PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

PICUM's contribution to the questionnaire on "Racism and the right to health" to the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 164 organisations working with undocumented migrants in 32 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With 20 years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

PICUM welcomes the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health's initiative on "Racism and the right to health". This submission includes responses to **key questions 1, 2, 3, 5, 7 and 8** from the questionnaire.

1. *What are the main ongoing manifestations of racism, and related forms of discrimination enabled by racism that may be prevalent in your country in the area of the right to health broadly including in underlying determinants of health, health outcomes and access to health care?*

The Covid-19 pandemic has shown how undocumented migrants experience a triple vulnerability:

- disproportionate exposure to illness,
- increased exposure to the social, economic, environmental conditions which contribute to poor health outcomes and health inequality, and
- barriers to accessing primary health services[1].

Health, and particularly mental health, inequalities are inextricably linked to social and economic inequalities. A person's wellbeing is influenced by protective factors, such as positive social and familial networks, secure housing, economic and financial stability and adequate labour conditions. Precarious residence status, trauma, abuse, isolation, violence, detention, experiences of racism, homophobia, sexism and other forms of oppression and injustice, on the other hand, are examples of risk factors, which can cause a negative impact in a person's mental wellbeing.

Undocumented migrants encounter barriers in the access to essential elements of social inclusion, specifically health, housing, education, and a fair income. They are at a heightened

[1] Migration Policy Institute (2021), Healing the Gap: Building inclusive public-health and migrant integration systems in Europe.

risk of experiencing risk factors and have less recourse to protective factors. A 2019 study[2] of nearly 30,000 people who attended health programs provided by Doctors of the World in seven European countries found that 55% of patients at the clinics were undocumented, 92% fell below the poverty line and close to 80% were homeless. This emphasises the link between being undocumented and having poor mental and physical health, which is further exacerbated by limited access to primary health care services.

Furthermore, undocumented migrants are also at risk of being placed in immigration detention, which **has severe negative impacts on individuals' mental and physical health during and after the period of detention.** Many people in detention experience anxiety, depression, and post-traumatic stress disorder as a direct consequence of detention. Detention and the perpetual threat of arrest causes further alienation and social exclusion in society. It is imperative for states to end immigration detention, including of children, and undertake community-based approaches which allow people to remain in the community, to engage in their migration procedures and receive social support towards the resolution of their case.

Racialised – including undocumented – people often face an increased and disproportionate risk of social exclusion, marginalization and poverty and are subject to systemic racism, state-sanctioned violence and other forms of discrimination. Racial profiling is a prevalent reality in Europe[3] and relies on the conception that associates belonging to racial or ethnic minority groups with being a foreigner.

In December 2021, the European Commission proposed a reform of the Schengen Borders Code, which would further increase surveillance and controls over non-EU citizens crossing internal and external borders, which can further legitimise this practice, particularly against undocumented migrants of colour[4].

Discriminatory policing is oftentimes accompanied by disproportionate use of force and violence against ethnic and racial minorities[5], which causes long-lasting harm to a person's wellbeing. According to a survey conducted by the Fundamental Rights Agency (FRA) in 2021[6], out of people who consider themselves to be part of an ethnic minority, 22 % were stopped by the police in the 12 months before the survey, as opposed to 13 % of people who do not consider themselves to be part of an ethnic minority, and only 46 % of people with an ethnic minority or immigrant background felt that the police treated them respectfully the last time they were stopped in the street. In a study conducted in 2014[7], the FRA concluded that 79 % of surveyed border guards at airports considered a person's ethnicity to be a useful indicator to recognise individuals attempting to enter a Member State irregularly, before interacting with them. **Undocumented migrants, who frequently belong to racial or ethnic minorities, face not only a risk of being stopped by law enforcement but also of being detained and deported.** This double jeopardy can increase stress and persistent trauma and reinforce existent mental health inequalities.

