

Victims Support Europe Conference

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Opening

- Thank you for inviting PICUM to speak at this important event. We very much welcome the opportunity to highlight key concerns and concrete policy suggestions in relation to the transposition of the Victims Directive in the EU.
- Very pleased to be on this panel together with ICI, with whom we work very closely to coordinate actions aimed at promoting a correct and effective transposition of the victims' directive.

Three Cases – Group Discussion

- In February 2010, 19 year old Najlae L. reported her brother for assault at a local police station in Loiret, France. Two days later, she was forcibly returned to Morocco, a country she had left over five years earlier.

- On 28 May 2010, Noura B. was in custody at the police station in Orihuela, Spain where she was informed by a police officer that she could engage in sexual acts in order to secure her release. Taken from her cell to the toilets, she was partially undressed and then abused by the officer on several occasions. She only submitted a compliant following the intervention of a female police officer who witnessed the offence. Although a judge suspended her deportation to allow for an investigation, the order was ignored by the Secretary of State for Security and she was returned to Morocco on 13 July 2010.¹⁷ Noura underwent an arduous 24-hour journey back to Morocco in handcuffs and was abandoned at the Moroccan-Spanish border in Ceuta. She has been unable to seek justice.

- Maria: PICUM member in Brussels told of undocumented woman from Brazil who called the police against her husband who was beating her; she was brought to the immigration authorities, together with her husband, and they were deported together from Belgium

1. THE ISSUE: Undocumented migrants face significant challenges to access justice and services when they become victims of crime

- Policies governing the entry, residence and employment of migrants frequently disadvantage them and increase their risk of abuse.

Commented [MGM1]: Guiding Questions:

How should the 'competent authority' (police) individually assess victims of crime?

Recital 56:

Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, **residence status**, communication difficulties, relationship to or dependence on the offender and previous experience of crime.

How can we ensure that victims who do not make a complaint to the police can access victim support services?

Firewall

What mechanisms do we need to protect vulnerable victims and at what stage should they be made available?

Suspension of removal procedures and temporary residence permits for the duration of the case determination/trial.

- Furthermore, Detection practices put them at risk of arrest or deportation when seeking justice

- Immigration authorities may be first contact, often not informed about victims' rights: "Violence reported, victim deported"

PICUM Members Findings:

- La Cimade (2010) nearly 40% of 75 police stations polled in Paris: 'she would be arrested if reporting violence'
- IMKAAN (UK) 92% of undocumented women seeking support for violence had been threatened with deportation by the perpetrator.

- Turned away from shelters and victim support services

- Victim support services and violence against women shelters: fear providing support to undocumented is a crime, not funded for work with undocumented

2. THE OPPORTUNITY: The EU Victims Directive places clear obligations on EU MSs to ensure that rights, protection and services are recognised and accessible to all victims of crime, regardless of their residence status

- The EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) provides a significant opportunity to advance access to rights and justice for undocumented victims in Europe.
- Article 1 of the Directive affirms that the rights and minimum standards set out in the directive apply to all victims of crime irrespective of their residence status. Member states have until November 2015 to transpose these rules into national law and practice.
- Effective implementation: requires that ALL persons covered by the directive will be able to benefit from the protections equally.
- As undocumented migrants are disadvantaged in their capacity to benefit from the protections provided by the directive, MSs will have the obligation to close this inequality gap through additional practical and positive measures, as the objective to provide protection to all victims of crime set out in the directive would otherwise be frustrated.
- We recognize this challenge: for the past year, at PICUM we have been working with our members to influence the transposition of the EU Victims of Crime Directive.
 - We are mobilizing grassroots networks throughout Europe and have met with the Ministry of Justice in several EU member states – but it is not a

Commented [MGM2]: •It is clearly not enough to say "law doesn't discriminate" against undocumented victims
 -Need to address discrimination at both individual and structural levels
Positive measures must be incorporated into law and policies to address ensure equality and non-discrimination in practice.

straightforward process to ensure specific protections for undocumented migrants

- Thus, we have worked with lawyers in our network to analyse how specific articles of the Victims Directive could be implemented in order to ensure protection for undocumented migrants (we would be happy to make this legal analysis available).
- Stemming from our work and consultations within our network of lawyers and grassroots organisations, I would like to highlight three areas which we feel are crucial for the Victims Directive to be effectively transposed to ensure protection for undocumented migrants.

3. TRANSPOSITION OF THE DIRECTIVE

3.1 ACCESS TO JUSTICE - Ensure that undocumented women can access justice and legal remedy without risking deportation

- **Issue and publicize a protocol to the police** making clear that they should not inform immigration authorities when undocumented victims seek help, so they can enjoy their right to immediate protection without fear of deportation. “Firewall” principle.
 - Good practice: EU Fundamental Rights Agency Guidelines on detection and reporting practices and upholding the fundamental rights of irregular migrants
- Ensure that **restraining and protection orders** are issued and enforced with due diligence and without discrimination on the basis of residence status.
- **Ensure a suspensive effect on removal orders or removal direction issued to and suspend expulsion procedures against undocumented victims** until the resolution of criminal procedures and until any application for residence has been finally determined.

3.2 SHELTERS AND SERVICES – Must be available and accessible to all without discrimination.

- **Make public funds available** for all victims to guarantee unrestricted access to shelters and support services without discrimination.
- **Ensure sites of information and protection are not sites of detection – “firewall” principle**
- **Actively inform all victim support services, violence against women services, and legal information centres** of the specific rights experiences, and challenges facing undocumented victims of crime.

