

# EU Victims' Directive

## An Opportunity to Advance Justice for Undocumented Migrants

### An Overview for PICUM Members

**The EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) provides a significant opportunity to advance access to rights and justice for undocumented victims in Europe.**

Article 1 of the Directive affirms that the rights and minimum standards set out apply to **all** victims of crime irrespective of their residence status. Member states have until November 2015 to transpose these rules into national law and practice.

How well this Directive will support undocumented victims in practice will most certainly depend on the strategic efforts of the migrants' rights movement in engaging national authorities during the transposition process and holding them accountable once it is complete.

**This paper seeks to inform PICUM members about this opportunity provide them with the basic information they need to engage in the national transposition process.**

# The EU Victims' Directive

The EU Directive establishing minimum standards on the rights, support and protection of victims of crime establishes minimum rights that should be accessible for victims of crime in all EU Member States. The Directive aims to ensure that, across the EU:

- A person is acknowledged as a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted [Article 2 and recital \(19\)](#)
- Victims are treated in a respectful, sensitive and professional way [Article 1 and recital \(9\)](#)
- Victims get information about their rights and their case in a way they understand [Articles 3, 4, 6, 7, recital \(26\) and \(34\)](#)
- Victim support services exist and are accessible to all (direct and indirect) victims in every Member State [Articles 8, 9 and recital \(37\)](#)
- Victims can participate in proceedings if they want and are helped to attend the trial [Articles 10, 13, 14, recital \(34\) and \(47\)](#)
- Victims are protected from secondary and repeat victimisation, intimidation and retaliation (including both physical, emotional and psychological harm) during all stages of police investigation and criminal justice proceedings [Articles 18, 19, 20, 21, recital \(52\), \(53\) and \(54\)](#)
- The needs of every victim are assessed and victims identified as particularly vulnerable are offered specific protection measures [Articles 22, 23, 24, recital \(55\), \(56\), \(57\) and \(58\)](#)
- Victims receive support and assistance accessing justice in cross-border cases [Articles 4, 17 and recital \(51\)](#)
- Police, prosecutors, judges and other professionals are trained to deal with victims in a sensitive and appropriate manner [Article 25 and recital \(61\)](#)
- All Member States must implement all rights contained in the Directive by 16 November 2015 [Article 27](#)

## ➤ Article 1 Affirms these protections apply to undocumented victims

“Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.”

**Source: Article 1 of the EU Victims’ Directive**

## ➤ The European Commission has told Member States to pay particular importance to undocumented women and girls

The European Commission’s Official Guidance for Member States seeks to ensure they understand how to transpose and implement the Directive into national law, policy, and practice. This official guidance note affirms:

“The application of the Directive in a non-discriminatory manner also applies to a victim’s residence status.

Member States should ensure that **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 (see also Recital 10). Thus, third country nationals and stateless persons who have been victims of crime on EU territory should benefit from these rights.

This may be of particular importance in the context of racist and xenophobic hate crime, **crime against undocumented migrant women and girls who are particularly exposed to various forms of gender-based violence** (such as physical violence, sexual exploitation and abuse, female genital mutilation, forced marriages and so-called ‘honour crimes’) and trafficking in human beings. However, reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.”<sup>1</sup>

**Source: DG Justice Guidance Note on Directive 2012/29/EU**

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<sup>1</sup> DG Justice Guidance Notice related to transposition and implementation of Directive 2012/29/EU, p. 8, available at: [http://ec.europa.eu/justice/criminal/files/victims/guidance\\_victims\\_rights\\_directive\\_en.pdf](http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf)

# ACCESS TO JUSTICE FOR UNDOCUMENTED VICTIMS OF CRIME

Because of the difficulties they face to access justice and support across the EU, undocumented migrants are disproportionately exposed to violence and exploitation at work, at home, and on the streets. In criminalising victims or witnesses who seek justice, the laws and policies of many EU member states provide systematic impunity to perpetrators targeting those with an irregular status.<sup>2</sup>

Provisions include, among others, the right to information (*Art. 3-7*), right to access victim support services including shelters, trauma support and counselling (*Art. 8-9*), right to participate in criminal proceedings (*Art. 10-17*), right to have special protection needs recognised (*Art. 18-24*).

