



UNCONDITIONAL ACCESS TO SERVICES FOR UNDOCUMENTED VICTIMS OF CRIME



PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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EXECUTIVE SUMMARY

For the many undocumented people who fall victim to a crime every year in Europe, engaging with public authorities and receiving victim support services can be a burdensome and challenging experience. A lack of awareness about their rights, social exclusion, distrust in law enforcement and the risk of detention and deportation all contribute to an environment where undocumented victims fall through the cracks of the justice system. Without help, undocumented victims are at an increased risk of repeat victimisation, continued social exclusion and may struggle to obtain the justice and redress to which they are entitled.

Legal framework

Victim support services play a critical function in mitigating the consequences of crime, helping victims through criminal and judicial procedures, securing justice and assisting them in rebuilding their lives after crime. International and European frameworks establish broad obligations on states to ensure that undocumented people have unconditional access to victim support services. The [EU Victims' Rights Directive](#) explicitly states that the "rights set out in this directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status...free of charge, acting in the interest of the victims!"

In its [Strategy on Victims' Rights \(2020 – 2025\)](#), the Commission acknowledges that "Irregular migrants who become victims of crime are also often in a situation of vulnerability and may have difficulty to access justice. If they report a crime to the police, they may be ordered to return to their home country." The strategy directly addresses the problematic dual role law enforcement agents have in many states of enforcing immigration rules against undocumented people found to be on a state's territory, on the one hand, and supporting survivors in accessing

services, protection and justice, on the other. This is complemented by the [EU Anti-Trafficking Directive](#) which confirms that undocumented victims have unconditional access to victim support services, during a reflection period² where they can recover as victims.

In addition to EU legislation, the rights of undocumented victims of crime are also codified in other international and regional legal frameworks and standards. Signatories to the [Council of Europe Convention](#) on preventing and combating violence against women and domestic violence must guarantee the availability of services such as emergency hotlines, shelters, medical assistance, counselling and legal aid to victims of domestic and gender-based violence, regardless of migration status. For victims of trafficking, the [Council of Europe Convention on Action against Trafficking in Human Beings](#) sets out a series of measures to protect and provide services to trafficked persons, including access to emergency medical treatment, counselling, interpretation services and education for their children.

At the international level, several United Nations treaties contain important provisions that are relevant to undocumented victims of crime. The [Convention on the Elimination of All Forms of Discrimination against Women](#), or CEDAW³, is an international treaty that requires countries to eliminate discrimination against women. Its implementation is overseen by the CEDAW Committee - a UN body consisting of independent, international experts - who have affirmed that all victims should benefit from specialist support services, including around-the-clock helplines, referral centres and shelters⁴.

The [UN Anti-Trafficking Protocol](#)⁵ also encourages states parties to implement "measures to provide for the physical, psychological and social recovery

1 Article 8(1) of the Victims' Rights Directive

2 Usually three to six months

3 [Convention on the Elimination of All Forms of Discrimination against Women](#), New York, 18 December 1979

4 [General recommendation No. 35](#) (2017) on gender-based violence against women, updating general recommendation No. 19 (1992)

5 The [UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#), 15 November 2000

of victims of trafficking in persons.⁶⁹ Furthermore, states should consider “adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently.”⁷⁰ Article 14 of the [UN Convention against Torture](#) stipulates that states should ensure that “the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”⁸⁰ The UN Committee against Torture has clarified that this should be available to all victims regardless of their status⁹.

Key victim support services for undocumented victims of crime

Undocumented people are at a heightened risk of exploitation and abuse because they have less recourse to rights and social protections. They have less contact with public authorities than others and so when they fall victims of crime, they are often unaware of their rights as victims. This can be particularly problematic as the first step in accessing victim support services and justice is to be informed of their rights as well as how and where they can access support services.

This is also the case for the availability of victims’ telephone helplines, which are frequently another early port-of-call for victims of crime. A lack of knowledge about their existence and the absence of availability in a language undocumented victims can understand also serve as major barriers to further support.

For undocumented women who fall victim to gender-based violence, shelters are an essential service in offering safety and refuge, free from harm. However, there are serious shortages of shelters across the EU¹⁰ and undocumented migrant women may face even greater hurdles in accessing these services. There are sometimes limitations on the number of beds that can be offered to undocumented women, or limitation in the duration of their stay¹¹.

In conjunction with shelters, trauma-informed care, mental health and psychosocial support are important support services for people who have suffered from violent crime. Health problems, however, can be exacerbated by the social, legal and economic circumstances in which undocumented victims of crime live. Poverty, fear of deportation, experiences of racism and violence at the hands of immigration authorities and police, lack of access to health services and other forms of social exclusion create stressors and chronic stress, which can result in complex, multifaceted health needs for individuals. Specialist support services, especially those for victims of gender-based violence, provide holistic, psychosocial support to individuals to address the underlying social determinants that cause these issues, but service-providers still struggle to cope with the increased demand¹².

The EU Victims’ Rights Directive places clear obligations on EU member states to ensure that all victims of crime have access to the rights and services it entails, without prejudice to their residence status¹³. This includes access to victims’ support services before, during and after criminal proceedings. Victim support services should be easily accessible, free of charge, confidential, victim-focused, and competent¹⁴ in dealing with the challenges faced by the victims they serve.

The position of legal and social marginalisation that undocumented people find themselves in means that they have specific needs when they fall victim to a crime. The legal frameworks in place to offer support to all victims of crime exist. Moving forward, the objective will be to implement safeguards for people with irregular migration status. This will allow them to meaningfully enjoy and exercise their rights as victims and human beings as well as to allow them to rebuild their lives.

6 Article 6(3) of the UN Anti-Trafficking Protocol

7 Article 7(1) of the UN Anti-Trafficking Protocol

8 The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

9 *Ibid.*

10 Women Against Violence in Europe (WAVE), 2021. [Country Report 2021](#).

11 Women against Violence in Europe (Wave), 2018. [Shelters for undocumented migrant women in the Netherlands](#)

12 European Women’s Lobby and Women against Violence in Europe, 2020. Webinar, [EU Mutual Learning Programme in Gender Equality: Good practices for tackling domestic violence in the context of COVID-19](#)

13 Article 1 of the Victims’ Rights Directive

14 The Victims’ Rights Directive features a broad understanding of the definition of “competent authority”. This is intended to go beyond just law enforcement officials so that referrals are not conditional on cooperation with criminal investigations and law enforcement.

A note on terminology

The EU Victims' Rights Directive¹⁵ includes a broad definition of "victim", which encompasses any person who has suffered harm caused by a criminal offence. Importantly, recital 19 of the Directive recognises that a "person should be considered a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them".

