in fact society as a whole that needs to be made aware of equal rights/opportunities. Without this culture of equal rights, which must be embodied primarily in public services, it is unlikely that individuals will be motivated to report discrimination.

Equinet⁶⁷

To ensure that victims of *unreported* crime can access the necessary information about their rights and how to exercise them – that is, information about where and how to report a crime, about where and how to access services, about the applicable criminal justice system including the rights and role of victims, protection measures, legal aid, criminal injuries compensation, interpretation and translation – that information must be available in a variety of formats and through means other than the police. Organisations that work with migrants can be instrumental in sharing information with migrant communities about their rights as victims, and also in ensuring that the relevant information is made available in places where undocumented victims are likely to be present.⁶⁸

Because undocumented victims are most likely to encounter information and support when they seek out basic services, such as medical care, limits on their access to these services can curtail their access to protection and justice. In Spain, for instance, while there has been positive movement in protecting the rights of certain undocumented victims of crimes (as discussed below), a 2012 decree scaling back undocumented adults' access under national law to emergency care and pregnancy-related services only has affected victims, since medical services are a primary means by which violent situations are detected.

Tools and Strategies

- **Member states should work with migrants' rights organisations and other members of civil society to ensure that migrant communities are aware of their rights as victims, and that the relevant information is made available in places where undocumented victims are likely to be present.**
- **Organisations working with migrants should make certain, as much as possible, that the process of receiving services or gaining information is a supportive and empowering one.**
- **Civil society organization that work with migrants can gather testimonials from undocumented victims and use these to gain press coverage, disseminate them on social media, and conduct awareness-raising campaigns on their rights as victims, and the reality of their experiences.**

SPOTLIGHT**Initiatives to Empower Migrants Through Knowledge and Engagement**

ESPER (Epouses Sans-Papiers en Résistance) is a **Brussels**-based association of migrant women shedding light on the situation of women confronting gender-based violence at home and in the workplace, who risk falling into irregularity after leaving situation of violence or abuse.⁶⁹ The group engages in advocacy on the deficiencies in the Belgian system, which, despite protections that exist in principle exempting women from the withdrawal of their status in situations of violence, often fails in practice to protect victims on dependent visas. ESPER campaigns to raise awareness about migrant women's rights and measures necessary for safeguarding them, such as access to safe emergency accommodation; the ability of victims to retain their residence permit; the impartial and thorough investigation of incidents of abuse; and decent working conditions.⁷⁰

CSC/ACV, a trade union in **Brussels**, started a group with documented and undocumented women in 2010 based on personal story-telling and discussion about their working conditions. In addition to developing demands about recurring issues, the group's work fed into the broader work of the union, enabling them to take part in concrete actions to defend their rights. In addition to organising an exhibition on the history of immigration to Belgium and the role of the trade unions in supporting migrant workers, the union published research in 2010 about the realities of undocumented workers and explained the need for union solidarity between all workers. With over 200,000 delegates in Brussels alone (1.7 million in Belgium), the union has significant public reach and political influence.

In June 2015, the CSC drew attention to the situation of an undocumented man named Mounir to put a face on the situation of workers whose status is exploited by employers who have little interest in their regularisation – and the extent to which employers, including public authorities, may be complicit in that exploitation because of complex sub-contracting arrangements.⁷¹ CSC's Food & Services division plans to establish a charter to clarify and define the obligations of agents in sub-contracting arrangements with respect to workers, to ensure mutual commitment to decent working conditions and fair salaries all along the sub-contracting chain, irrespective of their residence status.⁷²

5. Ensuring Access to Free, Confidential Victim Support and Specialized Services

The Victims' Directive guarantees that all victims of crime and their family members have a right to access free, confidential support services before, during and after criminal proceedings (Article 8 and 9). Access to such services should not depend on a victim making a formal complaint. As a result, those too afraid or otherwise unwilling to make a complaint still can get the support and help they need.

Member states have an obligation to provide minimum services,⁷³ and must ensure that victims of crime are aware of, and connected to, the relevant services. Under

the Directive, *specialist services* should include, but are not limited to, shelters and targeted, integrated support for victims with special needs, such as victims of sexual violence. The Directive also encourages member states to consider setting up “one-stop shops” that address the full-range of victims' needs in the criminal process, including the need for information, assistance, support, protection and compensation. The support guaranteed by the Directive can ensure the immediate safety and survival of undocumented victims, as well as contributing to their longer term welfare by supporting recovery and reducing the likelihood of re-victimisation.