2. *Who are the most affected people and why? Please describe existing disparities in the provision of and access to health services that affect people of different racial and ethnic origin, descent as well as other groups, such as migrants. The lack of data, analysis or health indicators in this regard may also be reflected.*

The right to health is a universal and inalienable right and a basic precondition for any person to enjoy a dignified life. However, people in an irregular situation residing in Europe and

[2] Médecins du Monde, University College of London (2019), Left Behind: The State of Universal Health Coverage in Europe.
[3] FRA, 5 June 2020, Stop racist harassment and ethnic profiling in Europe.
[4] PICUM (2022), The new Schengen Borders Code risks leading to more racial and ethnic profiling.
[5] European Network Against Racism (ENAR) (2021), The sharp edge of violence: police brutality and community resistance of racialised groups.
[6] FRA (2021), Your rights matter: police stops.
[7] FRA (2014), Fundamental rights at airports: border checks at five international airports in the European Union.

elsewhere[8] have extremely limited access to basic services and social rights, including the right to health, which is largely dependent on the right to residence instead of a person's concrete needs.

In the EU, national policies differ widely. In many EU Member States, undocumented migrants often only benefit from emergency or "necessary" care and have little to no access to a general practitioner[9]. This means that they are often deprived of systematic, preventive medical care, and that remediable, sometimes avertable, conditions are undiagnosed and untreated until it may be too late.

Studies have shown that national health services even in those contexts where services are available for undocumented migrants remain underused, as undocumented migrants are often unaware of their rights to access them, and when they do receive care, it tends to be deficient[10]. In France, practical problems such as administrative requirements, lack of knowledge and sparse information, language and cultural barriers, discriminatory practices, and refusal of care create obstacles for undocumented people to access health services[11].

In Germany, undocumented migrants have a legal right to access healthcare in the same conditions as asylum seekers, which extends beyond emergency services[12]. Nevertheless, the procedure to reimburse migrants for the costs of emergency care is confidential, while the procedure used for care that does not fall in this category is not. In practice, only emergency care services are safely provided for people in an irregular situation. That is because, in a non-emergency situation, undocumented migrants who have received care and are seeking reimbursement for their expenses have to directly approach a social welfare office, whose staff has a duty to report them to law enforcement[13]. The existence of such risk for undocumented migrants means that the legal possibility to access non-emergency healthcare is, in the end, void. **It is, therefore, indispensable that health care services are separated from immigration control, which means that data-sharing between health and social services and immigration services should not be possible.** In 2021, the new German coalition government took a first step in this direction, having adopted an agreement[14] which includes a vow to lift current obligations for the public body providing access to care to report undocumented migrants to immigration enforcement.

These disparities are often exacerbated for more vulnerable groups of individuals. That is the case for undocumented people with chronic disabilities or illnesses, who often require, but are unable to benefit from, continuous care, and children, who mostly receive health care protection under the same conditions as adult undocumented migrants, with no extra protection. Undocumented women, equally, are denied the possibility to gynaecological screenings, if they cannot access primary health care services. Health care professionals are also the first points of contact and support for people who have suffered violence and are responsible to redirect them to other essential support services (such as the justice system). Lack of access to health care can mean that criminal acts can go unreported, as victims are more reluctant to seek help.

The COVID-19 pandemic aggravated long-standing, structural disparities in access to healthcare by migrants, particularly undocumented. There has been evidence of higher

[8] For more information, see: PICUM (2022), Insecure Residence Status, Mental Health and Resilience and PICUM (2017), Cities of Rights: Ensuring Health Care for Undocumented Residents.

[9] University of Oxford Centre for Migration Policy and Society. Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe (2015). https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-Outside_In_Mapping.pdf

[10] Simonnot N, Rodriguez A, Nuenberg M, Fille F, Aranda-Fernandez P-E, Chauvin P (2016), Access to healthcare for people facing multiple vulnerabilities in health in 31 cities in 12 countries.

[11] Médecins du Monde (2015), Rapport de l'observatoire de l'accès aux droits et aux soins en France.

[12] Germany, Asylum Seekers Benefit Act (Asylbewerberleistungsgesetz), BGBl. I S. 2022 (5 August 1997), Section 1.

[13] FRA (2011), Migrants in an irregular situation: access to healthcare in 10 European Union Member States.

[14][14][14] In Koalitionsvertrag (2021-2025).

COVID-19 infection rates among migrant groups across the world[15], which can be explained by a number of factors, including socioeconomic precarity[16] and poor working and living conditions, usually in overcrowded, unsanitary facilities with no possibility to practice social distancing[17]. The pandemic has also triggered a rise in hate crimes and discrimination against migrants[18], which are factors that can be detrimental to a person's mental wellbeing[19]. Despite the general acknowledgement that migrants – particularly undocumented – are extremely vulnerable to the destructive, enduring effects of the Covid-19 pandemic, intersecting barriers to accessing health services (including to Covid-19 vaccinations[20]) persist.