As this report focuses on unconditional access to services for undocumented survivors of violence, it uses the term "victim" throughout by necessity. PICUM has reported in previous research¹⁶ that while undocumented migrants show significant resourcefulness, resilience, and courage, it is their relative social and economic precarity or marginalisation that makes them susceptible to certain forms of discrimination and ill-treatment. This report does not aim to feed into a narrative of powerlessness, but instead to highlight the already existing legislation and the importance of having unconditional access to services for undocumented people as rights-holders.

15 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>

16 PICUM, 2021. [Insecure Justice? Residence Permits for Victims of Crime in Europe](#)

INTRODUCTION

Nearly 75 million people are direct victims of crime each year in the European Union, according to Eurostat¹⁷. A crime can be defined as an intentional act or omission, which causes physical or psychological harm, or damage to or loss of property, and is punishable by law¹⁸.

Being the victim of shoplifting, identify theft, getting your wallet stolen, being racially abused, sexually assaulted or having a family member murdered all illicit different responses. The consequences of the different crimes along this spectrum vary widely and victims who experience different crimes will necessarily have different needs for support. Crimes can have potentially devastating effects, with lasting physical injuries, mental health problems, as well as financial loss. The impact of these consequences is not limited to the individual victim, but can also profoundly impact the person's family, community and often even entire societies.

This is where victim support services step in. Providing support to victims and their families can mitigate many of the long-term negative consequences of crime as well as assist them with practical matters.

In general, victim support services can be defined as services that provide free and confidential help to victims of crime, witnesses and their families. These services should be tailored to the specific needs and circumstances of each person but can include the provision of information and advice, counselling, advocacy, peer support, compensation, restorative justice, help in navigating the criminal justice system, court support, mental health and psychosocial support services.

By helping victims assert their rights, victim support services are crucial in reducing the likelihood of repeat victimisation as well as helping victims restore their social functioning and mitigating potential mental health problems. This has positive benefits for the individual, contributes to social inclusion and can also lead to improvements in the quality of life in entire communities¹⁹.

People who have irregular migration status are at a heightened risk of exploitation and abuse because they are more likely to live in social exclusion, have less recourse to rights and social protections. This position of legal and social marginalisation means that they have specific needs when they fall victim to a crime.

Many undocumented people do not report the crimes they have fallen victim to because they fear that doing so could risk them being deported. More broadly, undocumented victims of crime struggle to meaningfully exercise their rights as victims as they often do not have access to residence permits.

This report details the legal framework that governs the rights of undocumented victims of crime to access victim support services in the European Union. The aim is to highlight the broad set of rights that undocumented people have as well as to outline the obligations states have to realising those rights. The report provides an overview of the key services entailed in victim support.

17 European Commission, [Victims' Rights Directive, Frequently Asked Questions](#)

18 Victim Support Europe, 2022. [Help for Victims: If you are a victim of crime.](#)

19 United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention. (1999). Handbook on Justice Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf

LEGAL FRAMEWORK

States have broad international and European obligations to ensure that undocumented people have access to their rights to support services as victims, unconditionally. This section presents relevant legal frameworks covering access to victim support services, from the European Union, the Council of Europe and the United Nations.

The European Union

The EU Strategy on Victims' Rights

The EU launched its first Strategy on Victims' Rights (2020-2025) in June 2020²⁰. The strategy makes an important reference to the safe reporting of crimes for undocumented migrants, including by "empowering victims of crime" and establishing "safe environments to report crime." The Strategy recognises several categories of "vulnerable victims" and includes among them undocumented migrants:

"Irregular migrants who become victims of crime are also often in a situation of vulnerability and may have difficulty to access justice. If they report a crime to the police, they may be ordered to return to their home country. Under the Victims' Rights Directive, victims' rights shall apply to victims in a non-discriminatory manner, independently of their residence status. This shall also apply to unaccompanied minors. Under this strategy, the Commission will assess legal and practical tools at EU level to improve reporting of crime and access to support services for migrant victims, independently of their residence status. In particular, the Commission will promote exchange of good practices among the Member States aimed at disconnecting reporting of crime from the return procedure without jeopardising the effectiveness of such procedures."

The strategy directly addresses a critical dilemma confronting an undocumented person who has been victimised: the problematic dual role law enforcement agents have in many member states of enforcing immigration rules against undocumented people found to be on a state's territory, on the one hand, and supporting survivors in accessing services, protection and justice, on the other. The prioritisation of immigration enforcement leads to a systematic undermining of the rights of victims of crime.

It therefore provides an important framework to improve understanding about the rights of undocumented migrants under the Victims' Directive, and exchange about measures that advance their rights in a way that meaningfully engages civil society organisations with experience working with affected communities. It recognises the importance of strengthening the rights of undocumented people in Europe in a way that promotes their safety, protection, and access to justice potentially by proposing new legislation.

The Victims' Rights Directive

The Victims' Rights Directive is the most expansive legal framework governing victims' rights in the European Union. Adopted in 2012, it establishes common standards across the EU²¹ by setting out the rights victims of crime have as well as placing obligations for member states to realising those rights.

Article 1 of the directive stipulates that the "rights set out in this directive shall apply to victims in a non-discriminatory manner, *including with respect to their residence status*"²² (emphasis added). The Directive gives an explicit right for undocumented victims to access the rights it entails. This is significant because it prioritises their safety, security and protection ahead of immigration enforcement measures.

20 EU Strategy on Victims' Rights (2020-2025). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0258>

21 Except for Denmark, which has a formal opt-out of justice and home affairs.

22 [Directive 2012/29/EU](#) of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Vulnerability due to irregular migration status

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, acts of gender-based violence committed against undocumented migrants, and trafficking in human beings.²³

The directive, in fact, explicitly recognises that non-citizens are "particularly vulnerable" or at "particularly high risk of harm" and may therefore need specialist support services and legal protection. These include "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 victims²⁴."

Article 9 of the directive outlines what victim support services should provide at minimum.

Victims' support services

Victims' support services are an integral part of the directive, with obligations on member states to provide "access to confidential victim support services, free of charge, acting in the interest of the victims before, during and for an appropriate time after criminal proceedings²⁵." These services are based on the need of the victim and include emotional and psychological support, advice on financial and practical issues arising from the crime and on the risk and prevention of repeat victimisation.

Authorities should facilitate the referral of victims to victim support services²⁶, and "shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support²⁷."

Article 9. Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:
 - a. information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
 - b. information about or direct referral to any relevant specialist support services in place;
 - c. emotional and, where available, psychological support;
 - d. advice relating to financial and practical issues arising from the crime;
 - e. unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.
2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.
3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:
 - a. shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
 - b. targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

23 [European Commission, DG Justice Guidance Document](#) related to the transposition and implementation of 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, December 2013.

