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# VICTIMS WITH IRREGULAR MIGRATION STATUS' SAFE REPORTING OF CRIMES IN BELGIUM

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# 1. INTRODUCTION

## 1.1 VISA ROC BELGIUM

This study is part of the EU project “Victims with Irregular migration Status’ sAfe Reporting of Crimes (VISA RoC)”. This research report builds on the Belgian research part of the project “Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status” of the Centre on Migration, Policy and Society (COMPAS) of the University of Oxford (Van den Durpel, 2019) in which the policies and legislation on safe reporting of crimes by irregular migrant victims in Belgium, Italy, the Netherlands, Spain and the United States are analysed.

VISA RoC is funded by the European Commission’s Directorate-General for Justice through the “Call for proposals for action grants to support transnational projects strengthening the rights of persons suspected or accused of crime and the rights of victims of crime. crimes (JUST-2021-JACC)”. In line with the EU Strategies on Victims’ Rights (2020-2025) and Gender Equality (2020-2025), and the EU Action Plan against Racism (2020-2025), VISA RoC is explicitly committed to promoting equal access to victims’ rights for victims in an irregular migration situation, through safe reporting.

‘*Safe reporting*’ means that a so-called firewall has been built in so that no data is exchanged between service providers (for example from victim support and restorative justice organisations) and competent authorities (such as labour inspectors, police, Public Prosecutor’s Office) and, on the other hand, immigration enforcement officers from the Immigration Office (IO) (Crépeau & Hastie, 2015; Delvino & Beilfuss, 2021; Geddie et al., 2014).

‘*Irregular migrants*’ refers to persons who are present in Belgium who do not (or no longer) meet the conditions for entry, transit or residence in this Member State (Merlino & Parkin, 2011). It are non-nationals who enter without legal permission, but more often it concerns people who lost their right of residence during their stay, such as an expired visa, invalid single permit (i.e., a combined permit for access to residence and work), or rejected application to international protection (Van den Durpel, 2017a).

The term “*victim(s)*” is consistently used in the VISA RoC project and in this research report, in accordance with European, federal and subnational regulations and policies. However, the use of this term does not detract from the rights-based discourse that is the starting point of this study, in which each victim is an active agent with an own voice and (sometimes limited) freedom of choice (McEvoy & McConnachie, 2013; Sigona, 2012).

Participating in VISA RoC are: Barcelona, and the cities of Utrecht, Milan and Ghent with their local partners, the European umbrella and advocacy organisations Platform for International Cooperation on Undocumented Migrants (PICUM) and Victim Support Europe (VSE). The University of Barcelona, Faculty of Political Science, Constitutional Law and Philosophy of Law is the project coordinator. The Belgian study, commissioned by the City of Ghent, was carried out by the Centre for the Social Study of Migration and Refugees (CESS-MIR) of Ghent University.

VISA RoC started in October 2022 and is scheduled to be completed by July 2024. Based on the findings of the Belgian research, the City of Ghent, as local project coordinator, will -amongst others- set up a national-local partnership with a view to elaborating possibilities for safe reporting by irregular migrant victims and witnesses of crime. In addition, the research findings will be shared with local and national actors who come into contact with irregular migrant victims and witnesses of crime.

## 1.2 THE BELGIAN RESEARCH REPORT

This research report examines the implementation of the EU Victims' Rights Directive (2012/29/EU) in Belgium with regard to irregular migrant victims and witnesses of crimes in Belgium.

In the following section, the research design and methodology of this study are explained. The third part outlines the Belgian context regarding residents with an irregular status in Belgium, and the associated legislation and enforcement. The fourth segment successively focuses on the Victims' Rights Directive, its transposition in Belgium, the general framework for reporting crimes by victims and witnesses in Belgium, the reporting of the specific crimes (labour law violations, human trafficking and smuggling, violence against women and domestic violence) by victims and witnesses in Belgium, and on the legal possibilities for safe reporting of crimes by irregular migrant victims and witnesses of crime in Belgium. Part five provides an overview of the most relevant actors in Belgium the context of safe crime reporting. The sixth section of the report describes a number of practices and experiences concerning safe reporting of crimes by irregular migrant victims and witnesses of crime in Belgium, respectively from the perspective of migrants in an irregular residence situation, victim support organisations and enforcement actors. Subsequently, in the seventh part, proposals for improving safe reporting of crime by victims and witnesses with irregular status in Belgium are formulated.

## 2. RESEARCH DESIGN AND METHODOLOGY

### 2.1 AIM OF THIS RESEARCH

The EU Strategy on Victims' Rights (2020-2025) recognises that irregular migrants who become a victim of crime are often in a vulnerable situation and may have difficulties accessing justice (EC, 24 /6/2020). After all, a victim or witness in an irregular residence situation who reports a crime to the police, runs the risk of receiving an order to leave the territory (OLT) and/or being arrested (Article 7 Aliens Act). As a result, irregular migrant victims usually have no or only limited access to assistance and justice (Boychenko et al., 2021; Picum, 2020), and experience no or only limited liability for crimes committed against them (Delvino & Beilfuss, 2021). Not only do irregular migrant victims and witnesses often feel that perpetrator(s) go unpunished, this reality also effectively contributes to impunity (Kox et al., 2020) as this quote demonstrates: *“This boss of firm had paid me far too little (...) and I demand more pay (...). I was angry and I hit this boss, he hit and I hit back. It happened on street and someone called police (...) or police were already there (...). I explained to police this boss is not honest man, he stole money from me. The police said he was not going to write, that he was not going to make a report, that he was not going to do anything and that I had to go away. I was very angry then (...). The police said he had to lock me up if he listened to me (...). I did not understand. I was not thief (...) I had not taken money, had I?”* (Interview no. 4).

This quote also shows that the Victims' Rights Directive has been at least incompletely transposed into Belgian law, and leaves room for interpretation regarding the rights in the daily life of irregular migrant victims of a crime in Belgium. This research therefore scrutinises the legislation, policies and practices that exist in Belgium regarding victims and witnesses with irregular residence status in Belgium. The research findings can be used to further examine what can or should be improved, and how Belgium can fully comply with the binding European agreements on minimum standards for victims of criminal offences. In line with the general purpose of VISA RoC, this research aims to contribute to the effective and coherent implementation of the Victims' Rights Directive and to the objectives of the EU Strategy on Victims' Rights (2020-2025). In particular, this research report seeks to promote dialogue between the relevant actors in Belgium, so that discrimination against irregular migrant victims and witnesses will be eliminated and prevented, and equal access to victims' rights for all victims and their immediate family - not least children - regardless of residence status will become reality.

### 2.2 ETHICAL CONSIDERATIONS AND CHOICES WITH REGARD TO THIS RESEARCH

This research was conducted in accordance with the European Code for Scientific Integrity (ALLEA, 2017) which sets out the principles of scientific integrity and criteria for good research practices, the Policy Plan for Scientific Integrity at Ghent University (UGent, 2015), the Framework for Good Research Practices (UGent, 2020), and the Specific ethical protocol for scientific research at the Faculty of Psychology and Educational Sciences of Ghent University (UGent, 2021). The Ethics Committee of the Faculty of Psychology and Educational Sciences of Ghent University approved the VISA RoC Belgium file 2022-160 to conduct semi-structured interviews with adults in a precarious residence situation.

In view of participation in this study, relevant civil society organisations (NGOs) that represent the interests of (also) irregular migrants and/or that (also) support irregular migrants, victim support organisations and enforcement authorities were invited by e-mail. They received the “Information and Consent Form” (Annex 2) of this study in order to give their informed consent for further interaction, data use and information sharing. Adults in a precarious residence situation, on the other hand, were invited to participate through intermediaries who are fully aware of the study, so that the researchers do not need to have any direct contact data. The information and consent form was verbally explained to these



respondents, and they verbally agreed to participate, with data use and information sharing.

Given the sensitivity of the topic of this research, the contributions of all interviewees were treated confidentially and pseudonymised in the sense that no personal data were collected, and that specific information provided by interviewees was made de-identifiable. To ensure the confidentiality of identity, personal data and information provided, no interpreters were used when conducting the semi-structured interviews. The interviews with relevant NGOs, victim support organisations and enforcement authorities were conducted in Dutch, with irregular migrants in Dutch, English and/or French. Nevertheless, research participants always remain vulnerable because they have no control over how their information is interpreted (Schwartz-Shea & Yanow, 2012) and over what happens to the information they share (Haggerty, 2004; Obelene, 2009; Trinczek, 2009). This vulnerability is all the more the case in this study, as interviewees may talk about unlawful behaviour, and/or use politically incorrect normative beliefs and language (Düvell et al., 2009; Lancaster, 2017; Pfadenhauer, 2009). To meet these vulnerabilities, the agreements of the “Information and Consent Form” that were made in advance, were renewed at the start of each interview. Moreover, the researchers pointed out, and complied with the fact, that in all their communications -not least with all those involved in the VISA RoC project- they use firewalls that prevent the exchange of identifiable data between service providers and immigration law enforcers (Crépeau & Hastie, 2015; Delvino & Beilfuss, 2021; Geddie et al., 2014).

