

*INPUT ON THE 'VICTIMS OF
CRIME BILL'*



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T A B L E O F C O N T E N T S

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I N T R O D U C T I O N & B A C K G R O U N D

On 24th October 2014 the Ministry for Justice published the ‘Victims of Crime Bill’¹, “to make provision for the rights, support and protection of victims, and for matters connected therewith or incidental thereto.” The Bill’s primary aim is to transpose the EU’s Victims’ Rights Directive² by introducing the legal and administrative reforms necessary to ensure national compliance with the Directive’s provisions.

The purpose of the EU Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. This ambitious Directive provides a significant opportunity to advance access to rights and justice for migrant victims.

Indeed, this Directive makes it very clear that all the rights and minimum standards set out **apply to all victims of crime irrespective of their residence status**. The rights set out in the Directive are not made conditional on the victim having **legal residence status** on European Union territory or on the victim’s citizenship or nationality. Thus, third-country nationals and stateless persons who have been victims of crime on EU territory should benefit from these rights **without discrimination**.

Recital 9 of the Directive furthermore specifies that “*victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief (...)*”.

Migrants, by definition, tend to be prone to vulnerability and exclusion. Firstly, they are more susceptible to be targeted by criminals, particularly in relation to racist and xenophobic hate crimes and crimes against undocumented migrant women and girls. This latter group are often exposed to gender-based violence, including sexual and labour exploitation. Secondly, migrants are less likely to have sufficient knowledge of the host society’s legal and institutional system for them to seek adequate redress and reparation. Thirdly, they usually don’t have the financial resources to bear the cost of criminal or administrative remedy proceedings.

aditus foundation welcomes Malta’s efforts to transpose the EU Directive within the deadline, and to provide a true status for victims of crime in Malta. **aditus** also endorses the Position Paper released on 11th November by Victim Support Malta (**VSM**)³, which points out important shortcomings of the Bill and suggest the improvements that could be made.

This present document expresses some specific concerns on how the Directive, and consequently the Bill, should be read to take into account migration-specific situations. It is modelled on aditus’ experiences working with migrants, coupled with several capacity-building sessions with the **Platform for International Cooperation on Undocumented Migrants (PICUM)**⁴, of which aditus foundation is an active member.

¹ Available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26416&l=1>.

² 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, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>.

³ Available at <https://www.facebook.com/notes/victim-support-malta/victims-of-crime-bill-position-paper-11112014/284927678383728>.

⁴ <http://picum.org/en>.

A D I T U S F O U N D A T I O N P R O F I L E

aditus foundation is a young, independent, voluntary, non-profit and non-governmental organization established in 2011 by a group of young lawyers dedicated to ensuring human rights access in Malta. **aditus'** Director is Dr. Neil Falzon, and the current board is composed of Dr. Nicola Mallia (Chairperson), Dr. Michael Camilleri and Dr. Michael Ellul Sullivan.

Named for the Latin word meaning 'access', **aditus foundation's** mission is the attentive analysis of access in Malta to human rights recognition and enjoyment. In practical terms, **aditus** was established to *monitor, report* and *act* on issues of fundamental human rights access for individuals and groups.

aditus foundation was founded on the principles of the universality, interdependence and indivisibility of all fundamental human rights, and we strive to promote their understanding and application. Being a generic human rights NGO, we work to adopt a broad perspective for human rights in Malta, identifying themes such as discrimination and access to effective remedies. Furthermore, while focused on Malta, we work towards highlighting the regional and international implications of local obstacles to human rights access.

Our main activities include the identification of priority areas, formulating advocacy strategies and working towards improvement in legal and administrative standards. This includes offering pro bono legal information and advice. We focus primarily on the government of Malta (through participation, for example, in a series of meetings with the Office of the Prime Minister on the subject of refugees). We do also address the EU institutions, the UN, the Council of Europe and other relevant agencies. We remain in constant communication and cooperation with governmental, intergovernmental and non-governmental entities to maintain a comprehensive approach in our activities.

aditus is committed to engaging the general public in a human rights discourse that is well informed, unbiased and effective, through press statements and television and radio appearances. Further, **aditus** makes full use of the Internet to disseminate information, raise public awareness, gather advocacy support and establish contact with individuals and networks. We have a comprehensive website and a busy Facebook page and Twitter account. **aditus** also blogs about the European Asylum Support Office (EASO) to provide updated information and commentary on its activities.