24 Recital 38 of the Victims' Rights Directive

25 Article 8.1 of the Victims' Rights Directive

26 Article 8.2 of the Victims' Rights Directive

27 Article 8.3 of the Victims' Rights Directive

Under the directive, filing a criminal complaint is not a precondition for a victim being able to avail themselves of their right to services²⁸. Member states should provide information and advice on victim support services through diverse channels and “in a manner which can be understood by the victim²⁹.”

Importantly, this support should be available as early as possible and should take place during and after criminal proceedings are taking place, based on the needs of the victim. Member states should work to ensure that this support is accessible in practice by removing “excessive formalities” and ensuring “sufficient geographical distribution³⁰.”

Recital 38 recognises that some victims might need specialist support services due to social marginalisation and/or the severity of the crime. It acknowledges that “specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment.³¹”

Fear of accessing services and justice

Undocumented migrants, people with spouse-dependent visas, and people with precarious residence status are profoundly impacted by their wider social environment. Their migration status means that they struggle to access many basic services and living in fear of deportation can have significantly negative mental health consequences³². The recognition that the environment in which undocumented migrants live can exacerbate mental health problems is a crucial first step to providing undocumented victims the support and taking steps to address the stressors that lead to them.

Recital 40 notes that although “the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of

the possibility of support.” It cautions that member states should take steps to facilitate this and “data protection requirements can be and are adhered to.”

The ability of undocumented people to engage without fear of discrimination or threat of detention or deportation with law enforcement, with victim support services, and with other entities that provide the services and support provided for under the directive, is nonetheless implicit and indeed must be assumed as a basis for the rights of the directive to be effective at all for people with irregular migration status.

The directive makes clear that authorities must take steps to “encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation.” To ensure that this can take place, the directive recognises that “it is essential that reliable support services are available and that competent authorities are prepared to respond to victims’ reports in a respectful, sensitive, professional, and non-discriminatory manner.³³” This is particularly relevant for undocumented people, because of the stigma and discrimination they face. Even when they have clear rights as victims, they are often treated with a lack of respect and dismissed without recourse to their rights as victims, because of their status.

Residence permits

However, one of the key obstacles to realising the rights of the directive for undocumented people is that the lack of residence permits can act as a formal and informal deterrent to reporting crimes. Whereas member states should take the necessary steps to ensure that the “rights set out in this directive are not made conditional on the victim’s residence status in their territory or on the victim’s citizenship or nationality”, reporting a crime or participating in criminal proceedings “do not create any rights regarding the residence status of the victim³⁴.”

Residence permits are an important way to ensure that victims with insecure status have a remedy for the crimes they have suffered. They can help assuage

28 Article 8(5) of the Victims’ Rights Directive

29 Recital 21 of the Victims’ Rights Directive

30 Recital 37 of the Victims’ Rights Directive

31 Recital 38 of the Victims’ Rights Directive

32 Fakhoury, Julien et al. “Mental health of undocumented migrants and migrants undergoing regularization in Switzerland: a cross-sectional study.” *BMC psychiatry* vol. 21, 1 175. 1 Apr. 2021, doi:10.1186/s12888-021-03149-7

33 Recital 63 of the Victims’ Rights Directive

34 Recital 10 of the Victims’ Rights Directive

reluctant victims with precarious status to come forward and report the crimes to which they have fallen victim. In this sense, they can be seen as a way to assist in the rehabilitation of the victim but also to prevent further victimisation³⁵.

The European Commission's guidance note³⁶ to member states explains that "third country nationals and stateless persons who have fallen victims of crime on EU territory as well as victims of crime committed extra-territorially in relation to which criminal proceedings are taking place within the EU must benefit from these rights. Current practice from some Member States shows this can be achieved by adapting appropriate immigration rules, for example, *by suspending deportation orders and/or issuing temporary residence permits* in relation to on-going criminal proceedings" (emphasis added).

Anti-Trafficking Directive

The [EU Anti-Trafficking Directive](#)³⁷ was adopted in 2011 and sets binding rules on the definition of criminal offences and the level of sanctions as relates to trafficking in human beings. It provides a common legal framework for preventing and prosecuting human trafficking and protecting victims, according to which (Recital 18) undocumented victims have a right to assistance and support unconditionally at least during a reflection period. This directive is complementary to the Anti-Trafficking Directive 2004/81/EC.

Recital 18 recognises that in order for victims of trafficking to be able to exercise their rights effectively, they will need assistance and support before, during and after criminal proceedings. The directive stipulates that EU member states "should provide for resources to support victim assistance, support and protection." The anti-trafficking directive makes explicit reference to undocumented people who are victims of trafficking and obliges member states to provide them with assistance support "unconditionally

at least during the reflection period."

Article 11 further elaborates that member states must "take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings"; and this assistance and support must include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate".

Human trafficking occurs in a broader context of exploitation and irregular migration. To address this, governments should adopt a rights-based approach that tackles the structural reasons – in particular policies and practices – which increase risks for people with an insecure or irregular status of experiencing situations of exploitation and remaining in those situations and focuses on providing person-centred and rights-based services, support and justice to victims.

One of the key pitfalls of the 2011 Anti-Trafficking Directive is that it focuses heavily on identifying and punishing perpetrators and less on the provision of support and rehabilitation for the victims. This therefore creates gaps in crucial service provision for victims of trafficking, even when they are identified.

Proposed Violence against Women and Domestic Violence Directive

On 8 March 2022, the European Commission launched a [proposal on combatting violence against women and domestic violence](#)³⁸. The proposal recognises the multifaceted and intersectional realities of gender-based violence. Recital 11 outlines that "Violence against women and domestic violence can be

35 PICUM, 2021. [Preventing Harm, Promoting Rights: Achieving Safety, Protection And Justice for People with Insecure Residence Status in the EU](#).

36 [European Commission, DG Justice Guidance Document](#) related to the transposition and implementation of 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, December 2013.

37 [Directive 2011/36/EU](#) of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

38 Proposal for a [Directive of the European Parliament and of the Council](#) on combating violence against women and domestic violence

exacerbated where it intersects with discrimination based on sex and other grounds of discrimination prohibited by Union law,” (these grounds include nationality) and “Member States should therefore pay due regard to victims affected by such intersectional discrimination, through providing specific measures where intersecting forms of discrimination are present.”