SPOTLIGHT

Integrated Support Services for Victims with Intersecting Challenges

The **Barbra Schlifer Commemorative Clinic** in **Toronto**, Canada, was created in memory of Barbra Teena Schlifer, a young lawyer who was sexually assaulted and killed in Toronto in 1980 in the stairwell of her apartment building.⁷⁴ Two friends who had planned to be her law partners instead established a clinic in her honour. The clinic specialises in serving women from underserved communities who are survivors of violence, and offers legal support in family, criminal and immigration law, counselling, as well as interpretation and translation in more than 90 languages. The clinic's specially trained interpreters not only assist clients in using the clinic's services; they also ensure that their stories are told accurately in court. The clinic also advocates for law reform and social change to benefit women. Thirty percent of the women who come through its doors have complex needs, which means they face overlapping legal and social challenges, such as immigration status, domestic violence, access to public services and shelters. And nearly half of its clients who have experienced violence are also seeking help navigating the immigration system. All the clinic's services are provided for free.⁷⁵

Undocumented migrants have a range of support needs. Some are common with other victims or groups of victims; others are more specific to them. These needs include crisis support, emotional and psychological assistance, practical help, information and legal assistance. Member states must provide for all these needs whether through generalist victim support organisations, specialised centres or through other organisations or institutions. In doing so, however, it must be recognised that delivering support through only one avenue, such as through government agencies, will severely impede access to support for undocumented migrants, which is contrary to the spirit of the Directive.

Civil society has a critical role to play in putting undocumented victims of crime in touch with, or providing, specialised and support services – particularly in the case of undocumented victims who choose not to report a crime, who will therefore not have contact with the criminal justice system. It is also critical for civil society organisations – whether victims support organisations, women's organisations, organisations working with migrants or others – to coordinate and cooperate to ensure timely, adequate and appropriate responses to victims' needs.

Legislation backing the right to access shelters is critical for undocumented victims. Most shelters depend on the payment of housing benefits to cover accommodation. But because undocumented migrants are denied a legal income and have no recourse to public funds, shelters do not have a guarantee that their stay will be reimbursed. And their lack of access to the housing and labour market means they are more likely to require long-term support.⁷⁶ One undocumented woman trying to escape a violent situation was advised by social services in the UK to leave her child in state care, and to return to Algeria.⁷⁷ Three hundred and eighty-nine women were reportedly denied safe accommodation in the UK in 2014, because they did not qualify for public assistance.⁷⁸

Tools and Strategies

- **National and local authorities should ensure sufficient resources are made available to support programs (whether provided by government agencies or by civil society) providing the levels of support – including specialised support – guaranteed under the Directive. This includes support for shelters, to permit them to obtain reimbursement for services provided to undocumented migrants.**

SPOTLIGHT

National Legislation and Local Initiatives Ensuring Access to Shelters

In **Spain**, legislation on gender-based violence provides undocumented migrant women with an immediate right to access domestic violence shelters. Those pursuing a case against their abuser in court have access to housing funds and, in case of a successful conviction, receive priority in accessing public housing. Article 14(3) of the 2009 Organic Law affirms, “The foreigners, whatever their status, are entitled to services and basic social benefits.” When an undocumented woman files a complaint for violence in Spain, she can ask to be accompanied by police escort to pick up her belongings or to go to the health centre. If police believe the woman is in potential danger, they refer her to specialist emergency accommodation for women and children. According to Criminal Procedures Act, a quick trial (in 72 hours maximum) will take place to determine the seriousness of the breach, and to provide the victim a protection order. From that point Social Services will provide (locally) accommodation for a maximum of fifteen days in a different shelter and coordinate locally with NGOs to find permanent accommodation.

In the Netherlands, the Municipality of **Utrecht** in 2005 supported STIL, a Dutch NGO, in establishing a shelter called Fanga Musow (“Strong Women”),⁷⁹ which offers undocumented women and children safe and stable accommodation, as well as financial assistance, legal assistance, education and medical services. The project is now operated by Stichting Seguro,⁸⁰ which also runs three city-funded shelters for homeless undocumented men in Utrecht. The Municipality also funds Huize Agnes, another shelter for undocumented children and women.⁸¹ Staff costs at Fanga Musow are partially funded by the Municipality, and partially by independent donors. Most of the undocumented women supported in Fanga Musow arrived in the Netherlands as unaccompanied children, and are now undocumented young women, and in some cases, mothers.⁸²

Following almost a year of campaigning by Sweden’s “No One Is Illegal” network, the city of **Gothenburg** implemented an initiative addressing administrative barriers hindering undocumented women’s access to state-funded emergency shelters. On 19 February 2011, the municipality voted in favour of a motion to reimburse shelters offering undocumented women protection against violence. Non-profit shelters financially supported by the city are now compensated for activities with undocumented women, who also now receive assistance and protection from the Municipal Emergency Centre for Women. According to the “No One Is Illegal” network, cooperation with shelters has improved since they have the right to provide protection for undocumented migrants and can receive reimbursement.⁸³

6. Ensuring that Irregular Status is Not a Barrier to Obtaining Protection and Justice

Undocumented migrants are often denied the right to be party to criminal proceedings because they are deported to their countries of origin before legal action has got under way, or before the matter has been resolved. This

can be addressed by granting stays of deportation for the duration of criminal proceedings, or by granting temporary residence permits to victims of crime, all of which has the added benefit of encouraging victims to come forward.