By obliging member states to ensure these rights to all victims of crime irrespective of residence status, this Directive holds the potential to become one of the most significant legislative tools at EU level to address impunity for crimes wages against undocumented migrants.

How these legally binding minimum standards are integrated into national law and policy however, depends entirely on the implementation measures that EU member states will develop and execute.

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<sup>2</sup> For more information see PICUM's report "Strategies to End Double Violence Against Undocumented Migrant Women: Protecting Rights and Ensuring Justice", available at [www.picum.org](http://www.picum.org)

# THE TRANSPOSITION PROCESS

## ➤ **Obligation for Member States**

Since the Directive entered the EU Journal in November 2012, national authorities have exactly three years to implement its provisions into national law. Therefore all EU member states, with the exception of Denmark which has opted out, have until November 2015 to ensure their laws and policies adhere to the minimal standards of the Victims' Directive.

The authorities tasked with transposition will need to look **at how cases are currently brought to court**, how parties are informed, how evidence is presented, and how facts are determined and ensure that at every stage, all of the legal rights that are owed to all victims, including those who are undocumented, are upheld and respected. Undocumented migrants must be allowed and assisted to participate in a trial, and protected from secondary and repeat victimisation, intimidation and retaliation during the investigation and criminal proceedings.

The Directive obliges member states to recognise victims' **specific protection needs**. Individual assessments should be undertaken to determine a victims' risk of secondary and repeat victimisation, intimidation or retaliation during questioning and when testifying. Specific consideration should be given to those experiencing crimes with a bias or discriminatory motive, and those whose dependence on the offender makes them particularly vulnerable.

Recognising that reliable, respectful, sensitive, professional and non-discriminatory support services are essential to encouraging and facilitate the reporting of crimes and prevent repeat victimisation, the Directive aims to ensure that **victim support services**, including appropriate shelters, trauma support and counselling, exist and are accessible to undocumented victims in every member state. Furthermore, police, prosecutors, judges and other professionals must be trained to deal with victims in a sensitive and appropriate manner.

EU member states will have to develop an official document outlining what actions they will undertake. By comparing each article of the Directive against national law and practice, those tasked with transposition will have to develop a set of recommendations regarding the specific changes required. Once adopted by national authorities, these '**national implementing measures**' must be sent to the European Commission for scrutiny to ensure that they will actually lead to the application of all the measures required in the Directive. In developing these measures, member states have been encouraged by the European Commission to conduct an open and coordinated policy dialogue with key stakeholders and ensure interagency cooperation.

## ➤ Opportunity for Civil Society

Many member states will hold national level consultations to assist them in this process. As the Directive has implications upon national criminal codes and procedures as well as victim support services and immigration enforcement practices, a broad cross-section of relevant authorities and agencies will be affected by these new standards and therefore, have a key part to play in the transposition process and maintenance of standards once they become law. So, for instance, Ministries of Justice, Ministries of the Interior, the police, courts and other actors involved in the criminal justice system should be consulted on procedural rights such as right to information, right to justice, right to participate in a legal process to identify what needs to be changed, and then supported in bringing these changes about.

The Victims' Directive entails many obligations for national authorities. To support them in the transposition process, the European Commission DG Justice has developed a '**Guidance Document**' of approximately 50 pages, which will be released in early 2014.<sup>3</sup> The Commission will also develop a '**Best Practice Document**', less official than the guidance text, it will offer national authorities an overview of legislative, procedural and practical approaches which adhere to the minimum standards of the Directive.

Ultimately, how the Victims' Directive translates into practice depends on how the authorities tasked with implementation understand both the obligations it places upon them as well as the specific barriers facing undocumented victims. This demands open and genuine dialogue about the daily realities of undocumented victims of crime.

## ➤ Vital role for PICUM members

Often working alone to deal with the consequences of restrictive and non-rights based policies on migration, undocumented migrants and the organisations supporting them are best placed to provide insight on the specific legal, practical and procedural challenges which prevent undocumented victims and witnesses of crime from seeking justice and support, and often put them at risk of arrest or deportation if they do. Their experience and recommendations will be key to enabling policy makers to develop effective measures to change this situation, and ensuring practice adheres to their obligations under EU law.