## 2.3 DATA MANAGEMENT

### 2.3.1 Data collection

Two types of research data were collected. First, a literature review was performed (based on academic insights, research reports, policy documents and reports, and primary legal sources). Second, semi-structured interviews were conducted with a number of actors directly involved, in order to gain insight into practices and applications of the Victims' Rights Directive in Belgium. More specifically, people in a precarious residence situation, victim support organisations, enforcement authorities and relevant (interest and/or support) NGOs were interviewed. To this end, interview guides were prepared in advance by the researchers, in consultation with the VISA RoC project coordinator and with the Belgian VISA RoC project group (City of Ghent, Amal NGO, Orbit NGO, FAIRWORK Belgium, Centre for General Welfare Work East Flanders) (see Annexes 3, 4 and 5).

A total of 27 semi-structured interviews were conducted in Flanders and Brussels, of which 12 with adults in a precarious residence situation, five with victim support organisations, five with enforcement authorities and five with relevant NGOs. On average, an interview with an adult in precarious residence lasted 2h47, and with employee(s) of a victim support, enforcement and civil society organisation 1h36. Regarding the interviewees in a precarious residence situation, it was attempted to maximise the diversity of respondents. Table 1 shows the criteria that were drawn up and used for this purpose.

**Table 1: Criteria used to maximize the diversity of respondents in a precarious residence situation**

Criteria	Diversity respondents	Number
<b>Gender</b>	Woman	5
	Man	7
<b>Age</b>	18-25y	2
	26-35y	4
	36-50y	4
	+51y	2
<b>Country of origin</b>	Maghreb	2
	Asia-non conflict areas (e.g., India, China)	1
	Turkey	1
	Afrika-non Maghreb (e.g., Congo, Cameroon)	3
	Conflict areas (e.g., Afghanistan, Iraq)	1
	Europe non-EU (e.g., Russia, Albania, Kosovo)	2
<b>Period present in Belgium</b>	South America (e.g., Brazil)	2
	0-2y	2
	+2-5y	3
	+5-10y	4
<b>Type of crime</b>	+10y	3
	Theft and extortion	10
	Deception	11
	Damage to property	4
	Other (work)	12
	Crime against bodily integrity	4

### 2.3.2 Data processing and assessment

The interviews were transcribed and then analysed by means of qualitative content analysis, because this method is very suitable for systematically interpreting and describing the meaning(s) of qualitative data (Cho & Lee, 2014; Schreier, 2012). The entire process of analysing the transcripts was performed manually. First, as an attribute of classification, the category to which the interviewee belongs (i.e., adult in a precarious residence situation, NGO, victim support organisation, or enforcement authority) was added to each unit of analysis (i.e., each interview) to facilitate analysing the data (Mortelmans, 2019). Subsequently, categories and subcategories were assigned to relevant words, (parts of) sentences and/or longer parts of each interview transcript. Since the research is aimed at exploring, describing and interpreting practices -about which academic insights and theory are limited- the categories were developed inductively, so that the code book (i.e., structure of main and secondary terms and their description, see Annex 6) only gradually took shape (Cho & Lee, 2014; Schreier, 2012). Third, the methodological requirements of one-dimensionality, mutual exclusivity and completeness were tested (Mayring, 2014; Schreier, 2012). Fourth, to complete the code book, the value of each (sub)category was assessed, and all interview transcripts were re-read and re-coded where necessary. Finally, the results of the semi-structured interviews could be analysed, interpreted and described.

To evaluate the quality of the research data, their transparency, intersubjectivity, transferability, credibility and consistency were evaluated (Mohajan, 2018; Moravcsik, 2014; Verschraegen, 2018). Figure 1 shows the main actions taken to deliver quality research results.

**Figure 1: Actions taken to obtain high-quality research results**

<u>Transparency</u>	<u>Intersubjectivity</u>	<u>Transferability</u>	<u>Credibility</u>	<u>Consistency</u>
<ul style="list-style-type: none"> <li>◦ Literature review</li> <li>◦ Interview guides</li> <li>◦ Code book</li> <li>◦ Rich descriptions</li> </ul>	<ul style="list-style-type: none"> <li>◦ Review of primary sources</li> <li>◦ Information and consent form</li> <li>◦ Semi-structured interviews</li> </ul>	<ul style="list-style-type: none"> <li>◦ Qualitative content analysis</li> <li>◦ Rich descriptions</li> <li>◦ Prior agreements with VISA RoC researchers other cities</li> </ul>	<ul style="list-style-type: none"> <li>◦ Member checking findings</li> <li>◦ Discussing findings</li> <li>◦ Proceeding systematically</li> </ul>	<ul style="list-style-type: none"> <li>◦ Data triangulation</li> <li>◦ Source citations</li> <li>◦ Discussing draft report</li> <li>◦ Rich descriptions</li> </ul>

## 3. THE BELGIAN CONTEXT REGARDING MIGRANTS WITH IRREGULAR STATUS IN BELGIUM

### 3.1 PERSONS WITH IRREGULAR STATUS IN BELGIUM

#### 3.1.1 Who is with irregular status in Belgium?

Persons who do not (or no longer) have a valid residence permit have an irregular status in Belgium (Art. 1/3 Aliens Act). The conditions and rules that immigrants must comply with in order to lawfully enter, travel through and/or reside in Belgian territory are enshrined in the Belgian Aliens Act of 1980. Both tourists<sup>1</sup> and (temporary) immigrants must have a certain status that justifies their entry, transit or stay (Articles 2 and 9 Aliens Act). Children born in Belgium, of whom both parents reside irregularly in the country, 'inherit' this irregular status (DVZ, 2017). Persons with irregular status in Belgium are often referred to as '*sans-papiers*' (French), '*mensen zonder papieren*' (Dutch) or '*Menschen ohne Papiere*' (German).

Unlawful immigration arose with the introduction of territorial borders, but was in Europe not seen as a problem until the 1980s (for a full overview see Van den Durpel, 2017b). Although derived from international regulations, such as the Schengen acquis and the Geneva Refugee Convention, each EU country determines separately who and under what conditions has an irregular status (Engbersen & Broeders; 2009; Schinkel, 2005). At the European level, the Return Directive 2008/115/EC provides a description of irregular stay: The presence on the territory of a Member State by a non-EU citizen who does not (or no longer) fulfil the conditions for entry, residence or settlement in that Member State (Merlino & Parkin, 2011). Furthermore, the Schengen agreements, the Citizenship Directive and the Qualification Directive specify that anyone who is on the territory of a foreign country for more than three months must have a valid (temporary) residence permit. If that is not the case, that person is in an irregular residence situation. It concerns persons who:

1. Entered the territory without authorisation and valid residence permit;
2. Arrived in Belgium lawfully or unlawfully, went through a procedure for protection (e.g., asylum) or family reunification, but did not obtain a residence permit;
3. Arrived in Belgium lawfully, for example with a visa, but no longer meet the residence conditions;
4. Lost their residence permit, for example if the combined residence and work permit is withdrawn when it appears that the employer breaches the legislation.

<sup>1</sup> These are non-Belgians who reside in Belgium for a period of three months (extendable once) (Article 6 Aliens Act).

## **Some numbers with regard to persons with irregular status in Belgium**

The presence of irregular migrants in Europe is a structural fact (Castles, 2004). However, the number of persons residing irregularly on European soil is unknown and difficult to estimate (Van den Durpel, 2022). The pioneering CLANDESTINO project (2009) estimated that in 2008 between 1.9 and 3.8 million irregular migrants stayed in the EU. The Organisation for Economic Co-operation and Development (OECD, 2013) assumed that in 2011 about five to eight million people lived in Europe without a valid residence permit. Subsequently, Tjaden (2013), Orrenius & Zavodny (2016) and (proxy) indicators of the European Migration Network (EMN, 2015) suggested that irregular migration in Europe increased. In 2020, FRONTEX observed that irregular migration to the EU had reached its lowest level since 2013.

In 2007 it was estimated that in Belgium about 100,000 persons -approximately 1% on top of the regular population- did not have a valid residence status (Schockaert et al., 2012). Over the past five years, the number of irregular migrants caught in Belgium by law enforcement has decreased, to 10,885 persons in 2021 (EMN, 2022). To appraise the number of irregular migrants residing in a particular Belgian municipality, the number of medical cards<sup>2</sup> issued to unique individuals per year by the local Public Centre for Social Welfare (OCMW) can be considered a good indicator. In 2020, 1,370 individuals with irregular status received a medical card from the Ghent Social Services. In 2021, 1,407 medical cards were issued to unique eligible persons. In addition, the number of arrests per police zone may be an indicator for the number of persons with irregular status who are residing in the city or local police zone. Nevertheless, it must be noted that these figures concern the number of arrests (not the number of unique persons apprehended) and that the data do not distinguish between irregular migrants who transit through the police zone (so-called irregular transit migrants) and persons residing in the territory without having a valid permit to do so. Table 2 presents an overview of the number of arrests of irregular adult migrant by the Ghent police (police zone Ghent) in 2018 and 2019 (City of Ghent, 2022). The data are broken down on the basis of the decisions taken by the Belgian Immigration Office.

**Table 2: Overview of the number of arrested irregular adults in the Ghent police zone**

<b>Decisions of the Immigration Office</b>	<b>2019</b>	<b>2018</b>
No decision	43	20
Order to leave the territory (OLT)	135	291
Reconfirmation OLT	125	154
Free to leave decision	89	115
Detention order	53	119
<b>Total</b>	<b>445</b>	<b>699</b>

As part of the Urbact ROOF project on homelessness, a count of the number of homeless people in Ghent took place on 29 and 30 October 2020 (City of Ghent, 2021). A total of 1,873 homeless people were registered, of which 585 people (including 216 children) did not have a valid residence permit in Belgium (City of Ghent, 2022).