SPOTLIGHT

National Legal Framework Providing For Independent Residence Status for Victims of Certain Crimes

Spain's 2004 *Gender-based Violence Act* recognized the rights and protections of every victim of violence, no matter her administrative status, but was in conflict with the country's 2000 *Immigration Act*, which obliged the police to open a deportation file for every undocumented person and contained no specific measures for women who experience violence. Civil society organisations in Spain spoke out forcefully against the inherent contradiction in their legislation, and several police bodies and regional administrations in Spain developed alternative measures to encourage women confronting violence to come forward. For instance, the Basque Country issued police instructions *not* to open a deportation file for undocumented women coming forward to report violence. Other police forces complied with the law. The order for deportation, however, was suspended for the period during which a protection order was applied for in court, but if a woman was unsuccessful in obtaining a protection order, the deportation file was reinstated. While undocumented women were not explicitly denied access to justice, the inherent risk of deportation after

the judicial process served as a significant deterrent to reporting violence.

In 2009, Spain's Ministry of Equality established a three-year violence prevention plan and the *Immigration Act* was amended to provide for undocumented women's right to a provisional residence permit during judicial proceedings relating to gender-based violence. But the law continued to require opening a deportation file, and suspending it for the duration of the proceeding. In 2011, the law was again amended, this time to remove the obligation for police to automatically open a deportation file for undocumented women who contacted them, and suspending any existing files. This has permitted women to get a provisional permit for them and their children, which becomes a valid residence permit (for five years) only after having obtained a final decision from the Public Prosecution Service on the episode of violence – a ruling that can be difficult to obtain for undocumented women who often lack proof of violence.

In **France**, the 2003 *Immigration Act*⁸⁴ provided that women who separated from a violent spouse⁸⁵ could have their residence card renewed, but this was at the full discretion of the Police Prefects in Paris or the Prefect representative of the Ministry of the Interior in each department. Because of special bilateral agreements between Algeria and France, Algerian migrants are not subject to the Foreigners Code so undocumented Algerian women were not protected by this provision and prefectures routinely refused to lodge their complaint regarding violence. In 2006, France's Immigration Act was amended to allow married victims of violence at the hand of a French or foreign spouse to obtain a residence permit, whose issuance did not depend on the discretion of the representative of the Ministry of the Interior.

In June 2009, members of civil society, which had been calling for changes to the law, were invited by members of the French Parliament to participate in a mission evaluating measures to prevent violence against women and in November 2009 met with the Ministry of Immigration to formulate their proposals and recommendations. The French Government declared 2010 the year to “fight violence against women”, allowing non-profit associations to benefit from a public fund to organize events and send messages on public television and radios. Increased pressure from civil society organizations addressing this issue led Parisian police to appoint a specific officer trained to deal with domestic violence. At the urging of civil society, Members of Parliament conducted a visit to Spain to explore the legislation in greater detail.

On 9 July 2010, the *Law on Violence Against Women*⁸⁶ established a protection order, issued by a judge, that obliged prefects to provide a temporary resident card to

women (whether married or not) experiencing violence, regardless of their immigration status. The residence card is valid for one year, and renewable. If the perpetrator was condemned, a permanent resident card was to be delivered to the undocumented victim. Despite this positive evolution in the law, several challenges have been noted in practice, including long delays and discretionary demands upon women to provide proof, concern about possible deportation, the reluctance of women to lodge a complaint to the police, or lodging a complaint that failed to result in the conviction of the perpetrator in court.

In 2014, France passed a law granting residence permits for victims (men and women) of spousal violence and human trafficking, and doing away with their associated fees.⁸⁷ In 2015, the French Parliament again debated changes to the Immigration Act, including proposals to introduce provisions granting temporary residence status to victims of sexual exploitation who enter the process of social and professional integration. Advocates continue to push for additional measures, including an end to the discretion of prefects, and residence permits for all victims of domestic violence (not just spousal violence), whatever their immigration or marital status.

In July 2015, **Greece** passed a law (Law 4332/2015) amending an act regulating citizenship to permit victims (and, in some cases witnesses) of a wide range of crimes – including trafficking, sexual violence, racist violence, labour exploitation, child labour and domestic violence – to obtain a residence permit on humanitarian grounds. The residence permit is initially valid for one year, and can be renewed every two years for the duration of the criminal proceeding. Renewal conditions vary for each category of crime, where no criminal proceedings are pending.

Laws granting temporary residence permits or suspending deportation orders for the duration of a criminal proceeding, in principle, permit an undocumented migrant to participate in the criminal justice process, and are based on a recognition that undocumented victims are hindered by their status from coming out of the shadows to seek help. The downside of these laws is that there is no guarantee that victims won't be deported once the criminal proceeding is over, particularly where there is no conviction. This can prove to be a significant deterrent to undocumented victims, particularly for victims whose residence status is tied to an abusive employer or spouse.