We firmly believe that professional research is a necessary advocacy tool and encourage its use by policy-makers in formulating national strategies and action plans. Accordingly, we prepare reports for various national, regional and international entities on the local human rights scenario, violations, law and administrative policy and practice. One example is *Fleeing Homophobia: Seeking Safety*, an EU-wide research project identifying best practices for LGBTI asylum cases and making EU-policy recommendations. Another important example is our collaboration with other Maltese NGOs to draft a report on LGBTI children, children with disabilities and migrant children in Malta, for submission to the United Nations Committee on the Rights of the Child.

We organise training projects regularly, targeting a variety of actors. One such project is *Our Voice*, aimed at enhancing the integration of Malta's refugee and migrant communities, to foster a sense of active social participation, support the creation of refugee and migrant networks and organizations and to develop strategies for funding future programmes.

A second training project is our *Stakeholder Training Sessions*, designed to give core information to those public and private service-providers that have direct and frequent contact with refugees. The project works to help identify the specific challenges, opportunities and best practices associated with their work. Lastly, we insist on striving to improve our own capacity to address lapses in human rights access: as part of that effort, we participate in training, workshops and conferences with local and international colleagues.

aditus is the Secretariat for the **Platform of Human Rights Organisations in Malta (PHROM)**⁵, Malta's first and only national coalition of human rights NGOs.

Apart from being registered with the Malta Commissioner for Voluntary Organisations, aditus has affiliations and memberships with the International Detention Coalition (IDC), the Platform for International Cooperation on Undocumented Migrants (PICUM), the European Council on Refugees and Exiles (ECRE) and the Anna Lindh Foundation.

We are also members of the Consultative Forum of the European Asylum Support Office, and of the Fundamental Rights Platform of the European Union Agency for Fundamental Rights.

For more information on how you can follow and/or support our advocacy activities:

*aditus foundation,
149,
Old Mint Street,
Valletta VLT 1513,
Malta*

*Telephone: +356 2010 6295
Fax: +356 2010 6296
Website: www.aditus.org.mt
E-mail: info@aditus.org.mt*

⁵ www.humanrightsplatform.org.mt

M A I N O B S E R V A T I O N S

aditus welcomes the Government's choice to transpose the Directive by creating a single and unified legal instrument instead of amending existing general Criminal Code provisions.

The first article of the Directive ("*Objectives*") has not been transposed, presumably because this provision sets out the objectives of the instrument. As a consequence the Bill does not include a key provision of the Directive, namely that "*the rights set out in [this bill] shall apply to victims in a non-discriminatory manner, including with respect to their residence status*". It is recommended that the Bill include clearer reference to its scope.

Secondly, the Bill has transposed word for word the definitions included in Article 2 of the Directive, yet **aditus** believes that the definition of "*family members*" should also include unmarried partners, regardless of whether the partners are in a registered civil partnership under national laws.

Also, the Bill transposes the definition of "*victim*" but in some articles (e.g. Article 4) the term "*injured party*" is used. This is not in line with the Directive since the latter requires that the rights contained therein apply to "*victims*". The Bill should therefore only refer to victims to ensure full compliance and to avoid the restrictive application created by the different terminology.

1. Include the Directive's guarantee of protection to all victims in a non-discriminatory manner so that undocumented migrants would also be covered by the Bill's protection and support.
2. Broaden the definition of "*family members*" in order to offer increased protection and support.
3. Ensure a complaint definition of "*victim*" by removing references to "*injured party*".

O U R I N P U T O N T H E B I L L

Police reporting and access to justice: how to ensure better access for migrants

One of the main challenges for migrants who are victims of crime is their often-limited access to adequate remedies due to linguistic and/or financial barriers, and limited knowledge of judicial and administrative procedures.

