

The Rights of Undocumented Victims: WHAT TO KNOW IF YOU'RE A WOMEN'S ORGANISATION, SHELTER OR SERVICE PROVIDER

We draw focused attention to the rights and needs of women and girls facing multiple forms of discrimination, including women of Aboriginal and/or Indigenous backgrounds, women with immigration and/or refugee status, undocumented women, survivors of trafficking, women living in poverty, women with disabilities, LGBTQIA+ women, women of ethnic minorities and women enduring trauma and violence of armed conflict in post-disaster situations. In every case the inclusion of women's voices is imperative in efforts to prevent or mitigate such violence.

Global Network of Women's Shelters, Global Call to Action

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PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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1 Precarious Residence Status Increases Women's Exposure to Abuse and Violence

Violence against women and girls is a human rights violation. One in three women worldwide experiences physical or sexual violence at least once in their lives, usually by someone they know.¹

For women in Europe who become undocumented, or who have insecure residence status, the risk of violence increases. Most undocumented women arrive in Europe with regular, but often dependent, residence status and later become undocumented for a variety of reasons.

Lack of an independent residence status, or any status, creates challenge for these women, and increases their chances of experiences violence or exploitation by intimate partners or employers or in other areas of their lives.

Feminist Ethics of Care

Women's rights are human rights. Every woman who has experienced violence should be able to access protection, support and services.

Protection and safety come first. No woman should be turned away from a shelter because she lacks the valid paperwork. All women should be able to approach the justice system for help, with confidence and without fear.

Give them a way out, a way forward. Migration laws and policies often create dependency and increase women's risk of violence. Eradicating violence against women is not just about protection and support, it is also about ensuring their autonomy and agency.

Solidary against discrimination. Laws, policies and practices that limit migrant women's access to services are discriminatory. This violates feminist values, and reflects institutionalized forms of discrimination that we must all reject.

See also: <http://www.wave-stepup.org/>

1 World Health Organization (WHO), Media Centre, Fact sheet: Violence against women Intimate partner and sexual violence against women. November 2017, <http://www.who.int/mediacentre/factsheets/fs239/en/>

Abusive partners often intentionally misinform women who depend on them for their status or who are undocumented. They threaten them with deportation or with separation from their children. They tell them they have no right to state help for housing or subsistence. This leads women to be fearful of any state intervention and reluctant to report violence. When state agencies and other providers do intervene, they must be aware and well informed to gain

their confidence, and undo the myths the abusive partner may have perpetuated.

Perpetrators know that people who are undocumented face a genuine risk of arrest and possible deportation if they reach out to the authorities.² This leads to repeat victimisation and a climate of impunity.

People who are undocumented often belong to ethnic, religious or racial minorities, and therefore 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.³ A 2017 study by the EU Agency for Fundamental Rights (FRA) reports that 'ethnic minority and immigrant background' are the most common grounds for discrimination, experienced by one quarter of people surveyed. Just one in eight respondents reported the most recent incident of discrimination they experienced.⁴

The UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) has recognized that women are affected by intersecting forms of discrimination, and called for governments to "[r]epeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them..." including restrictive immigration "laws that prevent or deter women from reporting gender-based violence". The Committee has also said that protection and support measures and services must be "available in the whole territory of the State party, and provided irrespective of women's residence status."⁵

2 Access to Services for Undocumented Survivors of Violence

Undocumented women who have survived or witnessed abuse face big hurdles not only in reporting these incidents to the authorities, but also in accessing women's shelters, counselling, legal advice and other services. This is often because of laws that limit or deny undocumented women's right to benefit from some services, funding mechanisms that restrict service providers' ability to provide inclusive access, and discriminatory practices.

Women who are without secure status also face many practical obstacles, including language barriers, poverty,

social isolation, lack of awareness of their rights, difficulty navigating the system and lack of legal counsel or representation. They are often barred from accessing services because of the lack of interpretation and lack of awareness among service providers about their situation and needs. Women are also prevented from accessing services because of laws in some countries that punish organisations that give assistance and support to undocumented migrants.

Women with dependent status, or without status, are often hindered from exiting situations of violence or abuse because they cannot obtain autonomous residence status, so that leaving an abusive situation could lead to greater vulnerability and suffering, including detention, deportation or destitution.

2 See, e.g., Nathalie Bloomer, 28 November 2017, "Women report rape to police – and is arrested on immigration charges", *Politics.co.uk*.
 3 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.
 4 FRA *Second European Union Minorities and Discrimination Survey – Main Results* (December 2017).
 5 CEDAW Committee, *General Recommendation 35 on Violence Against Women* (July 2017).