## **3.2 LEGISLATION CONCERNING PERSONS WITH IRREGULAR STATUS IN BELGIUM**

### **3.2.1 Decision to expel a person with irregular status in Belgium**

The Aliens Act is the main legal basis of immigration policy in Belgium. Article 7 of the Aliens Act determines in which cases a decision to expel someone from the Belgian

<sup>2</sup> In Belgium, irregular migrants' right on access to health care is arranged via a medical card, which is fully funded by the federal government. A medical card is issued by the Social Services of the municipality (OCMW) if it is assessed that a person is in an irregular residence situation and has insufficient financial means. A medical card is valid for three months. Through this card, the patient can receive the necessary care, which is paid via the Social Services directly to the medical care provider. Urgent medical care does not only include emergency care. Urgent medical care means that there is an urgent need for medical care. Whether there is an urgent need is determined exclusively by a doctor, not by the patient, not by the Social Services, or anyone else. Thus, urgent medical care can also involve, for example, a medical examination, physiotherapy treatment, a visit to the dentist or general practitioner.

territory must or can be taken and thus when an order to leave the territory (OLT) must or can be issued.

An OLT must be issued when a person: 1) Does not have the required documents to be on the territory (Article 7.1° Aliens Act); 2) Stays on the territory for longer than allowed, or cannot prove to stay less long than allowed in Belgium (Article 7.2° Aliens Act); 3) Is reported due to refusal of entry and stay (Article 7.5° Aliens Act); 4) Has been transferred to Belgium for expulsion from the territory (Article 7.9° Aliens Act); 5) Was returned or deported from Belgium less than ten years earlier (Article 7.11° Aliens Act); 6) Is subject to a valid entry ban in Belgium (Article 7.12° Aliens Act).

On the other hand, an OLT can be issued when a person: 1) Poses a threat to public order or national security (Article 7.3° Aliens Act); 2) Is deemed to possibly harm the international relations of Belgium or its partner countries (Article 7.4° Aliens Act); 3) Has insufficient means of subsistence for the duration of the intended stay and for the return journey or transit to a third country (Article 7.6° Aliens Act); 4) Has a disease or ailment as listed in the appendix of the Aliens Act (Article 7.7° Aliens Act); 5) Is without authorisation active in Belgium as an employee or self-employed person (Article 7.8° Aliens Act); 6) Must be transferred from Belgium to a Partner Country (Article 7.10° Aliens Act); 7) Does not (any longer) meet the conditions for residence in Belgium (Article 13 §3 Aliens Act).

A decision to expel someone from the Belgian territory may be accompanied by a return to the border (Article 74/14, §3 Aliens Act). In that case, the person with irregular residence status can be detained, namely if the Immigration Office (IO) judges that this person is evading or hindering the return or removal procedure, or if the IO deems that this person might go into hiding (Article 7.13° Aliens Act). Although someone with irregular residence status may 'only' be detained "for the time strictly necessary for the implementation of the measure", this period can amount two months, extendable to five months<sup>3</sup> (Article 29 Aliens Act). The deprivation of liberty by imprisonment can rise to eight months (from five months on, each time renewable by one month) if the IO deems this necessary for the protection of public order or national security (Article 29 Aliens Act).

When taking a decision to expel someone from the territory, the IO must take into account the best interests of the child, the family life, and the state of health of the person concerned (Article 74/13 Aliens Act), as well as with the fundamental rights of the European Convention on Human Rights (Article 39/82 and Article 39/85 Aliens Act).

### **3.2.2 Criminalisation of "illegal entry" and "illegal stay" by the Belgian legislator**

With the introduction of the Aliens Act in 1980, irregular migrants who receive an entry ban or who exceed the term of their OLT became punishable with a prison sentence of eight days to three months and/or a fine of 26 to 200 Belgian francs (approx. 0.5 up to 5 euros<sup>4</sup>). In case of repeated violation, the penalty increases from one month to one year imprisonment and/or a fine of 100 to 1,000 Belgian francs (approx. 2.5 to 25 euros<sup>5</sup>) (Article 75 Aliens Act).

By adding an Article 4bis to the Aliens Act in 2007, non-compliance with the rules regarding crossing the Belgian external borders was considered an administrative violation of the law. With the Circular Letter of 16 June 2016, an administrative fine was added to the issuance of an OLT on the basis of Article 4bis, as a result of which the IO automatically imposed a fine of 200 euros when an OLT was delivered. This fine was also imposed on irregular migrants who had entered Belgium lawfully or of whom it could not be proven they had crossed the Belgian external borders unlawfully (VVSG, 2017). This practice was only stopped in 2017 after several Courts of First Instance ruled that this application is unlawful<sup>6</sup>.

<sup>3</sup> Provided the necessary removal steps: 1) Were taken within seven business days of incarceration; 2) Are continued with due diligence; 3) Can lead to effective removal within a reasonable time.

<sup>4</sup> With the programme law of 25 December 2016 the fines need to be multiplied by eight in 2023.

<sup>5</sup> With the programme law of 25 December 2016 the fines need to be multiplied by eight in 2023.

<sup>6</sup> See, inter alia, cases 16/6636/A (25/11/2016), 16/7774/A (03/02/2017), 16/8945/A (10/02/2017), 16/4813/A (20/02/2017), 16/3997/A (27/02/2017) of the Court of First Instance in Brussels.



### **3.2.3 Access to fundamental rights for persons with irregular status in Belgium**

Although irregular migrants in Belgium are not allowed to be in the country, they do have basic rights such as access to health care (Article 23 Constitution). For example, everyone in Belgium has the right to access health care in the event of accidents and emergencies, pregnancy and maternity, tuberculosis, HIV/AIDS, and/or need for basic care. Irregular migrants' right on access to basic medical care is included in Article 57 §2 of the Organic Public Welfare Act of 1976<sup>7</sup>. This so-called right to urgent medical assistance can include both preventive and curative medical care (RD, 12/12/1996). It concerns all medical care provided to a migrant in an irregular residence situation, which transcends mere emergency care.

Children up to the age of 18 with an irregular residence status in Belgium have an explicit right to education and to obtain a diploma (Law on compulsory education). However, from the age of 18, access to education is severely restricted (GD/2003/03).

Although an irregular migrant in Belgium cannot get permission to work and cannot be employed, it is a reality. Once employed, an irregular migrant worker has the same labour rights (such as minimum wage, safe working conditions, legal working hours) as all Belgian residents (Article 191 Constitution). After all, Belgian labour law does not distinguish between employees on the basis of residence status.

Based on Article 23 of the Belgian Constitution, which regulates the right to a dignified life (referring to internationally agreed economic, social and cultural rights), irregular migrants in Belgium also have access to socio-legal assistance. More specifically, it means that: 1) It is not prohibited to provide aid to irregular migrants when that aid is mainly provided for humanitarian reasons, and; 2) The services, organisations and individuals offering assistance have no obligation to report to the immigration law enforcer, IO, in the event of (suspected) assistance to a (presumable) irregular migrant in Belgium. In other words, there is a so-called firewall between providing assistance and immigration enforcement (Crépeau & Hastie, 2015; Delvino & Beilfuss, 2021; Geddie et al., 2014): Data is not exchanged between service providers and the IO.

Despite the right to a dignified life being enshrined in the Belgian Constitution, irregular migrants are confronted with many -often practical- obstacles that detract from this right. For example, it is not possible to open a bank account, to take out any commercial subscription (e.g., an internet subscription)<sup>8</sup>, to use digital (mainly government) applications that require a National, Aliens or Waiting Register number or identity card.

## **3.3 ENFORCEMENT OF THE LEGISLATION ON PERSONS WITH IRREGULAR STATUS IN BELGIUM**

### **3.3.1 The Immigration Office (IO)**

In Belgium, competence for immigration policy lies exclusively at the federal level, with the Ministry of the Interior and the State Secretary for Asylum and Migration. Also immigration enforcement is the exclusive authority of the Belgian government, namely the IO. This government service is therefore the sole issuer of entry documents (e.g., visa) and

<sup>7</sup> Whether the conditions (being in an irregular residence situation, being destitute, and being in need of urgent medical assistance) for right to access urgent medical assistance are met, is investigated by the competent Social Services (OCMW) through a social survey. Although only the IO is authorised to determine irregular residence, the IO is not involved in the carrying out of this social survey. A firewall is thus maintained between the two federal government services, IO and the Social Services. On the basis of documents from the person requesting help, statements from the person requesting help and/or third parties who know the person requesting help, and/or by checking the national register, the Social Services assess whether the person asking for help is in an irregular residence situation. If the person requesting assistance meets the three conditions, they will receive a medical card (valid for three months) from the Social Services. When the requester presents the medical card to the medical aid provider, the latter can claim back the costs of the medical aid from the Federal Public Planning Service for Social Integration, under which the Social Services fall.

