

## The Rights of Undocumented Victims: **WHAT TO KNOW IF YOU'RE A POLICE OFFICER**

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service.

*From International Association of Chiefs of Police (IACP) Law Enforcement Code of Ethics*

Undocumented victims of crime often risk deportation if they report their abuse. NGOs report that this was the case of a sex worker who was raped at knifepoint faced deportation after reporting the incident to the police.

*Source: Politics.co.uk*

↑ Photo: ©Dreamstime

**PICUM**

PLATFORM FOR INTERNATIONAL COOPERATION ON  
UNDOCUMENTED MIGRANTS

[www.picum.org](http://www.picum.org)

### 1 Improving Confidence in Law Enforcement among Migrant Communities

Law enforcement's interactions with communities are the cornerstone of effective police work.<sup>1</sup>

For people in Europe who are undocumented, or who do not have a stable residence permit, the police are often viewed with fear, not with confidence. They know that going to the police for help is more likely to lead to arrest and possible deportation, than to assistance.

When people do not believe they are equally protected by public institutions, everyone is worse off. Crimes go unreported, the police are hindered in their ability to investigate crimes, and people who prey on the most vulnerable go unprosecuted.

Undocumented victims are therefore at greater risk of abuse – and repeat abuse. Perpetrators realise there are no consequences for their actions, and abusers can use a person's insecure status to control and manipulate them, to convince them that they have no right to help, and to threaten deportation or separation from their families if they dare to report their mistreatment. Migrant women are particularly exposed to mistreatment, because women's residence status is often dependent on their spouse/partner, and because they often work in highly informal sectors.

Many practical obstacles also block undocumented migrants' ability to get help through the justice system, including language barriers, poverty, social isolation, lack of knowledge of their rights, and lack of legal representation. They often work in the low-wage, informal economy, which makes it extremely difficult to document violations.

#### How is safe reporting smart policing?

- > Builds trust within communities
- > Encourages people at high risk of exploitation and abuse to come forward, including undocumented women and children
- > Creates foundation of trust and contacts to pursue perpetrators who target vulnerable populations
- > Fosters safer communities by removing impunity
- > Improved crime prevention
- > More efficient use of resources

<sup>1</sup> [www.theiacp.org/TrustLegitimacy](http://www.theiacp.org/TrustLegitimacy); [www.theiacp.org/model-policy/model\\_policy/policy-citizen-contacts/](http://www.theiacp.org/model-policy/model_policy/policy-citizen-contacts/)

People who are undocumented and who belong to ethnic, religious or racial minorities often experience multiple forms of discrimination. They are targeted for bias-based assaults, the overwhelming majority of which go unreported, and face ethnic profiling by authorities.<sup>2</sup>

An EU study reports that ethnic minority and immigrant background are the most common grounds of discrimination. Just one in eight respondents reported the most recent incident of discrimination they experienced.<sup>3</sup>

## 2 EU Law Gives Every Victim the Same Rights

The *EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)* was adopted on 25 October 2012. Member states had until November 2015 to fully implement the Directive into their national law.

The rights and protections of the Victims' Directive apply to *all victims of crimes* 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.

Under the Directive, all victims of crime must be treated with respect and dignity. They have the right to be offered and to receive free and confidential support services, to access to protection and be given the opportunity to participate in the criminal proceeding linked to their case.

The Directive puts special importance on the needs of victims of gender-based violence, and the best interests of child victims.<sup>4</sup>

**“Some cases were reported where undocumented victims of racist crime were detained or faced consequences with regard to their residence permit in the process of reporting a hate crime.”**

*Source: European Network Against Racism*

Under the Directive, a victim (Article 2) is anyone who has suffered physical, mental or emotional or economic harm caused by a criminal offence, as well as family members of someone whose death was caused by a criminal act. Many of the rights and protections of the Directive do not depend on the victim reporting the crime to the police, 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 being a victim does not depend on whether a perpetrator is identified, apprehended, prosecuted or convicted (Recital 19).