The Directive seeks to guarantee the right for any victim of crime “*to understand and be understood*” throughout criminal procedures. The Bill is currently limiting this right by referring to Article 546 of the Criminal Code (also pointed out by VSM), instead of rendering this right applicable to all crimes. **aditus** urges the Government to make clear that all victims of all crimes should have access to interpretation and translation services from the first contact, if necessary.

aditus also recommends that the Bill specify – as the Directive does – that the rights to translation and information (Articles 3, 4, 5, 6 and 7 of the Bill) should not be dependent on the victim’s request. It ought to be clarified that criminal justice authorities and any other competent authority shall provide free information and translation proactively and *ex officio*. It should further be specified that these rights to information and translation should not only apply during Court hearings but at all stages of the procedure, such as during police questioning, police investigation, and medical examinations.

aditus also recommends that the Bill clearly specify which authority will be responsible for providing the information and translation, including with the possibility of such authority engaging the support of civil society organisations willing to provide such assistance.

1. The Bill should make clear that all victims of all crimes should have access to interpretation and translation services from the first contact, if necessary.
2. The rights to translation and interpretation should not be dependant on the victim’s request. These rights should not only apply during Court hearings, but during all interactions between victims and institutions/service-providers.
3. The authority responsible for providing information and translation services should be clarified.

Access to protection and to victim support services: how to provide full access for all victims

The Directive obliges Member States to recognise victims’ specific protection needs and the right to support is one of the core rights in the Directive. The purpose is to ensure that victims have access to confidential support services free of charge. The Directive also aims to ensure that victim support services, including appropriate shelters, trauma support and counselling, exist and are accessible, also to migrant victims.

aditus shares VSM's concerns regarding the Bill's minimum transposition approach, particularly relating to support services. The Bill, once again, limits access to such rights to certain crimes⁶ and it does not lay down the provision granting a right to victims to access such services.

Several important Directive provisions have been omitted, possibly since it was felt that they are already somehow addressed in other legal instruments. However, as reiterated above, **aditus** stresses that all the Directive's provisions should be transposed together in the Bill.

For example, **aditus** is very concerned that Directive provisions pertaining to the protection of victims (Articles 18, 19, 20 and 23 of the Directive) have not been transposed in the present Bill. These provisions are of particular importance as migrants are prone to increased vulnerability and should be protected from secondary and repeat victimisation, intimidation and retaliation during investigation and criminal proceedings. While a whole Directive chapter (7 articles) is dedicated to the protection of victims, only very few provisions related to these rights exist in the Bill. **aditus** is particularly worried that some core rights (e.g. protection rights, the specific needs of the child, and the right to privacy) have not been transposed at all.

Furthermore, while the Directive states that Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, intimidation and retaliation, the Bill only refers to the obligation of victim support services to "*provide advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation*" (Art 12b).

Due to the above considerations, **aditus** is seriously concerned that the specific needs of some victims, in particular migrants, will not be addressed adequately.

1. Include all Directive provisions in the transposition exercise, particularly those relating to core Directive rights.

Implementation of the Bill: how to ensure accountability and monitoring

Whilst **aditus** welcomes the transposition of the Directive, we are also keen to reiterate that effective implementation will be key to the Directive's success in Malta.

The most important steps following transposition will require Malta to introduce those practical measures required to achieve the law's objectives. Such measures may include nation-wide codes of conduct/guidelines for professionals having regular contact with victims of crime (police and judicial authorities, victims' support service-providers, etc.) so as to establish clear responsibilities for relevant entities. These codes of conduct/guidelines should be made public, promoted and followed-up by appropriate training of professionals, as also required by the Directive.

The competent authorities and professionals working with victims will also have to establish an operational network of easily accessible translators and interpreters. They will also have to develop appropriate models, templates, IT tools etc. for providing information to victims and also specify which criminal justice actor will be responsible for providing each type of information listed under Article 4 of the Bill.

These obligations are particularly relevant in the context of migrant victims since they will seek to ensure and promote it approaches that are sensitive to linguistic, cultural and social differences whilst simultaneously upholding the values promoted in the Directive.

⁶ Article 12 of the Bill refers to « severe crimes »

1. Together with the transposing legislation, Malta should engage with all relevant stakeholders – including civil society organisations – in order to map out and design a comprehensive national implementation framework that identifies and allocates responsibilities, including training and on-going monitoring.
2. Regular review of the Directive's implementation should be an integral component of its implementation framework, ensuring appropriate dialogue with civil society organisations, including those working with migrants.