3. *Under the right to health, States have a special obligation to refrain from denying or limiting equal access for all persons, comprising minorities, asylum seekers and migrants including undocumented migrants, to preventive, curative and palliative health services; abstain from enforcing discriminatory practices as a State policy as well as to ensure equal access to health care and health-related services provided by third parties. Please explain how the above point is implemented in your country, what works well and not so well and illustrate with disaggregated data if possible.*

All European Union member states have international law obligations to provide every person with the highest attainable standard of mental and physical health. However, the concrete realities of these countries – namely, their socioeconomic context, the configuration of their healthcare systems and the number of migrants on their territories – influence how healthcare services are provided and to whom.

With few exceptions, European countries severely restrain access to public health systems based on residence status, even though there is growing consensus that this approach is prejudicial not only to a patient's health, but also to public health, generally.[21] Creating or maintaining obstacles to accessing primary health care services is also contrary to States' human rights obligations to guarantee the universality of the right to health.

While no EU member state forbids undocumented migrants from accessing emergency services, some allow undocumented migrants to access emergency care only[22], which vastly limits their ability to receive, continuous, preventive care and achieve a good quality of life. What fits into a country's classification of "emergency" varies and payment may still be a requirement. Thirteen EU member states allow undocumented people to access specialist care (including, for example, HIV screening), but still exclude them from provisions of primary and secondary care.[23]

Even in countries where undocumented migrants are legally entitled to access healthcare services, cost barriers still exist. People with irregular or insecure residence status are more vulnerable to intersectional discrimination and often live and work in precarious conditions. Where cost of obtaining care is excessive, either because an individual must pay for private insurance or out-of-pocket, legal access is rendered meaningless. That is the case for the Czech Republic, Germany and Ireland, where an undocumented migrant is permitted by law

[15] See, for example: Irish Times, Ireland: Migrants face higher COVID-19 infection rate.

[16] Srikanta Sannigrahi et al. (2020), 'Examining the Association Between Socio-demographic Composition and COVID-19 Fatalities in the European Region Using Spatial Regression Approach', *Sustainable Cities and Society* 62.

[17] See, for example: BBC News, COVID-19: Singapore migrant workers infections were three times higher. EURACTIV, COVID-19 crisis in Portugal sheds spotlight on immigrant workers' rights.

[18] See, for example: IOM (2020), Quarantined! Xenophobia and migrant workers during the COVID-19 pandemic.

[19] For more on this: PICUM (2022), Insecure Residence Status, Mental Health and Resilience.

[20] PICUM (2021), The COVID-19 vaccines and undocumented migrants: what are European countries doing?

[21] International Organisation for Migration (2016), Recommendation on Access to Health Services in an Irregular Situation: An Expert Consensus.

[22] Bulgaria, Finland, Lithuania, Luxembourg and Slovakia. See Sarah Spencer, Vanessa Hughes (2015), Outside and In: Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe, COMPAS.

[23] Austria, Croatia, Cyprus, Denmark, Estonia, Greece, Hungary, Latvia, Malta, Poland, Romania, Slovenia and Spain. See Spencer (2015) op. cit.

to access some degree of primary or secondary care services, such as sexual and reproductive health services (to a certain extent)[24] but must cover the full cost of the care provided[25].

States have a duty to fulfil their obligation under international human rights law to guarantee that access to health services is provided based on need, and not status. This entails reform of legislation and policy at national, regional and local levels, to ensure the amendment and removal of legal provisions which limit access to health services on the basis of residence. People with irregular or insecure residence status must be legally entitled to access health services on equal terms with national citizens. Essential services should not be inaccessible due to cost barriers.

States must actively address administrative, cultural and linguistic barriers, by simplifying the rules to accessing care and guaranteeing a system that is inclusive to all, and not administratively prohibitive and difficult to navigate.

States must also guarantee the right to privacy and confidentiality of all patients by barring – legally and in practice – the sharing of personal information (including immigration status) between health care providers and public entities, such as immigration enforcement authorities.

5. *Please share examples of good legal and policy frameworks that address past or ongoing racism and racial and related forms of discrimination, specifically in relation to access to underlying determinants as well as quality health care, goods, services and facilities, including sexual and reproductive health.*

Some countries have progressively shifted their legal and policy paradigms to guarantee that they address existing inequalities and eliminate direct and indirect discrimination in the provision of basic services and goods, including healthcare services for undocumented migrants.

