



First reactions to the European Commission proposal to revise the Victim Rights Directive

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Introduction

The [Platform for International Cooperation on Undocumented Migrants](#) (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of nearly 160 organisations working with undocumented migrants in 31 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national and EU levels. With more than twenty years of evidence, experience and expertise on issues affecting undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at the policy level.

The EU's approach to migration relies heavily on the prevention of irregular migration, which has major consequences for undocumented migrants residing on EU territory. At the same time, the EU's legal and policy frameworks on victim rights has long recognised the need to protect all victims regardless of their status. The EU Victims' Directive¹ establishes that the rights of victims of crime cannot be denied to a person because of their residence status, or lack thereof (article 1). For undocumented people in Europe, the Victims' Directive is significant for clearly placing the priority on a person's safety, security and protection ahead of enforcement measures based on their residence status². The Strategy on Victims' Rights (2020-2025) further recognises undocumented people among the categories of "vulnerable victims".³

Despite the rights set out in the Victim Rights Directive (VRD), undocumented victims continue to face significant barriers in accessing justice, support and protection. As highlighted by the European Commission evaluation of Victims' Directive,⁴ irregular migrants are fearful of reporting crimes because of the risk that they will be detained and ordered to leave the territory as a result.

The Commission's proposal for a revision of the Victim Rights Directive⁵ constitutes an opportunity to strengthen the rights and protection for victims regardless of their residence status. The following is PICUM's first assessment of the proposed revisions to the Victim Rights Directive from the perspective of undocumented victims. Over the course of the negotiations, PICUM will analyse the proposal in more detail and provide recommendations based on its expertise.

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1 [Directive 2012/29/EU](#) of the European Parliament and of 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 ("Victims' Directive").

2 PICUM, 2015, [Guide to the EU Victims' Directive: advancing access to protection, services and justice for undocumented migrants](#)

3 [Communication](#) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Strategy on victims' rights (2020-2025).

4 Commission Staff Working Document on the evaluation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012

5 European Commission, 2023, [Proposal](#) for a Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Undocumented victims in Europe

Terminology

'Undocumented people' or 'undocumented migrants' do not have formal recognition of their residence by the country they live in. Many may have had residence permissions linked to employment, study, family, or international protection, but those permits were either temporary or very precarious and their validity expired. Some, due to the lack of regular migration channels, will arrive to country without a residence permission, seeking for example asylum.

A child may also undergo changes in their residence status during their childhood, which leads them to be a very diverse group. For example, as a child's status is usually dependent on their parents', they

too become undocumented if the parent loses their residence permit. This is the case for children whose (family) regularisation application on asylum or other grounds was refused and for children whose, or whose parents, permit lapsed and was not or could not be extended. On the other hand, children can acquire a regular residence status through their parents or on their own, thereby moving from an irregular to a regular status. Children can also be born as 'undocumented 'migrants', although they have never moved anywhere, because their parents are undocumented. Other children, categorized as 'unaccompanied children or minors', have migrated to Europe on their own.

Data

The number of undocumented people living in Europe is not known, and the estimates provided are debated. A previous 2008 study funded by the European Commission estimated that there were 1.9 to 3.8 million undocumented migrants in the EU, making up about 0.39% to 0.77% of the total

population.⁶ Currently, another study, also funded by the European Commission and scheduled for release in 2025, is working on providing more recent estimates of undocumented migrants in different EU countries.⁷

Key challenges

The EU criminalises irregular migration leading to de-prioritisation of a person's rights in favour of immigration control, and migrants being treated as criminals and even viewed as a threat to national

security.⁸ The need to issue return decisions to any third-country national staying irregularly in the territory of a Member State⁹ generates a clear contradiction between the victims' protection and

6 European Commission, 2019. Size and development of irregular migration to the EU. [Counting the Uncountable: Data and Trends across Europe](#).

7 MIRREM. MirreM: Measuring Irregular Migration. European Union. <http://irregularmigration.eu/>

8 Kanics, J. and Gianco, M., 2022, [Resilience and Resistance: In defiance of the criminalisation of solidarity across Europe](#). Study commissioned by the Greens/EFA.

9 [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

the immigration regulations both at EU and at national level.