3.3 SECURE RESIDENCE PERMIT – Ensure existing laws and procedures guarantee the right of migrant victims of crime to access justice and protection while their case is being determined.

Recital 10:

This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States **should take the necessary measures 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 and participating in criminal proceedings do not create any rights regarding the residence status of the victim.

DG JUSTICE GUIDANCE DOCUMENT on the transposition and implementation of the Directive

p.9

“MEMBER STATES ARE INVITED TO CONSIDER...

Paying particular attention to inter-agency co-operation. It is of utmost importance to ensure horizontal collaboration and coherence between police, judicial authorities and victim support organisations, when they are dealing with a victim's case in order to minimize the burden upon the victim. **Ensuring that rights set out in this Directive are not made conditional on the victim having legal residence status in their territory or on the victim's citizenship or nationality. Thus, 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.**”

- **Consider protection clauses in legislation** to allow migrant victims of crime to access temporary residence permits in relation to ongoing criminal proceedings, in order to access their rights to a due process and protection.
- **A practical example and suggestion: Spain**
It could be possible to build on the example of the existing legal framework in Spain, currently granting access to a temporary residence permit for victims of gender based violence in relation to ongoing criminal proceedings and to broaden this as to apply the same reasoning to protect and ensure access to a temporary residence permit for undocumented victims of crime, as a consequence of their particularly vulnerable status. The Spanish legal framework **explicitly includes gender-based violence as an “exceptional circumstance” to allow undocumented victims to also apply for a residence permit on humanitarian grounds once the criminal proceedings are concluded.**

Phases:

The Spanish legal framework consists of two essential Acts:

1. Immigration Act, passed in 2000 and several times amended. In our presentation we will refer to the amendments of 2009 and 2011 which specifically have broadened the rights of undocumented women.
2. Organic Act 1/2004 of 28 December on Integrated Protection Measures Against Gender Violence.

IMPORTANT TO NOTE: The Spanish legislator adopted a non discriminatory approach when addressing violence against women. Article 17 of the Gender based Violence Act states that *“All women suffering gender violence, regardless of their origin, religion or any other personal or social condition or particular, are guaranteed the rights recognized herein”*.

HOWEVER: Despite the provisions and guarantees provided within the Gender based Violence Act, when the Immigration Act was passed in 2000 no special reference was included to protect migrant women subject to violence. In 2004 the Gender based Violence Act included the general statement mentioned before. Very soon many civil organizations alerted to the contradictions between the Gender based Violence Act which recognized the protection of the rights system to every victim of violence, no matter of her administrative status, and the Immigration Act which put them at risk when imposing the obligation on the police to open a deportation file to every undocumented person.

PALLIATIVE SOLUTIONS WERE FIRST ADOPTED – BUT CERTAINTY OF THE LAW WAS NOT ENSURED – HIGH LEVEL OF DISCRETIONALITY - To solve this situation the police forces adopted different solutions. For example the members of the police force of the Basque Country received the instruction not to open a deportation file to undocumented women victims of violence. However, other polices fulfilled the Instruction 14/2005, adopted by the Security Department of the Home Office, which first of all obliged the police members to adopt every measure in order to protect and inform the victim of her rights, but simultaneously to open a deportation file to every undocumented women when reporting a gender based violence attack. The deportation file would be suspended meanwhile a judicial protection order was adopted. In other case, the deportation file would continue.

While justice to undocumented women was not explicitly denied, the inherent risk of deportation after the judicial process served as a significant deterrent against undocumented women to report violence.

FIRST AMENDMENT OF THE IMMIGRATION ACT (2009) - A new article 31 bis was included in the law, in which a general statement in favour of undocumented women was made and the right to obtain a provisional residence permit, as long as the criminal procedure lasted, was for the first time recognized, but article 31 bis also envisaged the opening up and the suspension of a deportation file to every undocumented woman subject to violence.

The 2009 amendment was necessary in order to gain security but it was not enough to guarantee the access to justice of every victim, regardless of her administrative status.

SECOND AMENDMENT OF THE IMMIGRATION ACT (2011) - In this context the Immigration Act was further amended in 2011 with the consensus of all the political parties.

In line with the Instruction adopted in 2011 if an **undocumented woman** reports an attack or asks for a protection order, she entitles the following rights:

1. No deportation file will be opened;
2. Any deportation file opened before the report will be temporarily suspended;
3. She may apply for a residence permit for exceptional reasons as soon as the judicial protection order has been adopted or a public prosecutor's report stating evidence of gender based violence has been issued;
4. She may apply for a residence permit for her children;
5. While the application is resolved a temporary residence permit will be granted by the competent authorities for the woman and their children;
6. If the aggressor is found guilty and the judicial process finds evidence of gender-based violence, the woman will receive a regular residence and labour permit;

Commented [MGM3]: Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.

Commented [MGM4]: Instruction DGI/SGRJ/3/2011, of 20 April amending Regulation of Organic Law 4/2000, and Act 2/2009

7. If the aggressor is not condemned, a deportation file will be opened or the suspended file will be reopened.

Conclusion

- Our legal frameworks should place prevention, protection, investigation and sanction of crimes above the administrative status. I think that is the right approach.
- We look forward to the opportunity that awaits us – through proper implementation of this convention, through concerted efforts amongst practitioners and policy makers at all levels – **we can work together to end impunity for violence against migrants in Europe.**