Ultimately, as the European Fundamental Rights Agency has pointed out in its report on severe labour exploitation, the right under Article 10 of the Victims' Directive regarding

equal access to justice irrespective of residence status is “just theoretical” for victims “as long as they are not offered a safe option of regularising their residence status.”⁸⁸ Such a move would not only “improve the functioning of the criminal justice system” but also “counter the climate of impunity for perpetrators [].”⁸⁹ The Istanbul Convention (referred to in Section 1.2 above) specifically requires states parties to implement measures allowing victims with spouse-dependent visas to obtain an independent residence permit in the event of marital breakdown, and suspending any deportation proceedings to allow victims to apply for this status.⁹⁰ The Istanbul Convention also requires parties to issue renewable residence permits to victims where this is deemed necessary because of their personal situation, or to permit their cooperation in an investigation or criminal proceedings.⁹¹

Double Victimisation of Undocumented Victims of Crime

In 2013, a fifty-two-year-old undocumented woman living in Spain was raped by two masked strangers⁹² and afterwards sought help from the police. Officers immediately asked her about her residence status and questioned whether she was reporting an assault because of a desire to become regularized under Spanish law that grants a permit to victims of domestic violence under certain circumstances. Administrative procedures for residing without a permit and for making a “false complaint” were opened against her, and the woman was placed in detention where she remained for forty-eight days, despite a medical report confirming that she had been raped. An organisation called Aspacia launched a campaign called “Raped and Expelled” to bring visibility to the woman’s plight, and later established a campaign challenging plans for the woman’s deportation, reporting the case to the ombudsman, authorities and media. The case drew headlines and public outrage, and ultimately led to her release.⁹³

It should be noted that what is *not* guaranteed by the Directive is that all crimes reported to the authorities will be duly and systematically investigated. However, ensuring victims' protection and safety means not only giving them access to services and protection when they are victimised, but also making sure that they are not re-victimised. This means tackling impunity among those who perpetrate crimes against this population by making sure that cases involving undocumented victims are investigated with the same vigour and thoroughness as any other.

Tools and Strategies

- › **Member states should introduce or strengthen laws granting stays of deportation for the duration of criminal proceedings or temporary residence permits, to ensure that undocumented migrants are afforded the opportunity to participate in the criminal proceeding linked to their case.**
- › **Member states should enact measures allowing those whose residency rights depend on their relationship with an abusive employer, spouse or family member to apply for an independent residence permit. They should also ensure that those who became undocumented because of having left an abusive sponsor are provided with a route back to regularity, and explicitly include gender-based violence as an “exceptional circumstance” to allow undocumented victims to apply for a residence permit on humanitarian grounds.**
- › **National and local authorities should take steps to address impunity of perpetrators by ensuring that crimes against undocumented victims are thoroughly investigated and prosecuted, and provide for proportionate penalties in law.**

7. Overcoming Practical Barriers

The criminal justice system can be cumbersome, with detailed and sometimes arcane rules and strong reliance on documentation to provide evidence that a crime was committed and of the harm it caused. Civil society can have an important impact on undocumented migrants' access to

justice by working with them and with law enforcement to diminish the administrative burden of participating in the criminal justice process, and in lifting the veil on this often mysterious process.

SPOTLIGHT

Local NGOs Addresses Practical Hurdles to Access

Safety4Sisters is a small group of activists based in **Manchester**, UK that provides support to survivors of gender-based violence who face challenges relating to their immigration status, including undocumented migrant women who have no recourse to public funds. Their experience reveals that women who come to the UK on spousal visas and who can benefit from the Destitution Domestic Violence concession (DDV), which enables victims to apply for temporary leave in the UK and ultimately permanent residence status, are often unaware of it or do not understand how to benefit from it. And both many migrant women and supporting agencies generally have limited knowledge of the support available to them or how to access it.

In 2015, Safety4Sisters assisted an Iraqi woman trying to leave her abusive British spouse whose spousal visa gave her 30 days to apply for indefinite leave to remain in the UK, after providing evidence of the abuse against her; but who was told by the hospital and police that it would take 40 days to get this evidence. Safety4Sisters intervened to ensure that she obtained the documents on time, and explained her benefit entitlement under the DDV. The woman's lawyer had been unaware of the welfare benefit attached to the DDV, and advised her not to go ahead to claim benefits in case it affected her application for permanent status.⁹⁴ Safety4Sisters clarified her entitlement and assisted her in accessing assistance.