Recital 56 specifically lists “undocumented migrant women” as a group of victims with “specific needs” and recognises that they are a group “at risk of violence against women or domestic violence.” It further notes that these groups shall receive specific protection and support. Article 35(3) also makes explicit that “The support services shall be available for third-country nationals who are victims of violence against women and domestic violence, including for applicants for international protection, for undocumented persons.”

However, the proposal still leaves open the possibility for members states to deport victims of gender-based violence. Article 16(5) notes that “Member States shall ensure that the competent authorities coming in contact with a victim reporting offences of violence against women or domestic violence are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment referred to in Article 18.” This is problematic because it creates ambiguity and could potentially give member states broad discretion to transfer data about residence status, even when the individual assessment has been done cursorily.

Article 27 of the proposed directive lists the obligation of member states to provide victim support services to survivors of gender-based violence as per Article 9 of the Victims’ Rights Directive (see above). It specifies that support “shall be offered in-person and shall be easily accessible, including online or through other adequate means, such as information and communication technologies, tailored to the needs of victims of violence against women and domestic violence.”

One of the challenges of Article 27 is that it makes quite strong provisions for providing all support services in one premise. Paragraph 4 notes that member states shall provide these services “at the same premises, or have such services coordinated through a central contact point, or through one-stop online access to such services.” It can be a challenge for many survivors of violence to feel comfortable in large, government-run agencies but this is especially the case for undocumented survivors, especially if law enforcement agencies are also present in these premises.

The Council of Europe

Istanbul Convention

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)³⁹ came into force on 1 August 2014. It is the first comprehensive legal instrument on violence against women. States that choose to join the Convention must bring their national laws in line with its provisions, and make sure that it is applied in their countries in way that benefits all women. By joining the Istanbul Convention, states are agreeing to binding standards on preventing violence against women, protecting survivors and punishing perpetrators; and to guarantee the availability of services like emergency hotlines, shelters, medical assistance, counselling, and legal aid.

The Convention must be implemented without discrimination on any ground including migration or refugee status.⁴⁰ The provision of support services is not dependent on the victim’s willingness to press charges or testify against the perpetrator⁴¹ and states must ensure that women are aware, and can avail themselves, of regional and international mechanisms to complain, individually and collectively, about violence they have experienced.⁴² Women have the right to civil remedies⁴³ and to compensation⁴⁴ from perpetrators, including state compensation when necessary. Victims whose residence status depends

39 The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ([Istanbul Convention](#))

40 Article 4

41 Article 18

42 Article 21

43 Article 29

44 Article 30

on that of a spouse or partner should have access to an autonomous residence permit and suspension of deportation proceedings initiated in relation to the loss of spouse--dependent visa status⁴⁵.

Recognising the critical role of NGOs and CSOs in providing support and services for victims, states must implement policies for effective multi-agency cooperation to ensure an integrated, holistic approach⁴⁶ and to engage and support the work of NGOs⁴⁷; and allocate appropriate financial and human resources for activities carried out by public authorities and relevant NGOs and CSOs⁴⁸. States must provide women with information about available support services and measures in a language they understand. Victims have a right to general support, including free and confidential legal and psychological counselling, financial assistance, housing, education, training, health care and social services⁴⁹. Women have a right to specialist services, as well as access to shelters, 24/7 hotlines to provide confidential advice⁵⁰. States must ensure that shelters are accessible in sufficient numbers and adequately distributed across the country.⁵¹

The Istanbul Convention has been ratified by 21 European Union (EU) member states.⁵² In 2015, the European Commission expressed its desire for the EU to accede to the Istanbul Convention⁵³. This would require the consent of both the European Parliament and the European Council. However, opposition⁵⁴ in the European Council has stalled the accession of the EU to the Istanbul Convention. In response, the Commission [proposed its own legislation](#) in March 2022 to combat violence against women and domestic violence in the EU (see previous section).

Anti-Trafficking Convention

The Council of Europe Convention on Action against Trafficking in Human Beings⁵⁵ was adopted in 2005 and came into force in 2008. The Convention sets out a series of measures to protect trafficked persons, prevent trafficking in people and prosecute perpetrators.

Article 12 of the Convention stipulates that states party to the Convention shall adopt legislative or other measures to “assist victims in their physical, psychological and social recovery.” This assistance to victims is not conditional on the victim cooperating with law enforcement as a witness⁵⁶ and includes:⁵⁷

- a. Standards of living capable of ensuring subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- b. Access to emergency medical treatment;
- c. Translation and interpretation services, when appropriate;
- d. Counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- f. access to education for children.

Furthermore, the Convention makes for provisions of residence permits to victims of human trafficking. Article 14 stipulates that states party shall “issue

45 Article 59

46 Article 7 and 9

47 Article 9

48 Article 8

49 Article 20

50 Article 22, 23, 24, 26

51 Article 23.

52 Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden. Available at <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention#:~:text=As%20of%20September%202022%2C%20it,Slovenia%2C%20Spain%20and%20Sweden>.

53 The European Commission, [\(A possible\) EU Accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#), 2015.

54 Euractiv, [Visegrad in the spotlight as EU lawmakers call to outlaw gender-based violence](#), 2021.

55 Council of Europe [Convention on Action against Trafficking in Human Beings](#)

56 Article 12(6) of the Council of Europe Convention on Action against Trafficking in Human Beings.

57 Article 12(1) of the Council of Europe Convention on Action against Trafficking in Human Beings.

a renewable residence permit to victims” if “the competent authority considers that their stay is necessary owing to their personal situation,” and/or “the competent authority considers that their stay is necessary for the purpose of cooperation” within the context of an investigation or criminal proceeding⁵⁸.

The United Nations

Most United Nations Conventions do not explicitly stipulate states’ obligations to provide access to services for survivors of crime, but rather the necessary steps to ensure people’s recovery and social reintegration through the framework of redress and reparations in international law. However, the Treaty Bodies which monitor the implementation of the UN Conventions have repeatedly clarified that States should ensure that people who have suffered from violence have access to legal services and advice, health services, information, reparation, and compensation.

INFO BOX

The United Nations Treaty Body System⁵⁹

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty.

There are ten human rights treaty bodies composed of independent experts of recognized competence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties. The treaty bodies meet in Geneva, Switzerland.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women, or CEDAW⁶⁰, is an international legal instrument that requires countries to eliminate discrimination against women in all areas and promotes women’s equal rights. Adopted in 1979, the Convention defines the meaning of discrimination against women, and establishes legal obligations for states parties to end such discrimination.

The CEDAW Committee oversees the implementation of the Convention in all states parties. It does this by periodically reviewing those countries as well as by issuing guidance on the interpretation of the Convention in the form of General Comments or Recommendations. In General Recommendations 28, 30, 33 and 36 the Committee reiterated the obligation of States to provide reparations to victims of violence within the scope of the Convention⁶¹. The right to reparation is understood to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In the context of gender-based violence, this includes access to health services as well as sexual and reproductive services, mental health services as well as access to information and sexual education.