Moreover, the criminalisation of migration makes people in an irregular situation susceptible to mistreatment and exploitation, and profoundly limits their options for support and redress. In many cases, victims who come forward to report abuse find themselves worse off – separated from their families, torn from their lives. 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, to deportation or the loss of financial support and therefore destitution. People who are undocumented are therefore fearful of engaging with public authorities, and especially with the police, because of the risk that will be detained and ordered to leave the territory as a result. This distrust is compounded by the increased policing and surveillance of migrant and minority communities, worsening the feeling of insecurity and concerns about discriminatory profiling.¹⁰

For women, their immigration status will have a significant affect on their risk and experience of violence. Being undocumented or having residence status that is tied to their employment or to their spouse, creates structural dependencies that make it difficult for women to exit situations of abuse. Lack of an independent residence status, or any status, creates challenges for these women, and increases their chances of experiencing violence or exploitation by intimate partners or employers or in other areas of their lives. Abusive partners often intentionally misinform women who depend on them for their status or who are undocumented and threaten them with deportation or losing custody of their children or tell them they will be entitled

to no state help for housing or subsistence. This leads women to be fearful of any state intervention and reluctant to seek help and report violence, and also means that when state agencies and other providers do intervene, they must be aware and well informed themselves to gain their confidence and undo the myths the abusive partner may have perpetuated.

Moreover, people in immigration detention suffer violent crime, they are also victims with rights under the Victim Rights Directive. At the same time, detention places them in a situation of vulnerability and dependency on detention staff and co-detainees: *"Their livelihood and safety depend on how they are treated by staff and fear of reprisals is a predominant barrier to reporting. This makes it especially hard for detained victims to report crimes and to seek to exercise their other rights as victims. This vulnerability is exacerbated for people who are non-nationals, do not speak the national language and/or have no local support networks"*.¹¹ Furthermore, "adequate reporting systems rarely exist, and few reports ever reach the criminal justice system".¹² According to Fair Trials,¹³ detained victims face the following barriers:

- limits on communication make it hard to report crimes to law enforcement;
- detained victims are often expected to produce evidence of violence but face difficulties in securing this;
- detainees experience difficulties to establish that the use of force is unjustified and amounts to a criminal offence;
- access to legal advice and representation is difficult to secure.

10 PICUM, 2021, [Presenting Harm, Promoting rights: achieving safety, protection and justice for people with insecure residence status in the EU](#); PICUM, 2022, [Unconditional access to services for undocumented victims of crime](#)

11 Fair Trials, 2019, [Rights behind bars Access to justice for victims of violent crime suffered in pre-trial or immigration detention](#)

12 Ibid.

13 Ibid

First assessment of proposed revisions to the Victim Rights Directive

Improved crime reporting

We welcome the Commission's effort to create safer conditions for crime reporting for undocumented victims by introducing **a provision limiting the transfer of personal information to migration authorities** (article 5(5)). Unfortunately, this would apply only until the "the completion of the first individual needs assessment". In doing so, the Commission is effectively rendering the intended effects of the article, namely to improve crime reporting, void. If there is a risk that the data would be shared, it is unlikely that undocumented victims will go report crimes to the police due to the risk of deportation. Moreover, allowing for data sharing violates undocumented migrants' fundamental human rights to privacy and data protection, in line with Article 7 and Article 8 EU Charter of Fundamental Rights and General Data Protection Regulation (GDPR)¹⁴. The provision should be amended to ensure that a victim's residence status is never be shared without consent with any stakeholder – including migration authorities.

We support the proposal (article 5(a)(3) to ensure **victims can effectively report crimes committed in detention facilities**, including "specialised detention facilities for applicants of international protection

and pre-removal centres, and accommodation centres where applicants and beneficiaries of international protection are located."

Nonetheless, the Commission does not adequately address how victims in detention should report a crime from closed facilities. It merely envisages (article 26a) that the national protocols should at minimum ensure that victims in detention receive information about their rights, can rely on "facilitated crime reporting" and have support and protection aligned with their needs. We recommend that the protocols clearly set out the responsibilities of detention staff and detention administration in securing the rights of violent crimes.¹⁵

Moreover, the proposed revisions to the Directive do not make provisions to enable and set out **third party reporting mechanism**. Third party reporting mechanisms are promoted in the current Victim Rights directive only in the form of a recital (recital 63). The Fundamental Rights Agency has highlighted the untapped potential of third-party reporting, as an alternative reporting option for victims that do not trust law enforcement.¹⁶

14 PICUM, 2020, [Data protection and the firewall: advancing safe reporting for people in an irregular situation](#)

15 Fair Trials, 2019, [Rights behind bars Access to justice for victims of violent crime suffered in pre-trial or immigration detention](#)

16 Fundamental Rights Agency, 2023, [Underpinning victims' rights: support services, reporting and protection](#)

Facilitating access to specialist support for vulnerable victims, including children

We support the EU Commission proposed amendments with respect to **support services** including the requirement that victims are contacted by support services where the **individual needs assessment** set out in Article 22 of the VRD indicates the need. The amendments also require that psychological services are available for as long as needed (as determined by the individual needs assessment), that articles are aligned with the violence against women directive and that new specific rules on specialist services for child victims are established.

