

Urgent call to EU negotiators to strengthen rights of all victims of crime regardless of residence status

Joint Statement on the Revision of the EU Victims' Rights Directive

February 2024

The European Union (EU) has long recognised the need to protect all victims of crime without discrimination.

The EU Victim Rights Directive (VRD)¹ articulates this commitment in law, stating that victim rights cannot be denied based on residence status (Article 1). It applies to criminal offences within the Union and extraterritorial offences, including those occurring in immigration detention and at the EU's borders.² The EU Strategy on Victims' Rights (2020-2025) further recognises undocumented people among the categories of "vulnerable victims".³

However, a paradox emerges when victim rights are juxtaposed with the EU's migration policy: immigration control is prioritised over a person's rights and needs.

Being undocumented, or having an insecure residence status, makes people susceptible to mistreatment, abuse and severe forms of exploitation, including human trafficking and forced labour.

When migration status intersects with other forms of discrimination, including gender, ethnic or social origin, sexual orientation or gender identity and disability, abuse is exacerbated. The abuse may also result from actions from public authorities (e.g. police, border guards, staff in immigration detention centres).

Migrants with irregular status face potential abuse not only when arriving at the EU's borders (e.g. pushbacks⁴) but also when living within the EU. This abuse may occur in the workplace, in personal relationships, but also in other settings (e.g. immigration detention).

The EU Pact on Migration and Asylum⁵, coupled with other initiatives seeking to further criminalise migration across the EU⁶, raises alarming concerns for the future.⁷ Far from upholding justice and protection, these policies are expected to escalate human rights violations and perpetuate discriminatory practices within the very structures meant to safeguard all individuals.

The EU must reinforce its legal tools to ensure universal access to justice, unconditional support, and protection without discrimination.

The ongoing revision of the VRD⁸ is a pivotal opportunity to strengthen the rights and protection granted to victims, irrespective of their residence status.

However, there exist significant obstacles and ambiguities in the proposed revision, potentially obstructing the full realisation of rights for marginalised victims of crime, in particular those with an insecure residence status or that are undocumented victims.⁹

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

2 See 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 In the absence of an internationally agreed upon definition of "pushbacks", the Special Rapporteur on Migrants [has described](#) "pushbacks" as "various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement."

5 For a brief assessment, see the editorial of PICUM's December 2023 newsletter '[EU Migration Pact: a historic deal against human rights](#)'.

6 On 28 November 2023, the European Commission [announced](#) a series of initiatives to 'Counter migrant smuggling', including a revision of the Facilitators Package.

7 Prior to the final negotiations of the EU Pact on Migration, PICUM joined 18 other leading human rights organisations in calling on EU lawmakers to [reject this Pact](#) and submitted an [open letter](#) calling out the human rights risks in the Migration Pact.

8 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

9 PICUM, 2023, [First assessment of the proposed revisions to the Victim Rights Directive](#)

In response, the **undersigned organisations call on the EU negotiators to incorporate the following recommendations:**

Safe reporting of crime

Undocumented victims rarely report abuse, as they fear engaging with authorities, due to the risk of detention and deportation: this means that they are not identified as victims of crime and do not receive the support and protection they need and are entitled to.¹⁰ This distrust is compounded by the increased policing and surveillance of migrant and marginalised communities, worsening feelings of insecurity and concerns about discriminatory profiling.

Safe reporting mechanisms for undocumented migrants are generally lacking all over Europe. They are almost non-existent for victims of abuse in immigration detention, with only few reports ever reaching the criminal justice system.¹¹

It is essential that Article 5a(1) of the revised VRD requires Member States to offer a variety of complaints/reporting mechanisms, accessible free of charge¹², to cater to the multiple needs and circumstances of victims, including those in immigration detention. This should include third-party reporting, crucial for victims that do not trust law enforcement.¹³

Article 5a(2) should also create safe environments for victims, third parties, and people who suspect that criminal offences have been committed, or are expected, to be able to **report a crime without any reprisals**, including in relation to their migration status. This concept of non-punishment, embedded in the EU's Anti-Trafficking Directive¹⁴ and Anti-Trafficking Strategy¹⁵, should be streamlined across the EU VRD, notably under Article 5a.