In 2012, Spain removed undocumented migrants' entitlement to the National Health Service, as part of a package of austerity measures to reduce the costs associated with healthcare[26]. However, in 2018, the Spanish Congress of Deputies withdrew this policy and approved a legal decree that expanded access to health services to every person residing in Spain, irrespective of whether or not this person has registered with a municipality. Even though restrictions are still in place[27] – undocumented migrants will be required to cover 40% of the cost of any medication they are prescribed and access to care is limited to the region in which they were issued their health care (which is also applicable to citizens)[28] - Spain has shown a commitment to safeguarding the right to health as an unconditional and universal right.

In 2019, Portugal adopted a new Lei de Bases da Saúde[29] (on the basic principles and legal provisions on healthcare) which allows for regular migrants, asylum seekers, refugees and irregular migrants that have been living in Portugal for more than 90 days (and present proof of residency issued by their municipality) to access healthcare services in the same conditions as national citizens. However, undocumented people who have been in Portugal for less than 90 days or cannot present this proof of residency were only entitled to free care for specific medical needs, such as emergency, vaccination, maternal and paediatric care, meaning that they still had to pay to access primary and other health care.

[24] For more information, see PICUM (2016), The sexual and reproductive health rights of undocumented migrants: narrowing the gap between their rights and the reality in the EU.
[25] Sarah Spencer, Vanessa Hughes (2015), op. cit.
[26] Ana Arriba Gonzalez de Durana, Francisco Javier Moreno-Fuentes, European Social Policy Network (2016), Undocumented migrants in Spain to regain access to healthcare?
[27] Newtral (2021) Es falso que los inmigrantes tengan "gratis los medicamentos": es un bulo antiguo que vuelve
[28] ECRE (2018), Spain: Undocumented immigrants regain the right to health.
[29] Lei n.º 95/2019, de 4 de setembro.

Despite this national framework, many migrants still encounter further bureaucratic, administrative, cultural and linguistic barriers and face a fear of being reported to immigration enforcement authorities and risking deportation, as there is no "firewall" in place[30].

Recently, promising regional and local research-based responses have been implemented. Such practices aim to mitigate the insufficiencies of State-wide policies and facilitate access to healthcare and other basic services by migrants – including undocumented – and other individuals and groups who are at a higher risk of social exclusion and discrimination. Regional and municipal authorities, due to their proximity to the day-to-day lives of their local communities, are at a particular privileged position to ensure everyone can access quality care that is continuous and equitable[31].

Authorities at local, municipal and regional level should continue, in cooperation with civil society, to implement relevant measures to guarantee access to health care for all residents in their communities. Local and regional authorities across Europe should seek information of the various examples which showcase good practice, and, where possible, transpose them to their own context, or create new models that suit their communities' particular needs. Local and regional authorities should work collaboratively, to promote consistency and accessibility of services. It is essential to advocate for adequate reforms in legal and policy frameworks at the national level, to ensure that service provision is homogenous across localities and regions[32].

7. *Please share good practices and examples of public health interventions resulting in adequate access (inside and outside the health sector), support knowledge production or implementation of programs that successfully address inequalities in particular the impact of racism and related racial discrimination, as well as other factors such as poverty, or discrimination based on sex, gender identity, expression, sexual orientation, disability and migration status.*

The COVID-19 pandemic led to unprecedented, increasing challenges for undocumented migrants, but it has also led to the implementation, by government authorities, service providers and civil society organizations, of innovative, humane and effective responses to these challenges.

During the pandemic, Portugal lifted all administrative obstacles in accessing the National Health Service (Serviço Nacional de Saúde – SNS), allowing people in an irregular situation to receive care, free of charge[33]. This meant that it now broadened the scope of free access to healthcare to include undocumented people who could not prove residency or had been in the country for less than 90 days.

In addition to this, the Portuguese Directorate-General for Health (DGS) created an online platform, available in Portuguese and English, where undocumented migrants (who are not, consequently, registered in the National Health Service) can register to be vaccinated[34]. By August 2021, the platform had seen 150,000 registrations, a substantial increase from July of the same year, when the figure stood at 30,000, although there is no record of how many of these people are in an irregular situation[35]. Notwithstanding, despite these adopted

[30] Migration Policy Institute (2021), Healing the Gap: Building inclusive public-health and migrant integration systems in Europe.