Safety4Sisters has identified a need for better support for women at the outset of their efforts to seek help, including the provision of sound advice on immigration law and their entitlement to benefits and safe accommodation. This would give women the confidence they need to seek safety under existing law for victims of domestic violence.⁹⁵

SPOTLIGHT

Linking National and EU-Level Advocacy to Improve Access to Justice for Undocumented Migrant Workers

In **Poland**, the **Association for Legal Intervention (SIP)** provides legal and social counselling to undocumented migrants, and undertakes training of professionals as well as communities about their rights and duties. Working with NGOs in the Czech Republic, Slovakia, Romania, Hungary, they undertook a project addressing the exploitation of migrant workers through national initiatives meant to feed both national and EU-level advocacy. The project's final report concludes: “[W]hile the labour rights of regular and irregular migrants are almost universally violated, no adequate safeguards are available for workers.”⁹⁶

As part of the project, SIP and its partners provide free legal assistance to undocumented migrant workers, as well as workers at risk of losing their immigration status, and conducted country-specific analyses to inform recommendations for European policymakers, from the perspective of Central Europe. Their work has also included information campaigns to raise awareness of migrants' rights under the Employer Sanctions Directive among migrants, employers and national authorities. Legal representation of migrants has allowed SIP to spotlight cases of strategic importance for national institutions.⁹⁷

Tools and Strategies

- **National and local authorities should work with civil society to ensure the burden of proof for undocumented victims of crime is realistic, for instance by advocating for the recognition of statements from NGOs and migrant rights organisations being accepted as credible, acceptable evidence, in cases where more standard documents (e.g., police reports, medical reports, attestations of a shelter or psychiatrists) may be unattainable for many undocumented victims.**
- **Civil society can play an important role in assisting undocumented migrants through the criminal justice process, including by providing assistance in documenting the crime, gathering evidence, accessing expert or legal counsel, and as an intermediary facilitating dealings with state or local agencies.**

CONCLUSION AND RECOMMENDATIONS

The EU Victims' Directive grants equal rights and protection to *all* victims of crime, and therefore provides an essential legislative framework for advancing undocumented migrants' access to protection, services and justice. But those benefits will not come about without further action by member states and by civil society to create the awareness and the infrastructure needed to connect undocumented victims of crime with the services they are entitled to, as well as to the opportunities they have to participate in the criminal justice process.

1. Put the Safety and Rights of Victims ahead of Immigration Enforcement

Member states

- › Codify safe reporting policies in national laws.
- › Ensure that immigration detection and enforcement practices do not undermine undocumented migrants' fundamental right to access basic services, or their right to information, protection and support as victims.
- › Use all means necessary to prevent discrimination, including by ending racial and ethnic profiling.

Civil society

- › Continue to call attention to the harmful impact of discriminatory practices, such as racial and ethnic profiling, which undermine access to justice by criminalising migrants.
- › Work with law enforcement to create bridges with migrant communities and increase confidence in reporting crimes.

2. Ensure a Victim-Centred Approach

Member states

- › Adopt a victim-centred approach that prioritises the needs and perspectives of victims and takes seriously undocumented victims' reasons for turning – or not turning – to the justice system for help.

3. Put in Place Mandatory Training Programs

Member states

- › Ensure mandatory training for all officials who come in contact with migrants in an irregular situation to ensure respectful treatment and to sensitize them to migrants' particular needs and circumstances.

Civil society

- › Support policymakers in instituting mandatory training of officials and practitioners on the specific rights, experiences, and challenges facing undocumented victims of crime.

4. Empower Undocumented Victims of Crime So They Can Exercise Their Rights

Member states

- › Work with migrants' rights organisations and other members of civil society to ensure that migrant communities are aware of their rights as victims.

Civil society

- › Gather testimonials from undocumented victims and conduct awareness-raising campaigns on their rights as victims and the reality of their experiences.

5. Guarantee Access to Free, Confidential Support

Member states

- › Ensure sufficient resources are made available to programs providing support for victims, including for shelters to permit them to obtain reimbursement for services provided to undocumented migrants.

6. Address Practical Barriers to Accessing Protection and Justice

Member states

- › Work with civil society to ensure the burden of proof for undocumented victims of crime is realistic and attainable for undocumented victims.

Civil society

- › Assist undocumented migrants through the criminal justice process by helping to document the crime, gather evidence, access expert or legal counsel, and facilitate dealings with state or local agencies.

7. Ensure Irregular Status and Dependence Are Not Barriers to Protection and Justice

Member states

- › Introduce or strengthen laws granting stays of deportation for the duration of criminal proceedings or temporary residence permits to allow undocumented migrants to participate in the criminal proceeding linked to their case.
- › Enact measures allowing those whose residency rights depend on their relationship with an abusive employer, spouse or family member to apply for an independent residence permit, or to have a route back to regularisation after leaving an abusive situation.
- › Address impunity of perpetrators by ensuring that crimes against undocumented victims are thoroughly investigated and prosecuted, and carry proportionate penalties.