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<sup>3</sup> [http://ec.europa.eu/justice/criminal/files/victims/guidance\\_victims\\_rights\\_directive\\_en.pdf](http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf)

There are many effective and practical ways that organisations and advocates can seek to influence this process. One way, is to directly engaging national authorities who are charged with the transposition process, ensure they are informed about the legal and practical obstacles which prevent undocumented victims from coming forward to report a crime, to bring perpetrators to justice, and to access support services as victims. This can be done by requesting a meeting with authorities tasked with implementation, encouraging elected representatives to pose a question in parliament, arranging training sessions for delegates or ministries, meeting with outlining specific changes required to ensure protection of undocumented victims.

This is also a good time to use the Directive as an awareness raising tool, so that those already engaged in this process can become more aware of the realities and rights of undocumented victims of crime. NGOs can gather testimonials from undocumented victims, use these to gain press coverage, disseminate them on social media, conduct an awareness raising campaign on the rights provided by the Directive, engage progressive networks of lawyers and legal experts, or even convene discussions with national victim support agencies, women's shelters and other specialist services to inform them about the implications of the Directive for undocumented migrants,

# WHAT WILL HAPPEN AFTER THE TRANSPOSITION DEADLINE?

Legislative reform is only the first step. After the transposition deadline of November 2015, frontline NGOs, advocates and service providers working with undocumented migrants must also work to hold member states accountable regarding their obligations under the Directive. The European Commission has the possibility to implement infringement proceedings against any member state not complying with the standards of the Victims' Directive, but this will require hard evidence from the field.

By carefully documenting breaches of the Directive, by operating a log-book and keeping copies of official documents for instance, frontline actors can provide the Commission with the proof it needs to take action. Individual proceedings would be a first step; the Commission would call on national authorities to correct their internal code of procedure or changing an incoherent practice. If this was not effective, the European Commission could then take infringement proceedings against a member state for failure to implement the Directive.

Tasked with interpreting EU law and ensuring its equal application across all EU member states, the European Court of Justice (ECJ) is another avenue through which complaints may be taken regarding non-compliance with the Directive. The highest court in matters of European Union law, the ECJ gives rulings on cases brought before it and may interpret EU law provisions, ruling against a member state for failure to fulfil an obligation, sanctioning EU bodies for failure to act, or issuing a decision on direct actions brought by individuals.<sup>4</sup>

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<sup>4</sup> To learn more about opportunities to engage with the European Court of Justice, see PICUM's 2012 guide "Using Legal Strategies to Enforce Undocumented Migrants Human Rights", pp. 15-19, available online at: [www.picum.org](http://www.picum.org)

# CONCLUSION

The EU policy making process often seems distant and complex to those working at national level. Across the EU, individuals, organisations, and advocates are facing an uphill struggle to protect undocumented migrants' rights. In these challenging times, engaging with an EU Directive may appear low on the list of urgent priorities.

However, this is a vital moment for the migrants' rights movement to join the dialogue on victim's 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 moment to raise awareness, to foster understanding and build alliances with those committed to justice, human rights, and rule of law, be this in the domains of gender equality, victim support, rights of the child, workers' rights etc.

Notably, this Directive creates a *minimum* set of rights for all victims of crime across the EU; this means that member states have the possibility to *extend* the rights set out in this text in order to provide a higher level of protection. This is a strategic moment to enrich discussion on victims' rights, improve perception, and develop key partnerships on access to justice and rights for all without discrimination.

Frontline services providers and advocates have a key role to play; either by directly engaging national authorities to *influence transposition* (for instance, by requesting a meeting with authorities tasked with implementation, writing to parliament, arranging training sessions for delegates or ministries, raising awareness about specific changes required to ensure protection of undocumented victims) or by using the Directive as an *awareness raising tool* (gathering testimonials from undocumented victims, gaining press coverage, using social media, conducting an awareness raising campaign on the rights provided by the Directive, convening discussions with national victim support agencies and services on the Directive, engaging progressive networks of lawyers and legal experts).

The Victims' Directive has the potential to significantly improve undocumented migrants' access to justice and rights across the EU. PICUM will continue to support its members through the working group on 'Access to Justice', working with them to provide timely, relevant, and pragmatic support to engage in this process. Any information on these and other tools will be available to all free of charge on our website [www.picum.org](http://www.picum.org).