[31] United Nations Human Rights Regional Office for Europe (2019), Promising local practices for the enjoyment of the right to health by migrants.

[32] For more, see PICUM (2017), Cities of rights: ensuring health care for undocumented residents.

[33] Direção-Geral da Saúde Pública (2020), Informação sobre migrantes e refugiados.

[34] Público (2021), Governo cria plataforma para estrangeiros em cartão de utente terem vacina contra a COVID-19.

[35] Observador (2021), Quase 300 mil estrangeiros vacinados em Portugal. Entre os que se inscreveram em site por não ter número de utente só 6,7% foram inoculados.

measures, several undocumented migrants, particularly Brazilians[36], have complained that, in practice, they still encountered bureaucratic obstacles to accessing the vaccine, with many reporting that they hadn't been contacted by the National Health Service. The coordinator of the Portuguese vaccination task force, Almirante Gouveia e Melo, has also admitted to the existence of practical barriers for undocumented people to get the vaccine[37]. Across Europe, other countries provide people access to the COVID-19 vaccination without need to prove residency[38].

Considering that irregular migration status constitutes one of the most significant obstacles to accessing healthcare, as UN Special Rapporteurs have pointed out[39], some states allowed for the creation of temporary regularization schemes following the outbreak of COVID-19. That is the case of Portugal, which granted temporary residence to more than 356,000 migrants who, by March 2020, had pending immigration procedures in the Portuguese Immigration and Border Service (SEF)[40]. This was a positive, albeit imperfect, measure, as it was only applicable to individuals who had already started a regularization procedure in the Immigration and Border Service (SEF). SOS Racismo estimated that roughly 80,000 to 100,000 undocumented people did not fall under the scope of this measure[41], including tens of thousands of Sub-Saharan African workers who were unable to apply for a residence permit before the beginning of the lockdown[42]. Although the government's decision explicitly stated that a pending application for residency was sufficient to obtain a national health system number, lack of coordination between national authorities and local healthcare facilities resulted in migrants being denied this number[43]. Italy, on the other hand, adopted a regularisation programme as part of its May 2020 stimulus package, which intended to provide temporary residence permits to migrants who worked in specific sectors of the labour market. However, NGOs and civil society associations argued that this measure had a particularly narrow range and created opportunities for fraud and exploitation of vulnerable individuals[44].

The pandemic has also led to a bigger involvement of civil society in the development of new tools supporting vulnerable communities – including undocumented migrants – in accessing healthcare services. Multiple countries put together multilingual web platforms to inform migrant populations about the pandemic and give updates on how to access care[45]. In Greece, the Ministry of Health, following the initiative of a coalition of national NGOs[46], launched "Vaccines for All"[47], a campaign which aims to guarantee that undocumented migrants are aware of their right to access the vaccine; to tackle misinformation, fear and lack of trust in public authorities due to previous insufficient healthcare policies, and to ensure a national vaccination scheme that is inclusive and open to all. In Sweden, the Cooperative for Migrant Unions created WhatsApp group conversations to reach their communities and disseminate information about COVID-19[48]. These initiatives can give rise to enduring changes in the way services are provided, as well as changes in outreach and

[36] Folha de S. Paulo (2021), Mesmo autorizados, brasileiros irregulares em Portugal relatam dificuldades para se vacinarem.
[37] PICUM (2021), The COVID-19 vaccines and undocumented migrants in Portugal.
[38] Lighthouse Reports (2021), Vaccinating Europe's Undocumented: A Policy Scorecard.
[39] Office of the UN High Commissioner for Human Rights (2020), UN Experts Call on Governments to Adopt Urgent Measures to Protect Migrants and Trafficked Persons in Their Response to COVID-19.
[40] Diário de Notícias (2021), Governo mandou legalizar provisoriamente mais de 356 mil imigrantes.
[41] Open Migration (2020), The shadows of the Portugal's migration model.
[42] InfoMigrants (2020), Falling through the cracks: Undocumented workers in Portugal.
[43] Social Europe (2021), Regularising migrants: Portugal's missed chance.
[44] Human Rights Watch (2020), Italy: Flawed Migrant Regularization Program. PICUM (2020), Regularising undocumented people in response to the COVID-19 pandemic.
[45] For example, Germany or Portugal, accessed on 17th May 2022.
[46] For more information, visit Vaccines for All, an initiative led by INTERSOS Hellas, the Greek Forum of Migrants and the Greek Forum of Refugees.
[47] For more information, see Vaccines for All: Government initiative in the fight against inequality.
[48] Esperanza Diaz et al. (2020), Situational Brief: Migration and COVID-19 in Scandinavian Countries, Lancet Migration.

health screening. But a comprehensive approach to migrant health, one that goes beyond a crisis response in order to tackle structural inequalities, is still lacking[49].