ENDNOTES

- 1 See European Commission website, Directorate-General for Justice, “Victims”, available at http://ec.europa.eu/justice/criminal/victims/index_en.htm.
- 2 EU law obliges member states to impose penalties on anyone who assists a person to irregularly enter, pass through or remain in the territory of a member state. See [Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence](#) (Facilitation Directive), OJ 2002 L 328, p. 17-18, and the accompanying Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ L 328, p. 1. The European Fundamental Rights Agency (FRA) reports that the laws of eight member states expressly exempt from punishment at least some forms of humanitarian assistance to irregularly staying migrants, while eight member states provide no exemption for such assistance and do not limit punishment to assistance provided for financial benefit. See European Fundamental Rights Agency (FRA) (2004), [Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them](#) at p.11-13.
- 3 European Network Against Racism (ENAR) (2015), [Racist crime in Europe: ENAR Shadow Report 2013-2014](#) at p. 35.
- 4 International Centre for the Prevention of Crime (2010), [International Report – Crime Prevention and Community Safety: Trends and Perspectives](#), Chapter 2: “The Impact of Migration on Public Safety”.
- 5 Personal communication, August 2015.
- 6 Eurostat collects figures on the number of arrivals and apprehensions on EU territory showing, for instance, that about 430,000 people were apprehended in 2013 for being irregularly present in the EU, 10% of whom were 17 years old or younger – but these data are not representative of the entire population of irregular migrants resident in the EU. See Eurostat, [Enforcement of Immigration Legislation: Tables and Figures](#), September 2014. Extensive research on available data led to estimates of between 1.9 million and 3.8 million undocumented migrants in the 27 EU member states in 2008, accounting for between 0.39% and 0.77% of the total population at the time. See A. Triandafyllidou, [CLANDESTINO Project Final Report](#), November 2009 at p.11-12.
- 7 See PICUM, “[Why ‘Undocumented’ or ‘Irregular’?](#)” at www.picum.org.
- 8 Speaking during the plenary debate on the Victims’ Directive, which took place during the European Parliament in Strasbourg on Tuesday, 11 September 2012. See “[Minimum Standards on the Rights, Support and Protection of Victims of Crime](#)” (debate), European Parliament, 11 September 2012.
- 9 [Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), L 315/57.
- 10 [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), November 2014, ISBN 978-92-871-7990-6.
- 11 The explanatory note also reiterates the Council of Europe’s Task Force to Combat Violence Against Women’s recommendation that one “family place” be available per population of 10,000. See Council of Europe, Task Force to Combat Violence Against Women, Including Domestic Violence (EG-TFV), [Final Activity Report: Proposals for Future Action of the Council of Europe and its Member States to Prevent and Combat Violence Against Women](#), 27 May 2008.
- 12 European Commission, [DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/12 of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), December 2013, at p.8.

- 13 PICUM (2012), Strategies for Ending Double Violence against Undocumented Women: Protecting Rights and Ensuring Justice.
- 14 Federal law in the United States makes it possible for undocumented victims of domestic violence, sexual assault and stalking to apply for an independent residence permit under the Violence Against Women Act (VAWA) of 1994. Under VAWA, individuals who have been “batter[ed]” or subject to “extreme cruelty” by a US citizen or legal permanent resident spouse or parent can file a battered spouse waiver and a self-petition for permanent residency, or apply for cancellation of removal. See “Violent Crime Control and Law Enforcement Act of 1994”, H.R. 3355, Pub. L. 103-322.
- 15 Ibrahim Hirsi, “University of St. Thomas to Screen Documentary on Sexual Abuse among Immigrant Women”, *Minn. Post*, 6 August 2015.
- 16 See “Ask Angy,” www.nysylc.org/ask-angy.
- 17 Tracy Reyes, “Frontline: ‘Rape on the Night Shift’ Exposes Dangers for Undocumented, Hispanic Immigrant Women Working Alone as Janitors – Tonight on PBS”, *Inquisitr*, 23 June 2015.
- 18 European Commission, Directorate-General for Justice (2010), Feasibility study to assess the possibilities, opportunities and needs to standardize national legislation on violence against women, violence against children and sexual orientation violence.
- 19 PICUM interview with Infor-étrangers in Belgium, November 2011.
- 20 See European Commission, “Child Protection Systems”, http://ec.europa.eu/justice/fundamental-rights/rights-child/protection-systems/index_en.htm.
- 21 Forum on the Rights of the Child, European Commission, Directorate-General Justice and Consumers, “Reflection Paper”, 30 April 2015.
- 22 UK Home Office (2014), Multi Agency Working and Information Sharing Project – Final Report.
- 23 Ibid.
- 24 Article 4(40) of the Law *Vreemdelingenbesluit 2000*.
- 25 FRA (2014), Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them at p. 13. According to the FRA, these five countries are France and Malta (whose laws carry exclusions for those who rent to close family members), Italy (which only sanctions landlords if that take undue advantage of an undocumented tenant’s situation), Belgium (whose law provides a broad exemption for assistance granted for humanitarian reasons), and Ireland (to which the Facilitation Directive does not apply, and whose national law does not impose penalties on landlords renting to undocumented migrants). Ibid.
- 26 United Kingdom, Immigration Act, 110, 2013-14, sections 21-23.
- 27 See United Nations Office on Drugs and Crime, International Federal of Red Cross and Red Crescent Societies (2015), Combating Violence against Migrants: Criminal Justice Measures to Prevent, Investigate, Prosecute and Punish Violence against Migrants, Migrant Workers and their Families and to Protect Victims at p. 3; ENAR inter-active map, “Anti-Migrant Violence, Hatred and Sentiment in the European Union,” at www.enar-eu.org; PICUM, “Recommendations to the European Union to Urgently Address Criminalisation and Violence Against Migrants in Greece”, March 2014. See also note 3, above.
- 28 See United Nations Office on Drug and Crime *op. cit.* note 27, above.