In General Recommendation 35 on gender-based violence⁶², the CEDAW Committee further clarifies that apart from access to health services, women survivors and their family members should have access to “financial aid and free or low-cost high quality legal aid” (para. 40(c)) as well as “affordable housing, land, childcare, training and employment opportunities”. In addition, it stipulates that, women should be able to benefit from specialist support services, including around-the-clock helplines, referral centres and shelters. These services are considered an integral part of effective reparations, which should also include monetary compensation, legal and social services (para. 46 (a)).

58 Article 14(1) of the Council of Europe Convention on Action against Trafficking in Human Beings.

59 United Nations Office of the High Commissioner for Human Rights (OHCHR), 2022. [The UN Treaty Body System](#).

60 [Convention on the Elimination of All Forms of Discrimination against Women](#), New York, 18 December 1979

61 General Recommendations [No 28](#), [No. 30](#), [No. 33](#), [No. 36](#)

62 [General recommendation No. 35](#) (2017) on gender-based violence against women, updating general recommendation No. 19 (1992)

General Recommendations No. 24⁶³ and No. 37⁶⁴ further emphasise that women and girls who are victims of human trafficking should have access to safe, free and confidential access to health care and trauma treatment. The 2014 Joint general recommendation No. 31 of CEDAW and No. 18 of the Committee on the Rights of the Child (CRC) stipulates to provide support and follow-up services including towards physical and psychological recovery⁶⁵.

In its joint recommendation on harmful practices,⁶⁶ the CEDAW Committee and the Committee on the Rights of the Child (CRC) state that States are obliged to condemn harmful practices and provide legal protection (para. 40), as well as should have access to legal remedies, victim support and rehabilitation services (para. 52). The CEDAW Committee and CRC recommend that States should include in legislation “detailed guidance on prevention, protection, support and follow-up services and assistance for victims (...) complemented by adequate civil and/or administrative legislative provisions” (para. 55(d)) and have access to “legal remedies and appropriate reparations in practice” (para. 55 (q)).

Anti-Trafficking Protocol

The UN Anti-Trafficking Protocol⁶⁷ also establishes obligations on states parties (ratified by all EU member states) to ensure that victims of trafficking have recourse to protection and assistance. It stipulates that, where appropriate, states parties shall ensure

that victims have access to “information on relevant court and administrative proceedings” as well as “assistance to enable their views and concerns to be presented” in court proceedings⁶⁸.

It also encourages states parties to implement “measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations.”⁶⁹ This can include housing, counselling, medical, psychological and material assistance as well as employment, educational and training opportunities. States are also obliged to ensure that domestic legal systems contain specific measures that offer victims of trafficking compensation for the damage they have suffered⁷⁰.

The UN Anti-Trafficking Protocol also stipulates that states “shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”⁷¹ In so doing, states “shall give appropriate consideration to humanitarian and compassionate factors.”⁷²

Convention against Torture

Article 14 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that States should ensure that “the victim of an act of torture obtains redress and has an enforceable right to fair and adequate

63 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at: <https://www.refworld.org/docid/453882a73.html>

64 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change (CEDAW/C/GC/37) available at <https://reliefweb.int/report/world/general-recommendation-no-37-gender-related-dimensions-disaster-risk-reduction-context>

65 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at: <https://www.refworld.org/docid/453882a73.html>

66 Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC), Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices <https://reliefweb.int/report/world/joint-general-recommendation-general-comment-no-31-committee-elimination-discrimination>

67 The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000

68 Article 6(2) of the UN Anti-Trafficking Protocol

69 Article 6(3) of the UN Anti-Trafficking Protocol

70 Article 6(6) of the UN Anti-Trafficking Protocol

71 Article 7(1) of the UN Anti-Trafficking Protocol

72 Article 7(2) of the UN Anti-Trafficking Protocol

compensation, including the means for as full rehabilitation as possible.⁷³

In its General Comment 3, the UN Committee against Torture clarifies that redress should be “equally accessible to all persons regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, *or any other status or adverse distinction*, and including those marginalized or made vulnerable on bases such as those above⁷⁴” (emphasis added).

As above, reparation means compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. The Committee explains that “for restitution to be effective, *efforts should be made to address any structural causes of the violation*, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination” (emphasis added).

On compensation, the Committee specifies that it “should be sufficient to compensate for any economically assessable damage resulting from torture or ill treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the

torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation awarded by States parties to a victim of torture or ill-treatment should provide for legal or specialist assistance, and other costs associated with bringing a claim for redress.”

The Committee understands rehabilitation services to be “holistic and include medical and psychological care as well as legal and social services⁷⁵.” That is to say, the Committee recognises that healing and redress does not take place in a social and legal vacuum; it is intrinsically linked to a person’s circumstances. This is explicitly acknowledged by the Committee, which clarifies that, in providing redress to victims of torture “the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them.”

This is particularly relevant for undocumented survivors of torture because it means they have the right to receive redress regardless of their residence status and that the services and support they should receive must recognise their position of social marginalisation. States should therefore ensure that undocumented victims of torture have recourse to residence permits and the same access to rehabilitation services as other victims of torture.

Finally, in its General Comment 4, the Committee against Torture has also specified that that victims of torture or other inhuman treatment should have access to specialised rehabilitation services, and no one should be deported to another country where medical treatment and services would not be available or guaranteed (par. 22)⁷⁶.

73 The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

74 UN Committee Against Torture (CAT), General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties, 13 December 2012, available at: <https://www.refworld.org/docid/5437cc274.html>

75 *Ibid.*

76 UN Committee Against Torture (CAT), General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, 9 February 2018, available at: <https://www.refworld.org/docid/5a903dc84.html>

Other relevant treaties

The International Covenant on Economic, Social and Cultural Rights⁷⁷ recognises that in order to live a dignified life, certain necessities have to be met. It therefore enshrines economic, social and cultural rights such as the rights to adequate food, adequate housing, education, health, social security, water and sanitation, and work.

The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 22 (2016) on the right to sexual and reproductive health, the CESCR recalled State obligations to ensure all persons within its jurisdiction to “meaningful and effective remedy” when the right to sexual and reproductive health has been violated (para. 64). These remedies include “adequate, effective, and prompt reparation in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as

appropriate. The effective exercise of the right to remedy requires funding access to justice and information about the existence of these remedies” (para. 64)⁷⁸.