**“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 Centre for Investigation of Human Rights*

## GENDER-BASED VIOLENCE AND UNDOCUMENTED WOMEN

The Victims Directive puts special emphasis on the needs of victims of gender-based violence. It notes that women who are victims of such violence and their children often need specialist support and protection “because of the high risk of secondary 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.

Abusive partners often intentionally misinform undocumented women, or 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 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.

Several EU member states have also signed up to the Council of Europe Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’), an international treaty that specifically addresses violence against women. The Istanbul Convention applies to *all* women, without discrimination, including based on residence or migration status.

**“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 being 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 Commission*

## UNDOCUMENTED CHILDREN

The Victims' Directive also gives special attention to children. Under the Directive, the best interests of the child must be “a primary consideration”, consistent with the UN Convention on the Rights of the Child, not only when the child is the victim of a crime (Article 1), but also when the child 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 repeated victimisation. Undocumented children, or children whose parents are undocumented, are often unable to obtain protection and justice because of restricted access to services and the risk of facing detention and possible deportation if they seek help. Undocumented children also face the additional risk of being separated from their parent, if victimisation is reported.

## 3 Safe Reporting is Essential for Victims' Rights and for Smart Policing

The ability to safely report crime to the police, without fear of immigration consequences, is necessary for ensuring access to justice and for protecting victims' rights under the Directive. It is also vital to building trust in communities, and for effective policing.

A growing number of cities around the world are recognising that criminalizing victims is counter-productive, and are choosing to prioritise building constructive relationships with migrant communities, rather than diverting energy and resources to immigration enforcement activities. Just as a woman who is reporting assault is not questioned about whether she has filed her taxes or paid all her parking tickets, she is not be questioned about her residence status. She will be treated as a victim, and provided with the full support she is entitled to.

### spotlight

#### Local Authorities Promote Safe Reporting

In **Amsterdam**, the police created a policy of their own initiative called “*Veilige Aangifte*” (Free in, Free out) to inform undocumented residents of their rights and to enable them to report crimes in secure ways. A special unit visited migrant support centre Wereldhuis once per month to meet with a group of undocumented migrants and answer questions on key topics such a filing a complaint, getting a protection order, and taking a case to court.

In 2016, Amsterdam's longstanding policy became official national policy, as set out in the explanatory note accompanying amendments to the criminal law adopted by **the Netherlands** as part of its implementation of the Victims' Directive. 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 to participate in criminal proceedings, as well as to access support services, including Victim Support Netherlands, the Centres for Sexual Violence, and medical assistance.

In the **United States**, a large number of localities have taken steps,<sup>5</sup> either formally or informally, to limit the

assistance they give to federal immigration authorities seeking to detain and deport people who are undocumented.<sup>6</sup> The City of **San Francisco** declared itself a “City and County of Refuge” in 1985, when the City's mayor, responding 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.”<sup>7</sup> 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 and 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.<sup>8</sup>

2 ENAR Shadow Report 2015-2016, *Racism and Discrimination in the Context of Migration in Europe* [http://www.enar-eu.org/IMG/pdf/shadowreport\\_2015x2016\\_long\\_low\\_res.pdf](http://www.enar-eu.org/IMG/pdf/shadowreport_2015x2016_long_low_res.pdf).

3 FRA *Second European Union Minorities and Discrimination Survey – Main Results* (December 2017).

4 The official guidance that accompanies the Directive emphasizes member states' obligation to ensure that the “rights set out in this Directive are not made condition on the victim having legal residence 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.

5 Some estimates indicate that 200 or more localities have limited their assistance to federal immigration authorities. See, for instance, Josh Harkinson, *“Actually, Sanctuary Cities are Safer,” Mother Jones*, 10 July 2015.

6 Id.

7 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.

8 2013 ORS 5, §181.850 *“Enforcement of federal immigration laws”*.

## 4 What Can Law Enforcement Do to Improve Reporting Among Undocumented?

### ➤ Avoid detection practices that discourage safe reporting and the use of essential public services, and refrain from racial profiling

Immigration detection and enforcement practices take several 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. 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. Such inspection practices deter migrants from seeking essential services and corrode their trust in the police, contributing to the under-reporting of crime.