Moreover, **we call on negotiators to ensure safe and confidential mechanisms in place for criminal offences committed by public officials (e.g. violence by police and border guards)** to be reported to the appropriate independent competent authorities.

Data protection

Protection of personal data is necessary to ensure that safe reporting is a reality for every victim of crime, regardless of residence status. It is a precondition to the enjoyment of rights under the Victims' Directive, essential to promoting trust in public institutions, and the basic democratic principle that everyone is equally protected under the law.

While welcoming the Commission's effort to limit personal information transfer to migration authorities when crimes are reported, this safeguard should not apply only temporarily until the first individual needs assessment has been completed.

10 PICUM, 2021, [Preventing 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 Greece's on-going revision of the [draft law amending the Criminal Code and Code of Criminal Procedure](#) includes provisions which would see victims have to pay a fee in order to report a crime and to make appeals.

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

14 Directive 2011 combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

15 Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on the EU strategy on combatting trafficking in human beings 2021- 2025, [COM/2021/171 final](#)

We urge negotiators to ensure under Article 5a(5) of the revised VRD that a victim's residence status is not shared with migration authorities. It is essential that the Victim Rights Directive introduces this strong safeguard, particularly given failure of EU negotiators to include it in the new Directive on violence against women and domestic violence despite the EU's¹⁶ obligations to uphold privacy rights laid out in the EU Charter of Fundamental Rights and General Data Protection Regulation (GDPR).¹⁷

Unconditional access to support services

Victims of crime should have access to available support services, regardless of their residence status or willingness to participate in criminal proceedings. Yet, for many undocumented victims of crime, justice and support remain elusive.

We support Article 9(1)(c) of the revised VRD, which would ensure access to psychological support. We further support targeted and integrated support for victims with specific needs, as articulated under amended Article 9(3)(b). These services should include comprehensive medical care services, including sexual and reproductive healthcare services.

Shelters are also an essential service in offering safety and refuge, free from harm. However, there are serious shortages of shelters across the EU and undocumented migrants, in particular women, may face even greater hurdles in accessing these services. **It follows that the revised VRD should ensure access to shelters and other appropriate forms of accommodation.**

Although not formally considered a victim support service, legal aid is also a precondition for victims to assert their rights effectively and promptly. **We recommend that Article 13¹⁸ is revised to ensure victims have access to free legal aid.**

All support should be provided without delay. **We thus further support Article 8(2) of the revised VRD which notably requires that victims are contacted by the relevant generic or specialised support services.**

Undocumented children

Children are particularly vulnerable and require adequate responses. **We support Article 9a of the revised VRD making available support services for children who are victims of crime in dedicated, safe and child-friendly locations, and Article 9a(2) which sets out the list of services which this should include.**

Children in migration are particularly vulnerable to exploitation, violence, crime, and going missing, because of their social isolation, being undocumented and/or having a 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. **We therefore recommend that Article 9a(2) also includes administrative and legal (free and specialised) support under the list of services.**

¹⁶ In the political agreement reached on 6 February 2024 on the new Directive on violence against women and domestic violence, [negotiators failed](#) to sufficiently protect undocumented women from immigration enforcement should they report violence and abuse to police.

¹⁷ PICUM, 2020, [Data protection and the firewall: advancing safe reporting for people in an irregular situation](#)

¹⁸ The provisions in article 13 (not opened for revision by the European Commission) 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

We generally welcome the proposal to strengthen the individual needs assessments as articulated in Article 22 of the revised VRD, including proposals to ensure the individual needs assessment is carried out on a regular basis and lasts as long as necessary based on each victim's needs.

We are concerned that the current draft suggests that only police authorities will be relied on to carry out a single support needs assessment to determine whether victims are referred to support services. Requiring police authorities, rather than organisations specialised in supporting victims, to carry out such assessments not only risks overburdening them but may result in inadequate assessments. We suggest including language to engage generic and specialised support services in this assessment.

It is crucial to ensure that the official duration of the assessment does not violate fundamental rights to assistance, support, and information, nor be linked to return procedures.

Additionally, we urge negotiators to include residence status and nationality among the personal characteristics of the victim that should be taken into account in the needs assessment (Article 22(2) (a)) and that undocumented and stateless victims should be considered as a group that would require particular attention (Article 22(3)).