The United Nations Convention on the Rights of the Child (CRC), in its article 39 stipulates that States should take the necessary steps for child victims of “any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts” to guarantee the child recovery and social reintegration. Similarly, the United Nations Convention of the Rights of Persons with Disabilities (CRPD), in its article 16(4), indicated that States should take the necessary steps to encourage “the physical, cognitive and psychological recovery, rehabilitation and social reintegration” of people with disabilities victims of exploitation, violence and abuse.

77 [International Covenant on Economic, Social and Cultural Rights](#)

78 Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfQejF41Tob4CvjieTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzxiHysKUoHMavD%2Foyfcp3YlZg>

KEY SERVICES

The objective of victim support services is to ensure that victims of crime have access to justice and that they are supported in rebuilding their lives after crime. The European Union Fundamental Rights Agency has stated that improvements are still necessary in order to facilitate reporting and access to services: “Victims’ effective access to justice depends in large part on the availability of targeted victim support services.”⁷⁹

This section details the key services for victims of crime and how they apply to undocumented victims of crime. However, before enumerating the specific services, it is important to highlight how irregular migration status places high barriers on individuals aiming to access victim support services.

Irregular migration status as a barrier to services

For undocumented victims, justice and support are often elusory. Structural factors lead to the systematic underreporting of crime by undocumented migrants. Immigration detection practices put them at risk of arrest and deportation when seeking protection and justice. People 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. 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. Difficulties they face in accessing justice and support across the EU exacerbate their exploitation at work, at home, and on the street. The people who exploit undocumented victims of crime know the barriers that exist and use them to deepen their exploitation.

Falling victim to a crime can be a disorienting experience for anyone, and can be particularly challenging for socially marginalized communities, such as undocumented migrants, who may not even speak the language or know what their rights are as victims. Being able to report a crime freely and safely, without fear of deportation, is an essential first step in being able to access justice and victim support services⁸⁰.

All victims of crime should have access to victims’ support services, based on their needs and independently of their residence status. In order to comply with their legal obligations, competent authorities should, as a part of a needs assessment, enable undocumented victims of crime to access justice and to benefit from victim support services⁸¹.

Access to information and advice

Victim support services should be easily accessible, free of charge, confidential, victim-focused, and competent in dealing with the challenges faced by the victims they serve. In the first place, they should provide victims with information and advice on how they can access victims’ support services. Under Article 4(1) of the Victims’ Rights Directive, victims are entitled to receive information on the type of support available to them, including on specialist support

79 The EU Fundamental Rights Agency, 2015. [Victims of Crime in the EU: The Extent and Nature of Support for Victims](#).

80 PICUM, 2021. [Safe Reporting: Safety, Justice and Protection for All](#)

81 PICUM, 2020. [Insecure Justice? Residence Permits For Victims Of Crime In Europe](#)

services. This requires competent authorities⁸² to ensure that victims are not merely informed of the existence of services, but also, according to Article 4(1) of the Victims' Rights Directive, referred to those services at the initial stage and "without unnecessary delay".

The objective is to ensure that victims and their families have effective access to this information and subsequently to free and confidential support services, depending on their needs. EU member states also have to go beyond merely promoting the involvement of victim support services and have an obligation to ensure that services act "in the interests of victims before, during and for an appropriate time after criminal proceedings⁸³".

The Victims' Directive indicates that at a minimum, competent authorities should provide victims with information on⁸⁴:

- the rights of victims including national compensation schemes
- their role in criminal proceedings including preparation for attendance at trial
- information about or direct referral to relevant specialist support services
- advice relating to financial and practical issues arising from crime
- advice relating to repeat victimisation, intimidation and retaliation.

The Victims' Rights Directive also recognises that certain categories of victims may be particularly vulnerable due to their social and administrative situations. It acknowledges that undocumented people may be at greater risk of secondary or repeat victimisation, intimidation and retaliation, and may therefore require specific support and protection. In this context, it requires competent authorities to carry out individual assessments of the victim's needs as well as the specific services that are available to address those needs.

Article 22 of the Victims' Rights Directive obliges EU member states to carry out an individual assessment of victims to identify specific protection needs, based on, for example, the severity of the crime, crimes based on bias or discrimination or victims that are in a vulnerable position because of their relationship to and dependence on the perpetrator.

General versus specialist services

In the actual provision of services, there are compelling grounds to include the inclusion of both general victim support services as well as specific support services. Generalist services, especially those where services are premised in the same location, may have an easier time introducing robust referral mechanisms. A one-stop service such as this, may also more easily avoid gaps and fragmentation and create a consistent approach to support across its service provision to different groups of victims⁸⁵.

On the other hand, specialist support services are usually in a much stronger position to deal with the often complex and dynamic needs of specific groups, such as undocumented migrant women survivors of gender-based violence. In recognising this, the Istanbul Convention obliges states parties to establish specialist support services to this end⁸⁶. They often have many years of experience and specific expertise, which allows them to provide a more targeted and often better service for their client populations. Beyond expertise, they may also be a more trusted source of service provision, meaning that victims may more readily seek out their services.

From a policy perspective, housing all (or most) support services in the same premise may act as a deterrent for some victims to access those services. For example, undocumented migrants may not feel comfortable entering the premises, which also house law enforcement agencies due to the perceived risk of deportation, or because of a lack of trust.

82 The Victims' Rights Directive features a broad understanding of the definition of "competent authority". This is intended to go beyond just law enforcement officials so that referrals are not conditional on cooperation with criminal investigations and law enforcement.

83 Article 8(1) of the Victims' Rights Directive

84 Article 9(1) of the Victims' Rights Directive

85 The EU Fundamental Rights Agency, 2015. [Victims of crime in the EU: the extent and nature of support for victims](#)

86 Article 22 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

IN FOCUS

Survivors of gender-based violence

Gender-based violence is a serious and widespread human rights violation. One in three women worldwide report having experienced physical or sexual violence at least once in their lives, usually by someone they know⁸⁷. Research confirms that migrant women, especially those with irregular status, experience high rates of gender-based violence, which has long-lasting negative consequences and is exacerbated by a fear of reporting violence⁸⁸.

Undocumented women who have survived or witnessed abuse face major obstacles 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.

Many undocumented women arrive in Europe with regular, but often dependent residence status and later become undocumented. Women with dependent status, or without status, are often hindered from exiting situations of violence or abuse because they cannot obtain autonomous residence status. Leaving an abusive situation could lead to greater vulnerability and suffering, including detention, deportation and/or destitution.

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. Undocumented women can struggle to get independent accommodation, as many landlords will not rent to people without regular status. This can also increase their exposure to exploitation and abuse by landlords and employers or prevent them from leaving abusive relationships.