<sup>8</sup> One of the few exceptions in this context concerns a subscription for the consumption of the essential utilities water, gas and electricity. In these cases, a subscription can be taken out as a tourist. However, the consequence is that one ends up in the highest rate category in this way, while irregular migrants usually meet the conditions for social rate.

residence documents (e.g., electronic E+ residence card for EU citizens with permanent residence), and for taking settlement decisions (e.g., issuing an electronic K card for settled aliens with permanent residence) and expulsion decisions (e.g., delivery of an Annex 13, order to leave the territory (OLT)). In addition, the IO is also responsible for the management of aliens on the Belgian territory (Article 75 Aliens Act). This includes, amongst others, the “fight against irregular migration” and the organisation of returns (DVZ, 2022:43). For example, the IO is the sole competent Belgian authority to verify the residence permit of foreign nationals and to decide on the issuance of an OLT, a detention order, and/or an entry ban. Each of these possible decisions is made on a case-by-case basis, based on the Aliens Act and internal instructions from the Secretary of State for Asylum and Migration (Articles 74/10 to 74/19 Aliens Act). However, often practical obstacles also play a role in the decisions of the IO, such as (in)sufficient available places in the detention centres, or (un)favourable prospects to repatriate the person within the legal term (Interview no. 15; no. 21). In order to improve the quality and legal validity of the motivation of these removal decisions (in line with Articles 3 and 8 ECHR), a new Unit “Article 3” became operational within the IO in June 2020 (IO, 2022).

The three decision options available to the IO with regard to irregular migrants -OLT, detention, entry ban- are administrative decisions (Article 63 Aliens Act), meaning they are subordinate to a judicial decision. A Public Prosecutor thus can revoke a decision of the IO, e.g., in the context of a judicial investigation in which an irregular migrant (victim, witness or alleged perpetrator) is involved.

In an OLT, the IO must record and justify both the time period associated with leaving the territory (Article 74/5 §5 Aliens Act) and the specific reason for the removal of each person (RvS, 2022). An OLT is not a means of coercion (unlike, for example, an arrest warrant), but “[an OLT is] a document that justifies the presence of a person with irregular residence in Belgium, thus avoiding detention after a new identity check.” (Interview no. 15). Although the time period to leave the territory is usually set at 30 days, this period depends on the individual case. For example, “(...) a sick person without legal residence who undergoes a certain treatment usually receives an OLT corresponding to the duration of the treatment.” (Interview no. 15).

A detention order is issued by the IO with a view to removing an irregular migrant who is suspected of not cooperating with the deportation. Detention takes place in one of the six closed detention centres<sup>9</sup>, in one of the 28 residential units in the case of families with minor children, in an open centre for unaccompanied minors<sup>10</sup>, or in an “Alternatives to Detention (ATD)” residential unit<sup>11</sup>.

Together with an OLT, possibly in combination with a detention order, the IO can also impose an entry ban. With an entry ban, entry to Belgium or the entire Schengen zone is denied for a certain period of time (Article 1.8° Aliens Act). The details of the person to whom the entry ban is issued are reported by the IO in the General National Database and the Schengen Information System (SIS) (Article 25 Aliens Act).

### **3.3.2 Other actors involved in enforcing the legislation on persons with irregular status in Belgium**

Although only the IO is competent for immigration enforcement, the law of 21 March 2018 dragged both the police and labour inspectors into it. Both government services became obliged to pass on the data of a (suspected) perpetrator of an administrative or criminal offense without lawful residence to the IO (Article 17 Law of 21 March 2018). As a result, the firewall between immigration enforcement on the one hand, and enforcement of public

<sup>9</sup> 1) “Caricole”; 2) “Repatriation Centre 127bis” (like Caricole close to the International Airport in Brussels); 3) “Centre for Illegals Merksplas” (Antwerp area); 4) “Centre for Illegals Bruges” (West Flanders area); 5) “Centre for Illegals Vottem” (Liège area), and; 6) “Centre for Illegals Holsbeek” (Flemish Brabant area).

<sup>10</sup> With regard to unaccompanied minors in an irregular residence situation, the terminology used is transfer (Article 74/19 Aliens Act) instead of detention. Unlike adult irregular migrants, who are detained by IO personnel, unaccompanied minors in an irregular residence situation are taken care of by the Guardianship Service of the Federal Public Service Justice.

<sup>11</sup> ATD was established in mid-2021 in execution of the federal coalition agreement of September 2020, in accordance with the recommendations of the Commission Bossuyt (Myria, 2021). In ATD, irregular migrants are guided by individual case managers (so-called ICAM coaches) to find a sustainable solution: obtaining a valid residence status in Belgium, return to the country of origin, or transit to a third country. In some Belgian cities and municipalities, including Ghent, ATD pilot projects Reception & Orientation were set up with substantial federal government funding.

order and social law on the other hand was abolished (Van den Durpel, 2023). The independent European Commission against Racism and Intolerance (ECRI), as well as the Belgian federal migration centre Myria and the interfederal centre for equal opportunities Unia, recommend to the Belgian legislator to restore this firewall between service providers and immigration enforcers (CEDAW, 2022). To date, however, Belgium has not acted on this recommendation. For example, decisions by the IO to issue an OLT, detention order and/or entry ban are often carried out by the police, particularly in situations where an irregular migrant is detained pending the outcome of investigations into their identity and right of residence<sup>12</sup>. Police officers are not only deployed to hand over an OLT, detention order and/or entry ban to the caught irregular migrant, in case of a detention order the police must also take the concerned person to the designated detention centre. In addition, the IO also calls in the police to check whether a delivered OLT has been followed up by the relevant irregular migrant. The police are then asked to carry out an address control and, if necessary, to intercept the concerned person for the purpose of forced return and detention in a closed detention centre (Circular Letter of 9 July 2001).

Involving the police in immigration enforcement is not a unilateral issue for the IO. For example, it is customary for the IO not only to check identity and residence documents of foreign nationals on its own initiative, but also for the IO to be asked by the police and the Labour Inspectorate to participate in their actions (DVZ, 2022). In 2021, for example, the IO was physically involved in 254 actions, in which 964 irregular migrants were intercepted. Of those intercepted irregular migrants, 408 were issued an OLT and 96 received a reconfirmation of OLT (DVZ, 2022). For example, a labour inspector carries out workplace checks to identify violations of social laws. Such visitation includes a visual inspection of the work areas, identification and questioning of persons, and retrieval of certain data. During the identity check, the labour inspector or present police can contact the IO to check if the foreign national at the workplace has a valid residence status in Belgium (Article 44/11/9, PAA). This is done by completing an administrative report<sup>13</sup>. This report must be filled in by the police with respect to the IO. It contains various sections, which relate to the identity, nationality, physical and psychological condition of the foreign national. Also the fingerprints of the foreigner and the identity documents present must be added to the administrative report (Circular Letter of 29/5/2009). Based on the administrative report, the IO must take a decision within 12 hours if proof of identity is enclosed, or within 24 hours if no proof of identity is enclosed. If the IO determines that the foreign national is an unaccompanied minor, the police must complete an "identification sheet" for the Guardianship Service of the Federal Public Service Justice. This service must then take a decision within the same 12 or 24 hours (Article 3, §2, 2° Programme Law of 24 December 2002). If the IO determines that the foreign national has no valid residence permit in Belgium, it takes a decision, which the involved (federal or local) police must carry out (Article 21 PAA and Article 74/7 Aliens Act; Circular Letter of July 9, 2001). The COMPAS research on safe reporting of crime by migrants with irregular residence in Belgium shows that there are major local differences between police concerning contacting the IO (Van den Durpel, 2019).

Finally, also municipal civil servants regularly are an indirect link in the chain of immigration enforcement. For example, when a foreign national applies for a residence permit at the municipality, the civil servant must send the application to the IO, and -thereafter- hands over the IO's decision to the foreign national who made the application. In addition, the municipal administration is expected to cooperate in the removal of irregular migrants residing within their administrative area, following the so-called Circular Letter Sefor of 10/6/2011. After an OLT is handed over, the municipality must also pass on all information about the irregular migrant's identity to the IO by means of a filled out identification form, so that the IO can ensure the follow-up of the OLT (DVZ, 2022). Major differences between municipalities exist when it comes to responding to the IO's requests<sup>14</sup>. For example, following a request for removal, practices can vary from municipalities that usually do not or cannot respond to the IO's request, to municipalities that provide the available information on the identity of the irregular migrant to the IO via the identification form, to municipalities that

<sup>12</sup> Pursuant Article 74/7 Aliens Act, the police may impose a period of administrative detention on an alien who does not carry the legally required identity or residence documents.

<sup>13</sup> The basis for this administrative report is Article 74/7 Aliens Act.

<sup>14</sup> For a comprehensive overview of examples see the COMPAS research on safe reporting of crimes by migrants with irregular residence status in Belgium (Van den Durpel, 2019).



collect and provide alternative documents<sup>15</sup> if an identification form cannot be completed due to a lack of data (Van den Durpel, 2019).

## 4. LEGAL OPTIONS FOR SAFE REPORTING OF CRIME BY VICTIMS AND WITNESSES WITH IRREGULAR MIGRATION STATUS IN BELGIUM

### 4.1 THE EUROPEAN VICTIMS' RIGHTS DIRECTIVE

Directive 2012/29/EU -better known as the European Victims' Rights Directive- sets minimum standards on the rights, support and protection of victims of crime and their family members. The aim of this European decision is to ensure that every victim -regardless of residence status- receives appropriate information, support and protection, and can participate in criminal proceedings (Article 1.1 Directive 2012/29/EU). The Victims' Rights Directive contains 21 specific minimum standards that victim support, restorative justice organisations and competent authorities (such as police and judicial staff) must comply with in the context of criminal proceedings. In order to adequately put the minimum standards into practice, the competent ministers of the EU member states agreed on 25 October 2012 to provide training for practitioners, amongst others, to make them more aware of the needs of victims (Article 25 Directive 2012/29/ EU). With a correct implementation of the 21 minimum standards, each victim and their family members are granted at least rights with regard to: 1) Receiving information and support (Articles 3 to 9 of Directive 2012/29/EU)<sup>16</sup>; 2) Participation in criminal proceedings (Articles 10 to 17 of Directive 2012/29/EU)<sup>17</sup> and; 3) Protection and specific protection needs (Articles 18 to 24 of Directive 2012/29/EU)<sup>18</sup>.