3 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) (Victims' Directive), was adopted on 25 October 2012. Under the Directive, all EU countries (except Denmark) must ensure certain basic rights to all victims of crime, and prioritises an individual's protection and safety above their migration status.

Non-discrimination is at the heart of the Directive, which requires that all victims of crime be treated with respect, offered support services, have access to protection, and be given the opportunity to participate in the criminal proceeding linked to their case. The Directive underscores the 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 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. The right to support services extends to all victims of crime, as well as to family members, not only where homicide is the crime (Article 8). And being a victim does not depend on whether a perpetrator is identified, apprehended, prosecuted or convicted (Recital 19).

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The Istanbul Convention Protects Undocumented Victims from Gender-Based Violence

The Council of Europe *Convention on preventing and combating violence against women and domestic violence* (or, the Istanbul Convention),⁶ 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 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 states 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 specialised women's shelters.⁷ In May 2015, an international group of independent experts, the GREVIO Committee, was established to monitor the Convention's implementation at the national level.

THE RIGHTS OF UNDOCUMENTED CHILD VICTIMS

The Victims' Directive pays 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 specialised support and protection because of repeat 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.

6 *Council of Europe Convention on preventing and combating violence against women and domestic violence*, November 2014, ISBN 978-92-871-7990-6.
 7 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.

4 All Survivors of Crime Have the Right to Free, Confidential 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,⁸ 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 be 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, advice, 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.

Undocumented victims 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

8 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.
 9 See Barbra Schliker Commemorative Clinic, www.schlikerclinic.com.
 10 Laurie Monsebraaten, "Schliker Clinic Celebrates 25 Years of Defending Women's Rights", *Toronto Star*, 14 June 2010.

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Integrated Support Services for Victims with Intersecting Challenges

The **Barbra Schliker Commemorative Clinic** in Toronto, Canada, was created in memory of Barbra Teena Schliker, a young lawyer who was sexually assaulted and killed in Toronto in 1980 in the stairwell of her apartment building.⁹ 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.¹⁰

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. 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.¹¹ Three hundred and eighty-nine women were reportedly denied safe accommodation in the UK in 2014, because they did not qualify for public assistance.¹²

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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 can get housing funds and, in case of a successful conviction, receive priority in accessing public housing. Under Article 14(3) of the 2009 Organic Law, "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 (local) accommodation for a maximum of fifteen days in a different shelter and coordinate locally with NGOs to find permanent accommodation.

Following almost a year of campaigning by Sweden's "No One Is Illegal" network, the city of **Göteborg** 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.

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

11 Nathalie Bloomer, "No Refuge: How Benefit Rules Leave Immigration Women at the Mercy of their Abusers", *Politics*, 10 September 2015.

12 Women's Aid, "Women's Aid Annual Survey 2014".

5 What Women's Organisations, Shelters and Service Providers Can Do to Support Undocumented Survivors of Violence

- › **Join the struggles of migrant women** and embrace an intersectional agenda, and empower undocumented women by supporting their cause and their rights, as well as their efforts to organise and to mobilise.
- › **Resist racism and the growing tendency to stigmatise and demonise migrants**, recognising the gender dimension and impact of prevailing rhetoric and policies on the treatment of women, particularly women of colour or those who are perceived as "foreign".
- › **Empower women's organisations** to provide quality and equitable services to all women, and ensure that they are informed of the specific challenges faced by undocumented women.
- › **Develop and promulgate an ethics of care** that integrates feminist principles with ethical imperatives to ensure inclusiveness and to promote greater solidarity.
- › **Join existing campaigns**, like the Women Against Violence Europe (WAVE) STEP UP! campaign to improve access to services for all survivors of violence in Europe, including women without secure residence status.
- › **Lobby decision makers in your locality, region or country** to meet their obligations to ensure adequate funding for organisations that support survivors of violence and to create mechanisms for more inclusive and non-discriminatory funding not linked to residence or other status.
- › **Push your government to create legal avenues** for women to obtain, or to retain, residence status so that being or becoming undocumented is not a barrier to safety.
- › **Create alliances between organisations** supporting undocumented women and feminist organisations to foster greater solidarity and mutual understanding, and to align core messages and advocacy.
- › **Disseminate information** among your own network and partners, and within your organisation, about the situation and rights of undocumented women.
- › **Push for your national government to ratify the Istanbul Convention**, if it has not, or, if it has, to implement its provisions in a non-discriminatory way to end violence against all women, whatever their migration status.
- › **Take action at the local level** to raise awareness of undocumented women's rights and to challenge discriminatory attitudes and conduct.

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