Specialist support services for undocumented victims of domestic and gender-based violence are a key cornerstone in providing appropriate support. These specialist organisations can either provide competent and tailored support to undocumented victims themselves or work within referral networks. They provide a safe space for undocumented women and can accompany them to services or ensure that service providers are aware of their obligations to provide support to all victims.

87 The World Health Organization, 2018. [Violence Against Women Prevalence Estimates, 2018](#)

88 Tan, S.E., Kuschminder, K. Migrant experiences of sexual and gender-based violence: a critical interpretative synthesis. *Global Health* 18, 68 (2022). <https://doi.org/10.1186/s12992-022-00860-2>

Safe reporting of crime

The Netherlands has created a policy known as “Free in, Free out”, which allows undocumented migrants to enter a police station to report a crime and leave freely, without the intervention of immigration enforcement. This measure started as a regional initiative of the Amsterdam police, and was later rolled out nationally in 2016, after the Dutch Ministry of Justice and Security supported a pilot of the program and as part of the Netherlands’ implementation of the Victims’ Directive⁸⁹.

A study by the University of Oxford’s Centre on Migration, Policy and Society (COMPAS)⁹⁰ interviewed civil society organisations (CSOs) in the Netherlands who provided support and services to undocumented victims of crime. The CSOs noted that the most frequent types of crimes undocumented people experienced included labour exploitation, theft, sexual violence, drug trafficking, domestic violence, blackmail and stalking. Despite this, however, police and immigration authorities were found to routinely exchange data about people’s status. Furthermore, the “Free in, Free out” policy was not accompanied by access to support services and does not cover situations that fall outside the scope of criminal law.

In Spain, the “Guardia Civil”, one of the country’s two national police forces, created specialised

groups called Immigration Attention Teams or EDATI (“equipos de atención al inmigrante”). These units are responsible for providing aid to migrants – including those who are undocumented – by informing them of their rights, providing advice on how they could regularize their status and offering assistance in filing a complaint against employers or others from mistreatment, exploitation or other offenses. The EDATI members do not have the competence to detain individuals or issue deportation orders, thus undocumented migrants are protected from adverse responses to their requests for assistance⁹¹.

In Belgium federal and local police are obliged to provide assistance to all victims of crime. However, they also have a duty to report all crimes and administrative offences to the public prosecutor, which includes reporting the irregular entry and stay of an undocumented migrant to the Immigration Office and following-up on their decision in case of a removal order. Victims of rape, attempted manslaughter, or victims of violence with dependent visa status have exemptions from these rules. In these cases, the Immigration Office cannot deliver an expulsion order. However, undocumented victims are not always covered by these provisions and administrative practice shows that domestic violence sometimes still is not considered a strong enough ground to merit non-expulsion.⁹²

Legal aid

Although not formally considered a victim support service, legal aid is often a precondition for victims to assert their rights effectively and promptly. The EU Fundamental Rights Agency has noted that although legal aid is widely available to most victims in most EU member states, financial means testing, or legal residence requirements often create undue barriers for victims⁹³.

For example, for victims of gender-based violence or domestic violence, legal aid can help prevent repeat victimisation and victim safety by obtaining protective orders, supporting them with child custody, assisting them with legal matters related to separation, divorce and possibly residence permits, as well as helping victims navigate their social rights.

89 R. Timmerman, A. Leerkes, & R. Staring (September 2019), [Safe reporting of crime for migrants with irregular status in the Netherlands](#), COMPAS: Oxford; R. Timmerman, A. Leerkes, R. Staring & N. Delvino (7 October 2020) [Free In, Free Out: Exploring Dutch Firewall Protections for Irregular Migrant Victims of Crime](#), *European Journal of Migration and Law*, 22(3), 427-455.

90 Ibid.

91 PICUM, 2021. [Preventing Harm, Promoting Rights: Achieving Safety, Protection and Justice for People with Insecure Residence Status in the EU](#).

92 Anja Van den Durpel, 2019. [Safe Reporting Of Crime For Victims And Witnesses With Irregular Migration Status In Belgium](#).

93 The EU Fundamental Rights Agency, 2015. [Victims of crime in the EU: the extent and nature of support for victims](#)

Helplines

National or local helplines for victims of gender-based violence are often the first port of call for those affected. They are generally easily accessible and can provide information, support and advice for victims at an early stage. The element of anonymity and confidentiality in placing phone calls means that helplines can encourage women who would otherwise feel uncomfortable to seek help and support or who are unable to access services.

Helplines can provide emergency advice in crisis or acute situations, and can refer victims or those affected to relevant agencies or they can refer them to local shelters and other forms of specialist help. Some helplines can also offer prolonged counselling and support over longer periods of time.

Article 24 of the Istanbul Convention notes that “Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention” and recommends that these should be available in relevant languages.

The Istanbul Convention calls for free and widely advertised national helplines – which should include listings on all media coverage of violence against women – dealing with all forms of violence covered by its scope (domestic violence, rape and sexual assault, stalking, unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”, female genital mutilation (FGM), forced marriage, sexual harassment).

For undocumented survivors of gender-based violence and domestic violence, making these helplines available in languages with which they can interact is essential and ensuring that no data on residence status is transferred for immigration purposes is vital. Furthermore, many undocumented women are often unaware of the existence of these helplines. Helpline staff should work together with civil society and community-based organisations to

raise awareness of their services, including stressing the confidential nature of their services.

Shelters

Shelters are an essential service in offering victims of gender-based violence safety when their homes are no longer safe to remain in. A shelter can provide a refuge where women and children are free from harm and also supported with other needs including emotional support and advice. Despite their importance, the demand for shelters still outstrips their supply: it is estimated that 43% of the beds that are needed in shelters are missing across EU member states⁹⁴.