The EU Victims' Rights Directive takes precedence over other EU regulations, such as: 1) Employers Sanctions Directive 2009/52/EC, which imposes sanctions on employers who employ irregular migrants and which guarantees the rights of all workers, including workers in an irregular residence situation; 2) Directive 2011/36/EU<sup>19</sup>, which creates a legal framework for prosecuting traffickers of human beings and for protecting victims of trafficking. In addition, the EU Victims' Rights Directive is in line with the Anti-Trafficking Directive 2004/81/EC, which states, amongst others, that Member States must grant a residence permit to victims of human trafficking and smuggling (Article 8 Directive 2004/81/EC).

<sup>15</sup> For example, the notifications of the OLT, or residence reports.

<sup>16</sup> In particular the right to: Understand and be understood (Article 3); Obtaining all information about the possibilities, conditions and procedures at the first contact with the competent authority (Article 4); Making a declaration free of charge in a language that the victim understands and receiving a written confirmation of the declaration (Article 5); Obtaining all relevant information about the case without undue delay (Article 6); Receiving interpretation and translation (Article 7); Having access to and support from victim support organisations irrespective of whether or not a declaration has been made (Articles 8 and 9).

<sup>17</sup> The right to/on: Be heard (Article 10); A review of a decision not to prosecute (Article 11); Safeguards in the context of restorative justice services (Article 12); Legal Aid (Article 13); Reimbursement of costs (Article 14); Return of objects (Article 15); A decision on compensation by the offender in the course of criminal proceedings (Article 16); Be adequately supported in case the victim lives in another Member State (Article 17).

<sup>18</sup> To wit, the right to: Protection against secondary and repeated victimisation, intimidation and retaliation, the risk of emotional or psychological harm, and the right to measures that protect the dignity of the victim (when appropriate, physical) and of the family members when questioned or heard as a witness (Article 18); Avoiding contact between the victim (and, if necessary, their relatives) and the perpetrator(s) (Article 19); Protection during criminal investigations (Article 20); Protection of privacy (Article 21); Individual assessment to determine specific protection needs (Article 22); Where appropriate, specific protection needs during criminal proceedings (Article 23); Specific protection needs during criminal proceedings of minors (Article 24).

<sup>19</sup> On 22/12/2022, the European Commission (EC) announced a revision of the Anti-Trafficking Directive. The EC considers a revision necessary, because the demand for services by victims of exploitation has not decreased. Perpetrators all too often still go unpunished in the EU and the number of prosecutions and convictions of human traffickers remains low (Aertsen, 2020).

All EU member states had to transpose the Victims' Rights Directive into their own national legislation by 16 November 2015. Although provided for in 2017 (Article 29 Directive 2012/29/EU), the EC only started evaluation the Victims' Rights Directive at the end of 2020. The final evaluation report does not contain an individual assessment of the transposition of the Victims' Rights Directive by each EU country, but tests the five criteria of the EU's better regulation agenda in the light of any follow-up proposals (EC, 28/6/2022)<sup>20</sup>. With regard to irregular migrant victims, the report explicitly states that they seek help less often and report less often for fear of being deported and/or sent back (EC, 28/6/2022:34;36). One of the report's suggestions for improvement is therefore that EU Member States set up safe reporting mechanisms such as third-party and anonymous reporting options, and install practical firewalls between law enforcement and immigration authorities (EC, 28/6/2022:43).

## 4.2 TRANSPOSITION OF THE EUROPEAN VICTIMS' RIGHTS DIRECTIVE IN BELGIUM

Even before the Victims' Rights Directive (and its predecessor: Framework Decision 2001/220/JHA) was adopted by the EU institutions, many measures to support victims were already in force in Belgium (Aertsen, 2015; Bouckaert, 2007). In 2023, Belgium has notified 99 different measures to the EC as proof of the implementation of the Victims' Rights Directive. In contrast, only few Belgian legislation refers to Directive 2012/29/EU<sup>21</sup> (Aertsen, 2020). In the transposition of Article 2 Directive 2012/29/EU, the Belgian legislation did not provide one general definition of "victim", but three separate categories: 1) Victims who have not formally filed a complaint and therefore have no connection with the criminal process; 2) Victims who have formally reported a crime (i.e., filed a complaint), and are that way formally registered as victims; 3) Victims who have filed a complaint because they have suffered damage as a result of the crime and want to be compensated for this, and that way become a civil party in the criminal proceedings (De Backer, 2019). The first category (so-called single victims) can be questioned as a witness during the investigation and can be summoned by the court during the criminal proceedings. However, these victims are not informed of the progress and decisions made in the case. On the other hand, the two other categories of victims (so-called registered victims and civil parties) do have access to information about the decisions taken in the course of the criminal proceedings through their right to inspect the file. They can also request that additional investigative measures be taken (De Backer, 2019).

According to Article 8 Directive 2012/29/EU, all victims of a crime in Belgium have free access to two types of general victim care: victim reception and victim support<sup>22</sup>. Victim reception is offered to registered victims and civil parties when and as long as criminal proceedings are pending (De Backer, 2019). The Victim Support Reception Service includes legal and psychological support (AJH, 2022). When a victim files a complaint with the police, they always point to the offer of victim support, which is open to the three categories of victims (Aertsen, 2020). If a victim wishes to make use of victim support, their contact details (address and telephone number) are passed on to the nearest victim support service, which will contact them within three to five working days to start a support process (De Backer, 2019).

The evaluation of the European Parliament (Scherrer et al., 2017) and the evaluation of the transposition of Directive 2012/29/EU by Belgium following the attacks in Brussels in 2016 (De Backer, 2019) highlight a number of points for improvement to be able to (better) guarantee the EU minimum standards from the Victims' Rights Directive in Belgium. Especially with regard to Articles 7, 11 and 22 work needs to be done (Aertsen, 2020; De Backer, 2019; Scherrer et al., 2017).

<sup>20</sup> Effectiveness, relevance, efficiency, coherence, EU added value.

<sup>21</sup> Also in the Flemish "Policy Note 2019-2024. Justice and Enforcement" is nowhere referred to the Victims' Rights Directive, despite the fact that Victim Support Centres and Reception Services have come under the same Flemish community competence since the sixth state reform and can therefore be better coordinated (Aertsen, 2020).

<sup>22</sup> Victim Support Reception Services are organised by the Houses of Justice in the three Belgian communities. Also victim support is organised at Community level: in the Flemish Community by the Centres for General Welfare Work, in the French-speaking Community by the Services d'Aide aux Victimes (in Brussels, this service is offered by both NGOs).

Both victims who report a crime and civil parties can obtain translation of procedural documents and interpretation during the criminal proceedings, in accordance with the right to interpretation and translation (Article 7 Directive 2012/29/EU). However, this right is not automatically provided for in Belgian law (De Backer, 2019; Scherrer et al., 2017). Access to this minimum standard must be requested, and can sometimes take a long time due to the lack of availability of sworn interpreters/translators (Interview no. 2; no. 11; no. 27), as evidenced by this interviewee: *“Even if an appointment has been made in advance, there is often no interpreter available in the right language, not even via telephone interpreting. It is then a matter of making do, for example if there is a common intermediate language, or sometimes someone knows someone who can act as an interpreter. Unfortunately, that is always to the disadvantage of the person who does not fully understand the language.”* (Interview no. 11).

Although Article 11 of Directive 2012/29/EU sets as a minimum standard that all victims are informed of any decision throughout the criminal proceedings, only registered victims and civil parties are notified in Belgium (De Backer, 2019; Scherrer et al., 2017). Moreover, only these two categories of victims can submit a formal complaint to the Investigating Judge if the Public Prosecutor decides not to (further) prosecute the suspected perpetrator (Aertsen, 2020; De Backer, 2019)<sup>23</sup>.

Finally, Belgium does not meet the European minimum standards to assess and identify specific protection needs of certain victims (Article 22 Directive 2012/29/EU) (De Backer, 2019; Scherrer et al., 2017). Only with regard to minors, a number of specific measures (such as an audio-visual interview) are automatically provided (Aertsen, 2020; De Backer, 2019). Otherwise, it is left to the discretion of the competent prosecutors and judges to apply other existing protocols<sup>24</sup> (De Backer, 2019). As a result, irregular migrant victims are usually deprived of two rights: 1) A safe environment to report crimes<sup>25</sup>, and; 2) Access to free legal aid (Picum, 2021).

### 4.3 GENERAL FRAMEWORK FOR REPORTING CRIME BY VICTIMS AND WITNESSES IN BELGIUM

Figure 2 (next page) provides a visual overview of the possibilities and limitations for reporting a crime from the perspective of a victim in Belgium. Cells A to C show the possible consequences if a victim or witness informally reports a crime to the police. Informal reporting of a crime can also be done directly to the Public Prosecutor's Office (arrow from cell A to cell E). An informal crime report means that the victim or witness provides information (orally or by letter) without the identity of the reporter being disclosed (Cass. No. 40, 21/1/2003; Article 14 PAA). The information provided is referred to as “soft information” from “a source” because no formal declaration is filed.