In particular, we strongly welcome the Commission's new and dedicated provisions on **support services for children who are victims of crime** (article 9a). A dedicated, safe and child-friendly location where child victims can be assisted and accompanied by the relevant services has proven its worth in many countries. The Commission's proposal would thus make these one-stop shops available to more child victims, as they would be set up in all member states and be accessible to child victims of all types

of crimes – there were the *Barnahus*¹⁷ have now often been used for victims of abuse only.

We also welcome the inclusion of the **list of services accessible on the premises** (art 9a(2)). However, we recommend that administrative support and legal aid are included in the list of services, as the child will *de facto* and *de jure* have less agency and less ability to navigate these aspects – either because of their age and maturity, their legal competence, or the emotional whirlwind they're experiencing. They are also especially important for children in migration, who are particularly vulnerable to exploitation, violence, and crime because of their social isolation, undocumented and/or precarious residence status. Having specialists on their side to understand and navigate the legal and administrative aspects, including residence procedures if applicable, is both part of the government's duty of care and basic children's safeguards. The provisions in article 13¹⁸ are insufficient, as they do not include administrative support and limit legal aid to victims who are a party in criminal proceedings.

Individual assessment of victims to identify specific support and protection needs

The Commission has recognised several problems in the **implementation of the needs assessment** and made a series of proposals to address these (article 22). While we generally welcome efforts to set more standards on the needs assessment, we have the following observations:

- It is proposed that the individual needs assessment shall "last as long as necessary depending on the needs of each victim". We support this strong focus on the needs of the victims but recommend putting in place more detailed criteria to define what "as long as necessary" entails.
- The current drafting appears to give responsibility to the police to carry out the assessment of individual needs for support,

only collaborating with institutions and bodies set out in the protocols referred to in article 26a. Given their specialised expertise, organisations supporting victims, and not police authorities, should carry out the support assessment.

- We support the emphasis on relevant experiences of discrimination within the personal characteristic of the victim that should be taken into account in the needs assessment (article 22(2)(a)). In line with article 1(1), it is essential for these grounds to include residence status. Moreover, undocumented victims should be considered as a group that would require particular attention (article 22(3)).

17 Promise Barnahus Network, n.d., [About Barnahus](#)

18 Not opened for amendments by the Commission.

Residence permits

The Return Directive leaves member states free to grant a residence permit "at any moment" to someone in an irregular situation for compassionate or humanitarian reasons.¹⁹

Yet in its revision of the Victims' Right Directive, the Commission has failed to propose amendments which could require Member States to **set out conditions of the residence of victims of crime**. This constitutes an important limitation to the revision of the Directive.

One important way to ensure undocumented victims can access justice and support, and prevent further victimisation, is to issue **residence permits to victims**.²⁰ This 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 exploitation.²¹ For example, Finland offers since 2021 the possibility for non-EEA workers who have experienced labour exploitation or significant negligence in the workplace to apply for a Residence Permit due to Exploitation by the Employer, or, if they have already found a new job, a Certificate due to Exploitation by the Employer.²²

Moreover, several EU directives make provision for residence permits for certain victims of crime, namely:²³

- For survivors of conjugal violence with dependent status: the Citizens' Rights Directive²⁴ and Family Reunification Directive;²⁵
- For victims of human trafficking: the Anti-Trafficking Directive;²⁶
- For victims of labour exploitation: the Employer Sanctions Directive.²⁷

19 [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

20 PICUM, 2022, [Unconditional access to services for undocumented victims of crime](#)

21 PICUM, 2020, [Insecure Justice? Residence Permits for victims of crime in Europe](#)

22 PICUM, 2022, [Labour migration policies Case study series Finland](#)

23 PICUM, 2020, [Insecure Justice? Residence Permits for victims of crime in Europe](#)

24 [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

25 [Directive 2003/86/EC](#) of 22 September 2003 on the right to family reunification

26 [Directive 2004/81/EC](#) of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

27 [Directive 2009/52/EU](#) of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals



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for social justice.

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