8. *Please share good examples and practices that enable accountability in public and private sector that enable access to justice and redress to victims of racism and discrimination on the grounds such as colour, descent, national or ethnic origin or migrant or refugee status in the provision of health care and as it intersects with factors such as poverty, or discrimination based on age, sex, gender identity, expression, sexual orientation, disability, migration status, health status eg HIV, Albinism etc. and the rural and urban divide.*

Due to the criminalization of irregular migration, undocumented people may be fearful of resorting to law enforcement and public authorities to report an instance of racist and xenophobic violence or discrimination and seek justice and redress. They risk detention and deportation for trying to access support. Migrants who belong to ethnic and racial minorities are particularly affected by heavy policing and surveillance, which spreads distrust and insecurity in state authorities. **When a person is a victim of violence or discrimination, their residence status can never be an obstacle to safely engaging with the criminal justice system and accessing services and support[50].**

European Union legislation foresees protection to undocumented people who are victimised. The European Union's Victims' Directive[51], which creates a common framework for all EU members states (except Denmark) for the rights of victims of crime, defines victim broadly as "any natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offense" and highlights that the directive is applicable to victims "in a non-discriminatory manner, including with respect to their residence status[52]. The official guidance note that accompanies the directive highlights Member States' obligation to guarantee 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," stressing the particular relevance of equal application of these rights in the context of racist and xenophobic hate crime[53].

For people with irregular or precarious residence status, the implementation of "firewalls" is an essential tool which allows them to engage with the criminal justice system without fearing deportation. If immigration authorities are involved whenever an undocumented person seeks assistance from law enforcement after suffering a crime or an act of violence or discrimination, their rights, as defined by the EU Victims' Directive, are undermined.

Some countries have already implemented practices that allow for people with irregular or insecure residence status to safely receive support after being victimised. The Netherlands, for instance, 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, which started as a regional initiative of the Amsterdam police, achieved national scope in 2016, after the Dutch Ministry of Justice and Security supported a pilot of the program and as part of the Netherland's implementation of

[49] Migration Policy Institute (2021), Healing the Gap: Building inclusive public-health and migrant integration systems in Europe.

[50] For more, see PICUM's 2021 report on Preventing Harm, Promoting Rights: Achieving safety, protection and justice for people with insecure residence status in the EU.

[51] 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").

[52] Ibid, article 1.

[53] 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.

the Victims' Directive[54]. A study by the University of Oxford's Centre on Migration, Policy and Society (COMPAS)[55] found that undocumented people reported various crimes under this policy, including labour exploitation, theft, sexual violence, drug trafficking, domestic violence, blackmail and stalking, However, this report noted that the firewall still had a fragile nature: police and immigration authorities routinely exchanged data about people's status; 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 (such as labour rights violations).

In Spain, the "Guardia Civil", one of the country's two national police forces, created specialized groups called Immigration Attention Teams or EDATI ("equipos de aténcion al inmigrante")[56] which were responsible for providing aid to migrants – including 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 assistance.

Despite some practices adopted by countries across the European Union to comply with the Victims' Directive, **access to justice and redress to victims who are undocumented or have precarious status is still limited and unfairly dependant on status.** Justice for victims of crime, violence or discrimination should also be understood in a broad, holistic way, including community-based models which allow for the promotion of accountability, the recognition of harm and the reparation of damage without necessarily relying on the criminal justice. **Promoting access to justice should include alternative avenues that are centred on the interests of the person who has been victimised and which address the broad social context in which harms occur, as well as recognize the insufficiencies of punitive approaches, such as incarceration, which operate mainly against racialized and economically vulnerable communities.**

[54] 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.

[55] Ibid.

[56] Ministerio del Interior, 3 April 2000, La Guardia Civil crea equipos de atención al inmigrante.