Informal reporting can lead, but is not guaranteed to lead, to starting legal proceedings up to and including a decision by the competent court (cell B) (Cass. No. 180, 23/3/2005)<sup>26</sup>. After all, it is up to the Public Prosecutor's Office to assess whether further investigation and prosecution will take place (Article 28quater CCP). In other words, the Public Prosecutor's, Examining Magistrate and Council Chamber in charge of the criminal case decide -each with regard to their specific assignments- whether to go on with the soft information or to dismiss the case (dashed arrows). This assessment is based on the Criminal Policy Guidelines (Article 143quater Judicial Code)<sup>27</sup>. If the Public Prosecutor's Office decides to dismiss the case, there is no legal obligation to inform the anonymous reporter of the crime (Wyseur, 2012). If the informal report leads to the case going to court, the soft information ob-

<sup>23</sup> In that case, the Investigating Judge opens a new criminal procedure whereby the decision on further prosecution is taken by the deliberation chamber of the Court of First Instance. If the deliberation chamber decides not to prosecute, only registered victims and civil parties can appeal against the decision and submit the case to the arraignment chamber (Aertsen, 2020).

<sup>24</sup> For example, to assess the need for safe shelter for victims of domestic violence.

<sup>25</sup> Yet, the EU Victims Strategy 2020-2025 focuses on providing a safe environment for crime reporting by victims, in particular by vulnerable victims such as irregular migrants whose access to justice may be hindered due to the risk of imprisonment when they turn to the police to report a crime (EC, 24/6/2020). Moreover, in accordance with Articles 2, 12, 18, 22, and 26 of Directive 2021/29/EU, secondary victimisation should be prevented at all times and with regard to all victims' rights.

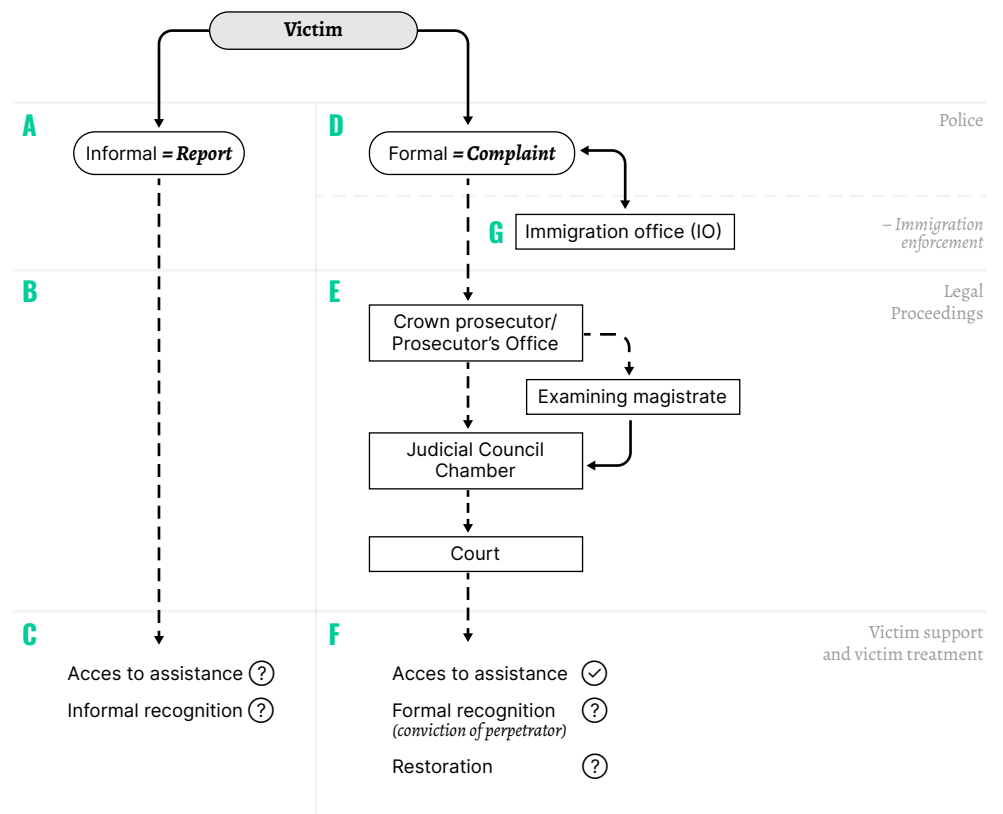
<sup>26</sup> Explained in detail in Cass., (2007). Rechtskundig Weekblad, volume 70, No. 20, p. 829-836.

<sup>27</sup> These Guidelines are Circular Letters from the Board of Prosecutors General and are binding on the Prosecutors General of the Courts of Appeal, the Federal Public Prosecutor's Offices and all members of the Public Prosecutor's Offices.

tained anonymously should not be given legal evidence of value (Cass. No. 28, 1/14/2009)<sup>28</sup>. A crime victim who reports this informally to the police or the Public Prosecutor's Office is not entitled to access the Victim Support Reception Services of the House of Justice. However, a victim can always turn to a Victim Support Centre<sup>29</sup>, however: "I wanted to make an appointment for an irregular migrant victim, but we couldn't have an interview until 3 weeks later at the earliest, because an employee was sick or on leave or something. Obviously, this is not helping you when you're in a crisis situation." (Interview no. 9); "Someone who works at [name of organisation], where I can sometimes get something to eat, had explained to me that I could go to [the Victim Support Centre]. When I went there, I entered a crowded waiting area where there was a lot of noise (...) and the registration desk was there too, for everyone to hear. I didn't feel comfortable there (...). I quickly left and never came back (...)." (Interview no. 18). The above quotes from interviewees indicate that due to several practical obstacles, the right to victim support (which is independent of any prior contact with the police or Public Prosecutor's Office) does not always lead to effective access to victim support and, that way, to possible informal recognition as a victim (cell C). To be guaranteed access to victim care, namely to a Victim Support Reception Service (offered by the competent House of Justice), a victim must have filed a formal declaration with the police (cells D to F).

Cells D to G show the possible consequences if a victim or witness files a formal complaint with the police. If a crime victim or witness wants to be registered as a victim, them must – like anyone who wants to become a party ('partie civile') – make a formal complaint and thus file a declaration with the police (cell D). Then, the police are, first of all, obliged to draw up an official report and to hand this report over to the Public Prosecutor's Office (Article 29 §1 CCP).

**Figure 2: General framework for reporting crimes to the police**



Secondly, the police can or must<sup>30</sup> draw up an administrative report and send it to the IO (cell G). In addition to the sections to be completed (see 3.3.2), this report contains tick

<sup>28</sup> Unless the procedure and protection measures for anonymous witnesses are applied to the source (Cass. No. 28, 14/1/2009).

<sup>29</sup> In Flanders and to Dutch-speakers in Brussels, Centres for General Welfare Work provide victim support, in the French-speaking Community and to French-speakers in Brussels, Services d'Aide aux Victimes provide victim support.

<sup>30</sup> Can, in case of doubt about the validity of the residence status of the foreigner (Article 21 law of 7/12/1998 and Article 17 law of 21/03/2018); Must, in case of a (suspected) perpetrator of an administrative or criminal offense in an irregular residence situation (Article 17 law of 17 March 2018 (see also 3.3.2)).

boxes so that the police can indicate that the person in front of them is a victim of human trafficking/smuggling or of a “crime in general”. If one of these boxes is ticked, the IO will not decide to issue a detention order. In an official message to Myria (2016), the IO stated that it applies this internal instruction if the irregular migrant victim is not a (co-)perpetrator who is being prosecuted by the judiciary and does not pose a threat to public order and safety. This internal instruction enables crime victims to cooperate with the judicial investigation.

Even if the victim of a “crime in general” box is checked, irregular migrant victims usually receive an OLT. However, the deadline of the OLT can be moved to the completion of the judicial investigation, if the IO is notified by the competent Public Prosecutor’s Office (Interview no. 15; no. 11). For a long time things regularly went wrong, through which many irregular migrant victims ended up in a closed centre, as the IO could often not conclude from the administrative report that the person was a crime victim (Van den Durpel, 2019). In that case, the victim, being punished twice as a result (so-called secondary victimisation), can submit a request for release to the IO. The IO then can verify the information of the detainee with the relevant police (Myria, 2016) and decide to no longer detain the irregular migrant victim of a crime.

Thirdly, the (federal and local) police are obliged to assist all victims (Article 40 PAA). However, this assignment of Police Victim Treatment is virtually impossible to achieve if no firewall is used between the IO and the police services. For example, if a victim files a complaint against them slumlord, the possibility of shelter or accommodation can be offered (Article 433quinquiesdecies CCP)<sup>31</sup>. However, if at the same time the victim’s identity is checked by the IO, this could result in the delivery of an OLT and/or the detention of an irregular migrant victim of housing exploitation. In that case, the police can no longer assist the victim and cannot further investigate the crime.