#### What can law enforcement do to improve reporting by undocumented victims?

- Avoid detection practice that discourage people from using basic services, such as medical clinics and schools
- Refrain from sweeps or stops that target people based on racial or ethnic profiling
- Create clear policies preventing police officers from asking victims and witnesses about their immigration status, and preventing the reporting of their status to immigration authorities should it become known
- Conduct outreach to communities and grassroots organisations working with migrants to build trust and encourage people to come forward
- Develop a network of organisations to which undocumented victims can be referred for support and assistance
- Fully investigate crimes committed against people without status
- Provide training to improve officers' awareness of victims' rights and how to respond appropriately to the needs of undocumented victims and diverse communities

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.”<sup>9</sup> Understandably, these experiences inform migrants’ reluctance to go to authorities when they are victimised.

In some countries and regions evidence has been gathered showing that police use ethnic profiling rather than behaviour to conduct disproportionately frequent identify checks among youths of foreign origin. This increases discrimination and exclusion.<sup>10</sup>

**“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 Rights<sup>11</sup>*

### ➤ Create clear policies preventing police officers from asking victims and witnesses about their immigration status, and preventing the reporting of their status to immigration authorities, should it become known

Amsterdam and San Francisco (see *Spotlight* above), alongside Chicago, New York and dozens of others, are among a growing number of municipalities worldwide that have recognised that their efforts to achieve safe communities are undermined by treating people without regular status as criminals. They realise that the criminalisation of these communities contributes to increasing prejudice against migrants and ethnic minorities, which increases the chance they will be the targets of discrimination, violence and exploitation. They have prioritised working with communities to address and investigate gender-based violence, sexual harassment, hate crimes, and labour exploitation, leaving the enforcement of immigration laws to immigration authorities. In 2013, Toronto became the first city in Canada to adopt a policy that enables anyone in the city to access services, irrespective of immigration status. Seven years earlier, the Toronto Police adopted new standards of conduct stating that undocumented residents will “have equal access to services without fear that contact with the police will lead to inquiries about their immigration status.” Such policies are critical first steps in establishing

9 Id. at p. 11, 40.

10 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.

11 FRA (2011), [Fundamental Rights of Migrants in an Irregular Situation](#) at p. 44.

a groundwork for trust, and must form the basis for police practice – grounded in training – to remain credible.

➤ **Provide training to improve officers' awareness of the directive and of how to respond appropriately to the needs of undocumented victims and diverse communities**

Significantly, the Victims' Directive requires that officials – including law enforcement – who come in contact with victims of crime receive training 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.

Training should have the goal of informing officers 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*. People 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 widespread but less well-understood forms of exploitation, such as those that occur in the workplace. They may also fail to properly attribute crimes committed against migrants to hate, discrimination or other forms of bias forbidden by national law.<sup>12</sup>

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, and that crimes committed against people without status are fully prosecuted. It also addresses 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.

For more information on the 'firewall' concept, see also: <http://picum.org/firewall/>

12 See, for instance, HRW, “Everyday Intolerance: Racist and Xenophobic Violence in Italy,” 21 March 2011.

13 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.

14 Council of Europe (1993), [Police Training Concerning Migrants and Ethnic Relations: Practical Guidelines](#).

## spotlight

### EU Guidance on Police Training

In 2013, the **European Fundamental Rights Agency**, in cooperation with the **Association of European Police Colleges** 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.<sup>13</sup>

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.”<sup>14</sup>

➤ **Develop a network of organisations to which undocumented victims can be referred for support and assistance**

Member states must provide minimum services, and ensure that victims of crime are aware of, and connected to, the relevant services. 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. Police can play an important role, in partnership with civil society, in referring undocumented victims of crime with specialised and support services. To do this effectively, they must become familiar with the needs of these communities and with key national and local organisations able to provide the advice, representation, counselling, or other assistance required.

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