- 29 See Amnesty International, “Greece: Refugees Attacked and in ‘Hellish Conditions’ on Kos”, 4 September 2015.
- 30 FRA (2015), Severe Labour Exploitation: Workers Moving Within or Into the European Union – States’ Obligations and Victims’ Rights at p. 30, noting that “[E]xperts maintained that third-country nationals are particularly vulnerable to labour exploitation if their residency status is irregular.”
- 31 Ibid.
- 32 See Recitals 38 and 39 of the Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing minimum standards on sanctions and measures against employers of illegally staying third-country nationals (Employer Sanctions Directive), L 168/24, 18 June 2009.
- 33 See Article 9(1) of the Employer Sanctions Directive.
- 34 See FRA (2015) *op. cit.* note 30, above, at p. 73-74.
- 35 Id at p. 39.
- 36 Ibid.
- 37 European Council on Refugees and Exiles, “ECRE Interview with Jerome Phelps, Director of Detention Action”, 20 September 2013. See also Detention Action, <http://detentionaction.org.uk/aboutus>.
- 38 Open Access Now is a Paris-based coalition demanding that civil society and journalists have access to detention centres. See <http://en.closethecamp.org/open-access-now/>.
- 39 Migreurop, The Hidden Face of Immigration Detention Camps in Europe, July 2014.
- 40 See “EU Victims’ Directive Transposition Checklist” at www.picum.org.
- 41 For additional information about available remedies at the national level, see European Commission, “Enquiries and Complaints about Application of Union Law,” http://ec.europa.eu/atwork/applying-eu-law/complaints_en.htm. See also “The Direct Effect of European Law” <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l14547>, for information about invoking the Directive in national courts for violations, even where it has not been transposed into national law.
- 42 Members of the alliance are: Advocates for Victims of Homicide (AdVIC), CARI Foundation, Dublin Rape Crisis Centre (DRCC), Gay & Lesbian Equality Network (GLEN), Immigrant Council of Ireland, Inclusion Ireland, Irish Council for Civil Liberties (ICCL), Irish Road Victims’ Association (IRVA), Irish Tourist Assistance (ITAS), One in Four, Rape Crisis Network Ireland (RCNI), Safe Ireland, Support After Homicide (SAH), and Victim Support Court.
- 43 See www.victimrightsalliance.com/about/.
- 44 VRA’s report notes that victims of road traffic collisions are frequently not viewed as victims of crime but instead as victims of an “accident”, a term that can mask the fact that the conduct in question may entail reckless or dangerous driving, or other violations of criminal law. Maria McDonald (2014), The Implementation and Enforcement of the Victims Rights Directive in Ireland: Ensuring the Consistency of Victims’ Rights for All Victims of Crime at p. 16.
- 45 Ibid.
- 46 European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/12 of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, December 2013 at p.50.

- 47 European Commission, "Infringement Procedure", http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm.
- 48 See Court of Justice of the European Union, http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm.
- 49 The standard complaint form is available on the Commission's website, and may be filled out in any of the EU official languages. See European Commission, "How to Submit a Complaint to the European Commission", http://ec.europa.eu/atwork/applying-eu-law/make_a_complaint_en.htm.
- 50 International Association of Chiefs of Police (2007), [Police Chiefs Guide to Immigration Issues](#).
- 51 FRA (2013), [Apprehension of migrants in an irregular situation – fundamental rights considerations](#).
- 52 Some estimates indicate that 200 or more localities in the United States have limited their assistance to federal immigration authorities. See, for instance, Josh Harkinson, "[Actually, Sanctuary Cities are Safer](#)," *Mother Jones*, 10 July 2015.
- 53 Ibid.
- 54 The law was later amended to allow police to report to immigration authorities undocumented adults arrested for, or previously convicted of, serious crimes. See "[Timeline: How San Francisco Became a Sanctuary City for Undocumented Immigrants](#)", *CBS*, 8 July 2015.
- 55 2013 ORS 5, §181.850 "[Enforcement of federal immigration laws](#)".
- 56 FRA (2011), [Fundamental Rights of Migrants in an Irregular Situation](#) at p. 44.
- 57 Ibid.
- 58 Ibid. at p. 11, 40.
- 59 Human Rights Watch (HRW), "[The Root of Humiliation: Abusive Identity Checks in France](#)", 26 January 2012. See also HRW, "[France: Ruling against Ethnic Profiling](#)" 24 June 2015.
- 60 See FRA (2011) *op. cit.* note 55 above.
- 61 See Victim Support Europe (2013), [Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe](#) at p. 23, citing J. van Dijk, R. Manchin, J. Van Kesteren, S. Nevala & G. Hideg (2015), [The Burden of Crime in the EU: Comparative Analysis of the European Crime and Safety Survey \(EU ICS\) 2005](#).
- 62 The European Fundamental Rights agency has concluded that, in the employment context, achieving access to justice requires acknowledging the specific "pull" factors needed to draw undocumented migrants out of the shadows and away from the situations of exploitation they find themselves in, not because of coercion but because of circumstances often related to economic necessity. They have identified four: (1) a real possibility of regularization of their residence status and access to the labour market; (2) provision of targeted and tailored support services including information about their rights; (3) a realistic chance of receiving compensation and back pay; and (4) facilitation of victims' access to and participation in criminal proceedings. See FRA (2015) *op. cit.* note 30, above, at p. 74.
- 63 See note PICUM (2012) *op. cit.* note 14, above.
- 64 See, for instance, HRW, "[Everyday Intolerance: Racist and Xenophobic Violence in Italy](#)," 21 March 2011.