Immigration detention

Immigration detention is the deprivation of liberty for reasons related to a person's residence status.¹⁹ When crimes occur in detention centres people are already placed in a situation of vulnerability and dependency.²⁰

Article 26a should therefore require member states to clearly set out the responsibilities of detention staff and detention administration in securing the rights of victims of violent crimes, as well as ensuring that victims in detention receive access to free legal support.

Residence permits

One important way to ensure undocumented victims can access justice and support, and prevent further victimisation, is to issue residence permits to victims.²¹ 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, domestic violence and labour exploitation.²² Moreover, several EU directives make provision for residence permits for certain victims of crime.²³ In fact, 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.²⁴

We urge negotiators to ensure the revised VRD includes a provision on the issuance of residence permits on personal or humanitarian grounds, not requiring their cooperation in criminal proceedings, and not conditioned on the start or outcome of criminal procedures.

19 PICUM, 2022, [Immigration detention and de facto detention: What does the law say?](#)

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

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

22 PICUM, 2020, [Insecure Justice? Residence Permits for victims of crime in Europe](#); PICUM, 2022, [Labour migration policies Case study series Finland](#)

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

24 [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

Compensation

Compensation serves as a crucial tool for restorative and preventive purposes, particularly for victims who have endured physical, mental, economic, or sexual abuse. We support proposed revisions of the VRD under Article 16 seeking to enhance access to compensation by strengthening victims' rights during criminal proceedings, making state payment of the offender's compensation binding and timely, with the possibility for the state to recover it from the offender later.

We urge negotiators to ensure under Article 16 that a lack of residence status does not impede the right to compensation. It follows that undocumented victims should not be denied compensation based on their irregular immigration status but are instead encouraged and (legally) supported to introduce their claims for remedies and given the possibility to participate in legal proceedings.

Now, more than ever, the EU must stand firmly against discrimination, ensuring justice, support, and protection for all victims of crime.

We stand ready to collaborate with the EU institutions to create a future where victim rights are inviolable, no matter who they are or whatever residence status they have.

Signatories:

International and European organisations

1. Amnesty International
2. Centre for Youths Integrated Development
3. Dynamo International
4. European Network Against Racism (ENAR)
5. European Network Against Statelessness (ENS)
6. European Sex Workers Rights Alliance (ESWA)
7. Global Alliance against Traffic in Women
8. International Planned Parenthood Federation European Network (IPPF EN)
9. La Strada International - European NGO Platform Against Trafficking in Human Beings
10. Kids in Need of Defense (KIND)
11. Methoria
12. Missing Children Europe
13. Platform for International Cooperation on Undocumented Migrants (PICUM)
14. Social Platform
15. Transgender Europe (TGEU)

16. The European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)
17. The Women Against Violence Europe (WAVE) Network
18. Victim Support Europe

National organisations

19. ADPARE, Romania
20. Andalucia Acoge, Spain
21. Animus Association Foundation, Bulgaria
22. ARSIS Association for the Social Support of Youth, Greece
23. Association for Integration and Migration, SIMI, Czech Republic
24. Asociacion en Prevencion y Asistencia de la Violencia (APAV), Spain
25. ASTRA-Anti trafficking action, Serbia
26. Ban Ying, Germany
27. CoMensha, Netherlands
28. CSC ACV Brussels, Belgium
29. Fairwork, Belgium
30. FairWork, Netherlands
31. Fundación de Solidaridad Amaranta, Spain
32. Greek Council for Refugees (GCR), Greece
33. HIAS Greece, Greece
34. HopeNow, Denmark
35. KOK - German NGO Network against Trafficking in Human Beings, Germany
36. Latin American Women's Rights Service (LAWRS), United Kingdom
37. On the Road Società Cooperativa Sociale, Italy
38. Open Gate/La Strada, North Macedonia
39. PA International Center "LA STRADA" Moldova, Republic of Moldova
40. Payoke, Belgium
41. Sans-Papiers Anlaufstelle Zürich SPAZ, Switzerland
42. Stichting LOS, Netherlands
43. Stowarzyszenie Interwencji Prawnej (Association for Legal Intervention), Poland
44. Migrant Voice, United Kingdom
45. Mission d'intervention et de sensibilisation contre la traite des êtres humains (Mist), France
46. Vatra psycho social center, Albania

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