



## VICTIMS RIGHTS DIRECTIVE STATEMENT

8 March 2024

### **The European Network of Migrant Women's views on the need to protect undocumented migrant victims**

The European Commission's proposal for the revision of the Victims Rights Directive includes a disposition for Member States to ensure that "*competent authorities coming in contact with a victim reporting crimes 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*" (article 5a §5). The European Network of Migrant Women welcomed this proposal from the early stages of the work on the Directive's revision<sup>1</sup>. This is an ongoing demand of our organisation which can be found in our Manifesto for the 2024 European Parliament elections<sup>2</sup>. Indeed, undocumented migrant women are exceptionally vulnerable to violence, facing increased risks due to their marginalised status and limited legal protections. Their undocumented status often deters them from reporting crimes, exacerbating their vulnerability, as they fear potential repercussions. This leaves them with minimal recourse for justice, as highlighted in our 2021 report *Undocumented Migrant Women, A Neglected Chapter in Fundamental Rights Protection*<sup>3</sup>.

The European Network of Migrant Women is concerned with the current ongoing debates, as the European Parliament legal services have brought to question the legality of the proposal, notably in relation with the Return Directive (Directive 2008/115/EC). It is crucial to find a legally sound wording that will lead to an agreement around this key aspect of migrant victims' protection.

Both the Return Directive and the general principles of EU law emphasise the respect of fundamental rights, including the right to privacy and the protection of personal data. Article

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<sup>1</sup> European Network of Migrant Women, 2023, submission for the European Commission on the proposal for the revision of the Victims Rights Directive, available at: [Victims Rights Directive Statement - European Network of Migrant Women \(migrantwomennetwork.org\)](https://migrantwomennetwork.org/victims-rights-directive-statement)

<sup>2</sup> European Network of Migrant Women, 2024, Towards a Europe of Justice, Equality and Dignity for All Women, manifesto, available at: [The European Network of Migrant Women's manifesto for the 2024 European Parliament elections - European Network of Migrant Women \(migrantwomennetwork.org\)](https://migrantwomennetwork.org/the-european-network-of-migrant-women-s-manifesto-for-the-2024-european-parliament-elections)

<sup>3</sup> European Network of Migrant Women, 2021, *Undocumented Migrant Women: A Neglected Chapter in Fundamental Rights Protection*, legal study, available at: [New Report: Undocumented Migrant Women – A Neglected Chapter in Fundamental Rights Protection - European Network of Migrant Women \(migrantwomennetwork.org\)](https://migrantwomennetwork.org/new-report-undocumented-migrant-women-a-neglected-chapter-in-fundamental-rights-protection)



6 of the Return Directive provides Member States with certain flexibilities, including the ability to refrain from issuing a return decision in specific circumstances, including for “compassionate or humanitarian reasons”. Protecting victims of crimes, especially those who are particularly marginalised and excluded from protection mechanisms, falls within the realm of humanitarian considerations as it aligns with the humanitarian principle of preventing and alleviating human suffering. Humanitarian protection can manifest in various forms, such as legal measures, social support, and access to essential services, aimed at ensuring the safety, well-being, and rights of individuals who have experienced harm or are at risk. Recognising victim protection within the broader framework of humanitarian protection underscores the importance of addressing the specific needs and vulnerabilities of those who have suffered from crimes or abuses.

The interests of immigration laws enforcement should not supersede victims’ rights. While the Directive could state that the provision of article 5a §5 shall not prejudice the legitimate interests of law enforcement and public security, a proper balance needs to be achieved, with the aim to create an environment where victims feel secure in reporting crimes. Only such an approach can achieve the broader goal of ensuring access to justice for all individuals.

In addition, specific temporary residence permits should be granted to victims when they report a crime. This is especially relevant for undocumented migrant women, their legal status being often dependent on their perpetrator (family member or employer), which makes them extremely vulnerable and at risk of continued victimisation if a residence permit is not granted to them upon the filing of a complaint. Such protection, as well as access to a comprehensive set of support services should be available to the victims until the completion of the investigation. In addition, victims should be explicitly made aware of such guarantees in order to feel safe in reporting and collaborating to the investigation.

In conclusion, the prohibition on transferring personal data related to a victim's residence status to migration authorities until the completion of the first individual assessment is a crucial measure to ensure the protection of victims, uphold human rights, and foster a legal environment where all individuals feel safe reporting crimes. It not only strengthens the justice system but also contributes to building a society founded on principles of fairness, dignity, and trust.

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Other recommendations from the European Network of Migrant Women regarding the Victims Rights Directive revision include:



- A recital should be added to highlight the need for a gender sensitive perspective with regards to the implementation of the Directive, similarly to what was done in the directive on combating violence against women and domestic violence.
- Art 8.2 should state that Member States shall refer victims to generic and specialist support regardless of the needs' assessment conducted by law enforcement services.
- Art 22.3.c should make explicit that the legal status of the victim shall be taken into account as part of the individual assessment, as it can be a factor of dependency of the victim towards the perpetrator, thus increasing the victim's vulnerability.
- Art 22.3.a should include the risk of sexual exploitation, including in prostitution, in the list of risks emanating from the offender to which particular attention shall be paid upon individual assessment of the victim.
- Art 23.2.d. should not include any limitation. Member States should allocate the necessary resources to guarantee that interviews are conducted by a person of the same sex if the victim so wishes, without derogation.
- Art 23.4.b should include a specification that forbids the offender from approaching the victim by all means until the conclusion of the criminal proceedings.
- Art 26a.1.a should include that information shall be provided in multiple languages, as the lack of understanding of the language of the country of residence is a specific barrier to migrants' access to information.
- Art 26a.1.b should include access to psychological and specialised health support.
- Art 27a.c should include proactive questioning by properly trained staff to ensure the reporting of occurrences of VAWG or domestic violence.
- Art 28.1 should include the legal status of the victim amongst the data to be collected.