In addition to Police Victim Treatment, every victim who submits a formal complaint is entitled to care from a Victim Support Reception Service of the competent House of Justice and from a Victim Support Centre (Circular Letter of 4 May 2007). Both services also provide support when the court has decided on restorative measures (cell F). As mentioned earlier, several practical obstacles hinder the access and effective support provided by a Victim Support Centre and/or a Victim Support Reception Service, such as lack of interpreters and translations (De Backer, 2019; Interview no. 2; no. 11; no. 27) and the lack of systematic screening of specific protection needs. That way, irregular migrant victims have neither access to a safe environment to report a crime, nor to free legal aid (Interview no. 19; no. 20; Picum, 2021). Moreover, due to the impossibility for irregular migrants to open a bank account in Belgium, compensation rarely reaches an irregular migrant victim (Interview no. 6; no. 12; no. 19). Consequently, situations like this one are no exception: “(...) [the employee] had a serious accident at work and was taken to hospital by ambulance. Since the police had also arrived on site and had checked [the employee’s] documents (...), the IO [had] delivered an OLT. Also in the hospital they were not aware of irregular migrants’ rights, they wanted to get rid of [the employee/victim] as soon as possible, because they thought that no one would pay the hospital costs. The police questioned [the employee] at the hospital, s/he was completely panicked and confused. S/he signed a statement which s/he certainly did not make and which s/he did not understand because of the language barrier (...). S/he had signed because the police had told to do so, or so s/he had understood it. S/he did not want and did not dare to go to the police afterwards, s/he had received an OLT! That way, the employer remained out of sight and completely untouched, while the victim received no recognition and no compensation as a victim, and was unable to work for a long time.” (Interview no. 19).

The statement made to the police by a crime victim or witness and of which a police report has been drawn up, is always passed on to the Public Prosecutor’s Office (Article 29 §1 CCP) (cell E). The appointed Public Prosecutor judges whether an investigation should be carried out or whether the complaint should be immediately dismissed. In many cases the competent Public Prosecutor’s Office immediately dismisses the administrative measure OLT due to lack of capacity, in favour of starting an investigation into the reported criminal offense (Interview no. 17; no. 24).

<sup>31</sup> In the event of a conviction by the court, the costs of shelter or accommodation are recovered from the perpetrator. If the accused is acquitted, the competent Social Services (OCMW) absorb these costs.



Based on the criminal investigation conducted, the Crown Prosecutor who leads the criminal investigation (Article 22 CCP) decides to either: 1) Dismiss the complaint; 2) Propose an amicable agreement; 3) Take mediation and other measures between the perpetrator(s) and victim; 4) Prosecute the suspected perpetrator of the offense; 5) Open a judicial investigation (Article 28quater CCP). If the Crown Prosecutor decides that a judicial inquiry should be opened, the file is handed over to an Investigating Judge (Article 28bis CCP). Following a fully conducted judicial investigation, a decision is taken whether or not to prosecute the suspect (Article 28quater CCP). In the event of prosecution, the file is passed on to the Council Chamber, which refers the case to the appropriate court (Article 28sexies CCP).

## 4.4 REPORTING SPECIFIC CRIMES BY VICTIMS AND WITNESSES IN BELGIUM

### 4.4.1 Reporting violations of the Belgian labour legislation

All labour inspectors of the 24 decentralised directorates<sup>32</sup> of the Federal Public Service Employment, Labour and Social Dialogue are charged with preventing, monitoring and establishing violations against the Belgian labour law, such as social fraud and illegal employment (Article 1 SCC). To this end, the labour inspectors take own initiatives, based on incoming reports and complaints, and carry out requests from the Investigating Judge (Article 24 § 2 SCC). In order to fully perform their duties, labour inspectors are allowed to enter a workplace day and night without prior authorisation (Articles 22-49 SCC). However, prior permission from the Investigating Judge is required to carry out a visitation (Article 24 § 1 SCC). A visitation includes a visual inspection of the workspace, identification and interrogation of persons and the retrieval of certain data (Article 24 § 4 SCC) and is usually performed in collaboration with the local or federal police (Interview no. 6; no. 19). Then, it are the involved police who check the identity of persons and, if in doubt about the validity of a residence status, contact the IO (Interview no. 6; no. 10). Labour inspectors may only use the personal data they obtain in the performance of their supervisory tasks in that exact context (Article 58 SCC).

Within their individual discretion (so-called '*appreciation right*'), a labour inspector can impose a period within which the employer who violates a law must comply with it (Article 28b, § 3 CCP). Labour inspectors can impose various sanctions on the employer, including the payment of due wages and arrears of social security charges via the postal check account of the Deposit and Consignment Office (Article 5 §4/1 Wage Protection Act of 12 April 1965). Meanwhile, it is assumed by default that each employee has been employed for three months under the conditions encountered (Law of 11 February 2013)<sup>33</sup>. The amount due, which is deposited by the employer on the Postal cheque Account, is transferred to the account number of the employee(s) via the Deposit and Consignment Office. Since irregular migrants cannot open a bank account in Belgium (Article 6. § 1 Act of 24 March 2003), the Deposit and Consignment Office sometimes gives a proxy to deposit the amount due to the account of a third person.

Nonetheless, labour inspectors are not authorised to impose criminal sanctions themselves (Articles 68 and 69 SCC). In order to make any criminal prosecution possible, an official report must be drawn up directed to the Labour Auditor (Article 65 SCC). In this official report, the identity of the suspected perpetrator(s) must be stated, but not the identity of the complainant (Article 64 SCC)<sup>34</sup>.

Anyone who is a victim or witness of a violation of Belgian labour law can contact the Supervision of Social Laws directly or can report the violation via various access points<sup>35</sup>. Re-

<sup>32</sup> 13 are located in the Flemish Region, nine in the Walloon Region (one of which is for the German-speaking Community) and one in the Brussels-Capital Region.

<sup>33</sup> It is then up to the employer to prove it if this is not the case (Law of 11 February 2013 establishing sanctions and measures for employers of illegally residing third-country nationals).

<sup>34</sup> In this context, it is also relevant to consider Article 458 Penal Code, which states that every violation of professional secrecy is punishable with a prison sentence of eight days to six months and a fine of 100 to 500 euros (in 2023 to be multiplied by eight).

<sup>35</sup> This includes the web application of the federal Point of Contact for Fair Competition, telephone or email to the federal Contact Centre. Although the identity of the reporter is legally protected at all times (Article 58-59 SCC), anonymous reporting is not possible through these channels, because the reporter's name and aliens or national register number are required, and companies their company number. Furthermore, an e-mail address is requested for online communication.

porting a violation of labour law anonymously is only possible via an anonymous letter or a face-to-face conversation with a labour inspector, in which the reporter indicates the wish to remain anonymous. In these cases, the labour inspector draws up an internal control report, that can justify (if there is sufficient information) for a workplace visit. Nevertheless, if a violation of labour law is reported proactively to the Labour Inspectorate (i.e., prior to an on-the-spot check), this need not be done anonymously: Indeed, the Labour Inspectorate is only authorised for supervising social legislation and not for enforcing other laws, and so proactive reporting has no influence on the personal situation of the reporter. Thus, as a clear firewall has been built into the Belgian Social Penal Code, the IO is not contacted. It is customary for the labour inspector to ask the reporter to be present during a workplace visit following the report, so that also the rights of the reporter can be met (Interview no. 6; no. 19). After all, labour inspectors are bound by a duty of confidentiality (Article 59 SCC) and are therefore not allowed to disclose the name of a complainant under any circumstances (neither to the employer, nor to a judge or any other person or body). Although it prevents them from taking up their labour rights, irregular migrant victims who reported a labour violation rarely want to be present during a visitation (Interview no. 6; no. 19). This is mainly due to the actual risk of receiving an OLT - possibly in combination with a detention order and/or entry ban- during a visitation (Interview no. 12; no. 22)<sup>36</sup>.

#### **4.4.2 Reporting human trafficking and - smuggling with aggravating circumstances<sup>37</sup>**

Human trafficking is defined in the Belgian Criminal Code (CC) as recruiting, transporting or harbouring a person or taking or transferring control over a person, for the purpose of: Sexual exploitation or prostitution (Article 433quinquies §1.1° CC); Economic exploitation through begging (Article 433quinquies §1.2° CC); Performing work or providing services in circumstances that are contrary to human dignity (Article 433quinquies §1.3° CC); Physical exploitation through the removal of organs or other human body material (Article 433quinquies §1.4° CC); Causing a person to commit a crime against them will (Article 433quinquies §1.5° CC).

Aggravated human smuggling refers to smuggled minor third-country nationals and smuggled third-country nationals against whom violence has been committed or whose life is in danger (Article 77quater CC). In addition, at least one of the six aggravating circumstances must have occurred at the time the crime was committed: 1) Involvement of a minor; 2) Abuse of a vulnerable condition due to an irregular or precarious administrative or social situation, age, pregnancy, illness or physical or mental infirmity of the person concerned, so that the person had no real and acceptable choice but to be abused; 3) Direct or indirect use of deception, violence, threats or any form of coercion, kidnapping, abuse of power or deceit; 4) Payment, or offer or acceptance of other benefits to obtain the consent of any person; 5) Intentionally or through gross negligence endangering the life of the person; 6) Causing an incurable disease or other work disability that prevents the performance of work for more than four months, or removal or use of an organ, or severe mutilation.