Undocumented migrant women may face even greater hurdles in accessing these services. In the Netherlands, for instance, women who reside with their legal partners because they can otherwise not comply with the conditions for a residence permit face difficulties in being admitted to women’s shelters. According to national legislation, women’s shelters in the Netherlands have no obligation to accept undocumented women victims of domestic violence, although at the same time specific shelters for undocumented women are eligible for financial support⁹⁵. Some women’s shelters have a limited number of beds available for undocumented women, and other shelters only allow undocumented women to stay for shorter periods of time than those with regular residence status.⁹⁶

The Dutch city of Utrecht, and the Swedish cities of Stockholm and Gothenburg have been supporting shelters specifically aimed at hosting irregular migrant victims in need of escaping a situation of exploitation and violence and with no alternative accommodation.⁹⁷

Mental health and psychosocial support

All victims of violence may be in need of mental health and psychosocial support. Violence can lead to long-lasting physical injuries and mental health problems⁹⁸. Post-traumatic stress disorder, anxiety, depression, chronic stress, fatigue, and involuntary disassociation are all common responses to suffering

94 Women Against Violence in Europe (WAVE), 2021. [Country Report 2021](#).

95 Women against Violence in Europe (Wave), 2018. [Shelters for undocumented migrant women in the Netherlands](#)

96 *Ibid.*

97 COMPAS, 2019. [Safe reporting of crime for victims and witnesses with irregular migration status in the United States and Europe](#)

98 Friberg O, Emaus N, Rosenvinge JH, Bilden U, Olsen JA, Pettersen G. Violence Affects Physical and Mental Health Differently: The General Population Based Tromsø Study. *PLoS One*. 2015 Aug 28;10(8):e0136588. doi: 10.1371/journal.pone.0136588. Erratum in: *PLoS One*. 2019 Jan 10;14(1):e0210822. PMID: 26317970; PMCID: PMC4552864.

from violent experiences⁹⁹. These issues can make it extremely difficult for a person to carry out basic day-to-day functions such as waking up, maintaining social relations, sustaining a job and caring for others. It can also make it challenging for victims to participate in complicated judicial procedures and to effectively cooperate with criminal investigations.

Trauma-informed care, mental health and psychosocial support are therefore critical support services for people who have suffered from violence. Specialist services for women who have experienced sexualised violence and may be suffering from trauma are therefore essential. Article 25 of the Istanbul Convention specifically mentions that “Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.”¹⁰⁰

Mental health problems are likely to be aggravated by the specific conditions that undocumented victims of violence find themselves in. Undocumented migrants are more likely to live in poverty, live in constant fear of deportation, in many cases have experienced racism and violence at the hands of immigration authorities and police and struggle to access health services. These factors all create stressors and chronic stress, which result in complex, multifaceted mental health needs for individuals. It is therefore important for victim support services to provide

holistic psychosocial support to individuals to address the underlying social determinants that cause these complex issues.

Residence permits

Despite the clear legal framework establishing unconditional access to services for undocumented victims of crime, obstacles remain in ensuring that undocumented people can access them in practice. Many undocumented victims of crime fear cooperation with the police because of their status and are therefore less likely to receive justice and access support services.

One solution to this problem has been to issue residence permits or temporary visas to victims. This policy solution already exists in different EU member states, which have permits for individuals who have been trafficked, who have been victims of racist violence, who have experienced domestic violence and for those who have experienced labour exploitation¹⁰¹. A secure residence permit helps to ensure access to assistance and victim support services for people with insecure status and can promote their safety and protection from further victimisation. Consistent with a victim-centred approach, and with the spirit of the Council of Europe Anti-Trafficking Convention and Istanbul Convention, undocumented victims should be able to apply for residence permits based on their personal situation, without pressure to cooperate with the investigation and prosecution of the accused person.

Public funding

According to the Council of Europe [Istanbul Convention](#), Member States should allocate relevant resources for the correct implementation of the treaty’s policies – including towards civil society and non-governmental organisations – to prevent and combat violence against women and domestic violence (Article 8).

In its [joint recommendation on harmful practices](#), the UN CEDAW and CRC recommend States to include in their legislation “detailed guidance on prevention, protection, support and follow-up services and assistance for victims (...) complemented by adequate civil and/or administrative legislative provisions¹⁰².”

99 Sonnenberg SM. Victims of violence and post-traumatic stress disorder. *Psychiatr Clin North Am.* 1988 Dec;11(4):581-90. PMID: 3062592.

100 The [Council of Europe Convention](#) on preventing and combating violence against women and domestic violence

101 PICUM, 2020. [Insecure Justice? Residence Permits for Undocumented Victims of Crime in Europe](#)

102 [Joint general recommendation/general comment](#) No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices. para. 55(d).

CONCLUDING REMARKS

The unconditional right of victims of crime to access victim support services is clearly established in European and international law. Yet, for many undocumented victims of crime, justice and support remain elusive. The failure to establish clear safeguards for undocumented victims of crime means that they risk being detained and deported, when they are entitled to justice and to support.

In some cases, even when undocumented victims do have access to victim support services, there are practical and legal barriers in place that prevent them from enjoying the same rights as others. For instance, in some member states shelters are prevented from offering beds to victims with irregular migration status or have strict time restrictions for them.

It is also imperative that victim support services treat undocumented victims with dignity and respect and offer them a service, which is tailored to their specific needs. The complex socioeconomic and legal realities of undocumented people often means they need a holistic range of interventions that can support them in rebuilding their lives.

Healing does not take place in a social vacuum; it exists in a daily, lived reality where intersecting forms of marginalization and exclusion can cause chronic stress and pain. Mental health and psychosocial support should be offered to undocumented victims of violence so that they can address this social exclusion holistically and regain their agency and social function.

Residence permits would allow undocumented victims of crime to meaningfully engage with public authorities, as they eliminate the fear that people with irregular status have in contacting authorities. Undocumented victims of gender-based violence whose residence is linked to their abusive spouses urgently require independent residence permits which should also contain pathways to more stable residence in the long term.

It is critical for society to view people as human beings and not to reduce them to their residence status. The EU and its member states have the tools and frameworks in place to offer support to victims of crime. The challenge going forward will be to implement relevant safeguards to ensure that people with irregular migration status can meaningfully enjoy and exercise their rights as victims of crime and as human beings.

RECOMMENDATIONS

1 Access to services

- › Member states should remove all legal and practical barriers for survivors of crime to access available support services and the protection they require, regardless of immigration status or willingness to participate in criminal proceedings.

2 Tailored services

- › Member states and competent authorities should ensure that support services are inclusive, holistic and tailored to the specific needs of undocumented victims of crime.
- › Information about legal proceedings and victims' rights should be available in multiple languages.

3 Firewalls

- › EU member states should establish clear safeguards ("firewalls") allowing undocumented migrants to safely report crimes to competent authorities and interact with other actors in the criminal justice system (as victims or witnesses), including by ensuring that no data on residence status is transferred between authorities for the purpose of immigration enforcement and communicating this clearly to people from affected communities.

4 Residence permits

- › Competent authorities in EU member states should ensure that special permits for victims of crime are grounded first and foremost in a protection rationale and remove barriers for undocumented survivors of crime to access existing residence permits available under national law.
- › For victims of intimate partner violence, residence permits that do not depend on the continuation of the abusive relationship should be made available.
- › Member states should reform legislation on special residence permits to address existing gaps in protection and avoid a piecemeal approach based on narrowly-defined forms of victimisation.



PLATFORM FOR INTERNATIONAL COOPERATION ON
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