- 65 FRA (2013), Fundamental rights-based police training: A manual for police trainers. See also webinar “Apprehension of Irregular Migrants: Dos and Don’ts,” organized by CEPOL (European Police College) on 19 May 2015, which included participation by the FRA as well as PICUM.
- 66 Council of Europe (1993), Police Training Concerning Migrants and Ethnic Relations: Practical Guidelines.
- 67 Equinet (2012), Tackling the ‘known unknown’: How equality bodies can address under-reporting of discrimination through communications, Chapter 2: “A framework for Responding to Under-Reporting and the Role of Communication” at p.16.
- 68 Victim Support Europe (2013) *op. cit.* note 60, at p.16.
- 69 MRAX, “ESPER contre la double violence faite aux femmes migrantes”, 10 March 2015.
- 70 See H. Dorzee, “Exilées, violentées et sans protection”, *Le Soir*, 16 February 2013.
- 71 “La CSC réclame une charte qui li donneurs d’ordre et sous-traitants dans le nettoyage”, *La Libre*, 2 June 2015; Xavier Van Oppens, “Le Foyer anderlechtois critiqué pour sa gestion du nettoyage”, RTBF, 3 June 2015.
- 72 *Ibid.*
- 73 Article 9 of the Directive is clear that, at a minimum, these services should include: information, advice and support on the rights of victims, including accessing national compensation schemes; information about or referral to relevant special support services; emotional and psychological support; advice on financial and practical issues arising from the crime; and, advice on the risk and prevention of repeat victimisation, intimidation and retaliation.
- 74 See Barbra Schlifer Commemorative Clinic, www.schliferclinic.com.
- 75 Laurie Monsebraaten, “Schlifer Clinic Celebrates 25 Years of Defending Women’s Rights”, *Toronto Star*, 14 June 2010.
- 76 See PICUM (2012) *op. cit.* note 14, above.
- 77 Nathalie Bloomer, “No Refuge: How Benefit Rules Leave Immigration Women at the Mercy of their Abusers”, *Politics*, 10 September 2015.
- 78 Women’s Aid, “Women’s Aid Annual Survey 2014”.
- 79 See Fanga Musow, www.fangamusow.nl/, and PICUM (2012) *op. cit.* note 14, above.
- 80 *Ibid.*
- 81 See Huize Agnes, www.agnesvanleeuwenberch.nl.
- 82 PICUM (2015), Protecting Undocumented Children: Promising Policies and Practices from Governments at p. 22-23.
- 83 *Ibid.*
- 84 Loi no. 2003-1119 du 26 novembre 2003 relative à la maîtrise de l’immigration, au séjour des étrangers en France et à la nationalité.
- 85 The spouse had to be French national, or a foreigner who had entered the country through the family resettlement process.
- 86 Loi no. 2010-769 du 9 juillet 2010 relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants.
- 87 Prior to 2014, it cost 608 Euros to obtain a first residence permit, and 110 Euros, annually, to renew it.

88 See FRA (2015) *op. cit.* note 30, above, at p.19.

89 Ibid.

90 Istanbul Convention, Article 59.

91 Ibid.

92 Irene Ruano Blanco, "Ser mujer en los Centros de Internamiento de Extranjeros," *Diagonal Global*, March 2014.

93 Women Against Violence Europe (2013), Spain Country Report.

94 See Nathalie Bloomer *op. cit.* note 74, above.

95 See Safety4Sisters, www.twitter.com/safety4sisters.

96 I. Czerniejewska, K. Stubik, E. Cech Valentova, I. Saadi, K. Mazurczak (2014), Unprotected Migrant Workers in an Irregular Situation in Central Europe.

97 For more information, see EPIM, "Association for Legal Intervention", www.epim.info/association-for-legal-intervention-stowarzyszenie-interwencji-prawnej; also see SIP, www.interwencjaprawna.pl/en/projects/for-undocumented-migrants-rights-in-central-europe.



PLATFORM FOR INTERNATIONAL COOPERATION ON
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