Belgium has a long tradition of action against human trafficking and smuggling. Since the early 1990s, Belgium has de facto granted specific residence permits to victims of trafficking in human beings who cooperate with the competent authorities (Bouckaert, 2007). With the Law of 13 April 1995 a specific status as a victim of human trafficking was legally enshrined<sup>38</sup>. Around the millennium, specialised reference magistrates were employed within the Public Prosecutor's Office, and specialised units were added to the police in the fight against human trafficking and smuggling (Spapens et al., 2016). By Royal Decree of 16 May 2004, a federal interdepartmental coordination cell for combating human trafficking

<sup>36</sup> Although every irregular migrant worker risks of being fined with a level one sanction (this is an administrative fine of ten to one hundred euros, in 2023 to be multiplied by eight) for undeclared work (Article 183/1 SCC), for years this sanction has only been applied in very exceptional cases (Van den Durpel, 2019, Interview no. 6; no. 19; no. 21).

<sup>37</sup> Human smuggling with aggravating circumstances is not the same as human smuggling. On 26/5/2021, the Court of Appeal in Brussels clarified the constitutional elements of the offense of human smuggling as defined in Article 77 Aliens Act. The Court ruled that providing shelter or lending a laptop/mobile phone to irregular migrants is not human smuggling.

<sup>38</sup> The Law of 13 April 1995 containing provisions to combat human trafficking and child pornography, only covered human trafficking for the purpose of sexual exploitation. Human trafficking by economic exploitation, exploitation by begging, the removal of organs and by committing a crime were added in 2005 via Article 433quinquies CC. Article 64-68 of the Law of 15 September 2006 introduced the current residence status for victims of trafficking and smuggling in human beings with aggravating circumstances.

and smuggling was established. The Circular Letter of 4 May 2007 elaborated on how to deal with (minor) victims of abuse and sexual violence by the police, and the Law of 31 May 2016 further implemented the European obligation on sexual exploitation of children, child pornography, and human trafficking (Boychenko et al., 2021). To date, Belgium continues to notify to the European Commission several federal, Community and Regional measures to implement the EU Victims' Rights Directive. Traditionally, Belgian policy on human trafficking and smuggling has mainly aimed at assisting victims and punishing (co-)perpetrators. This vision continues to be reflected in federal policy documents such as the 2022-2025 National Security Plan<sup>39</sup> and the 2021-2025 Action Plan to Combat Human Trafficking<sup>40</sup>.

Pursuant Article 8 of the EU Human Trafficking Directive 2004/81/EC -transposed via Article 64-68 of the Law of 15 September 2006, the Law of 30 March 2017 and the Circular Letter of 23 December 2016- irregular migrant victims of human trafficking and smuggling with aggravating circumstances in Belgium are not prosecuted because of their irregular residence status (Boychenko et al., 2021). With the transposition of the Human Trafficking Directive into the Law of 15 September 2006, also child victims of human trafficking or human smuggling with aggravating circumstances -just like adults- were offered a specific form of protection by means of the 'Victim Procedure' and 'Victim Status'. The Victim Procedure relates to the conditions under which an irregular migrant victim can obtain a temporary residence status from the start of the criminal investigation up to and including the court hearing. The Victim Status, which can lead to a permanent residence status, is granted by the competent judge to irregular migrant victims who meet the conditions.

The way in which victims of human trafficking and smuggling with aggravating circumstances must be traced and treated, as well as the Victim Procedure, are further elaborated in the Circular Letter of 23 December 2016. Persons who are (suspected) victims of human trafficking or smuggling with aggravating circumstances can take part in the Victim Procedure on the condition that they: 1) Break off all contact with the suspected perpetrator(s); 2) Accept the support offered by a specialised reception centre for victims of human trafficking<sup>41</sup>, and; 3) Cooperate with the judicial authorities (Circular Letter of December 23, 2016)<sup>42</sup>.

In addition to informing and putting the (suspected) victim in contact with one of the recognised specialised reception centres, the police must report the (suspected) foreign victim, regardless of residence status, to the MINTEH Bureau<sup>43</sup> of the IO (Circular Letter of 23 December 2016). If the (presumed) victim has no valid residence status in Belgium, the specialised reception centre can apply to the IO for a special residence permit for victims (Circular Letter of 23 December 2016), the so-called "Annex 15" which is valid for 45 days so that the (suspected) victim has a "reflection period" of 45 days (Circular Letter of 23 December 2016). This reflection period is the first phase of the victim procedure and serves to allow the victim to recover and to consider whether or not to make a statement against the suspected perpetrator(s), in preparation for voluntary return or another alternative (Article 61/2 Aliens Act).

As soon as the (suspected) victim has made a statement against the suspected perpetrator(s), the second phase starts. The (presumed) victim then automatically receives a residence permit, called "Certificate of Immatriculation", which is valid for three months. This Certificate can be renewed once by the Public Prosecutor's Office, at the request of the specialised reception centre, on the basis of the elements of the investigation file (Article 61/3 Aliens Act). Then, in the third phase, which lasts as long as the criminal proceedings are ongoing, the (presumed) victim who still meets the conditions is given a provisional Victim Status. This temporary residence permit, which is valid for six months at a time, is granted

<sup>39</sup> In this, the fight against human trafficking and "security problems linked to irregular migration and human smuggling" are two of the 15 priorities (FOD Justitie, 2022).

<sup>40</sup> This Plan focuses on awareness-raising, information and training, as well as on improving rules and legislation and the position of the reception centres, and on refining the protection status of the victims (FOD Justitie, 2021).

<sup>41</sup> This support includes (if necessary) residential care, psychosocial and medical assistance, administrative and legal assistance and assistance by an interpreter (Circular Letter of 23 December 2016).

<sup>42</sup> This cooperation should be understood in a broad sense and can include both the informal provision of information and the formal filing of a complaint (Circular Letter of 23 December 2016).

<sup>43</sup> MINTEH stands for Office Unaccompanied Minors and Victims of Human Trafficking.



by the competent Public Prosecutor's Office -on the advice of the partners involved<sup>44</sup> (Article 61/4 Aliens Act). When the human trafficker or smuggler is convicted, or when the Public Prosecutor's Office leaves the indictment out of the claim, the victim receives permanent residence status (Circular Letter of 23 December 2016 in conjunction with Article 61/5 Aliens Act). If the Public Prosecutor's Office dismisses the case while the victim has already been subject to the procedure of victims of human trafficking for two years, the person can apply for humanitarian regularisation (Article 3bis Aliens Act)<sup>45</sup>.

#### **4.4.3 Reporting violence against women and domestic violence**

On 11 September 2012, Belgium signed the "Convention of the Council of Europe on preventing and combating violence against women and domestic violence". With the entry into force of this so-called '*Istanbul Convention*' on 1 July 2016, Belgium -at least on paper- stepped up its fight against violence against women and domestic violence. Although the Council of Ministers (2021:14) recognises in the National Action Plan to Combat Gender-Based Violence 2021-2025 that irregular migrants, especially women, are "vulnerable to violence" and are "often victims of gender-based violence, including sexual violence" Belgium has insufficiently transposed Article 59 §3 of the Istanbul Convention (CAW Brussels, 2020; GRE-VIO, 2020). Belgian legislation does not provide a specific residence status for irregular migrant victims of domestic violence. These victims can only try to regularise their stay for humanitarian reasons (Article 9bis Aliens Act). However, in the absence of (publicly known) transparent assessment criteria for humanitarian regularisation in response to domestic violence, experiences in the field vary widely (Interview no. 7; no. 11).

Furthermore, Belgium only partially implements Article 59 §1 of the Istanbul Convention, as not all victims of domestic violence whose residence status depends on their spouse or partner can apply for an independent residence status in case of dissolution of the marriage or relationship, regardless of the duration of the marriage or relationship (CAW Brussels, 2020; RvM, 2021). The Programme Law of 28 June 2013 and the Law of 4 May 2016 added to the right of residence of family reunifiers the condition that their right of residence depends during the first five years on the continued relationship with the person they join (Dawoud, 2017). Only with regard to victims of rape, attempted murder or physical injury in a family context, who have obtained a residence permit for a definite period on the basis of a family relationship, the IO does not issue an OLT (Articles 375, 398-400, 402, 403, 405 CC). The legal basis of this exception is contained in Article 42quater, §4,4° Aliens Act in conjunction with Judgment no. 17/2019 Constitutional Court<sup>46</sup>. In other forms of domestic violence, the IO must take into account the victimisation of migrants with a temporary residence when deciding whether or not to issue an OLT (Article 11, §2,4 Aliens Act).

As also noted by the Council of Ministers (2021), there is still a lot of work to be done to provide effective protection to victims of gender-based violence whose residence status is based on family reunification. In this context, the 2021-2025 National Action Plan to Combat Gender-Based Violence contains "key measures" to improve the residence status of victims of gender-based violence residing in the context of family reunification<sup>47</sup>. This Action Plan also includes key measures with regard to irregular migrant victims of gender-based

<sup>44</sup> These are: the recognised specialised reception centre, the IO, and the relevant police and/or inspection service.

<sup>45</sup> This is the so-called '*STOP-procedure*'.

<sup>46</sup> This Judgment ruled that imposing additional conditions (such as having sufficient means of subsistence and having a health insurance for dependents of EU citizens) is contrary to Articles 10-11 of the Belgian Constitution. Although this Judgment does not change Article 42quater §4,4° Aliens Act, it does imply that the IO must adjust its internal instructions.

<sup>47</sup> Key measures 161 to 164: "161. Explore the possibility, within the framework provided by the federal Coalition Agreement, of amending the Aliens Act in order to improve the status of victims of domestic violence with a right of residence based on family reunification; 162. Clarify the procedure and practice of the Immigration Office (IO) for victims of domestic violence with residence based on family reunification by means of a Circular Letter; 163. Standardisation of the various arrangements under which victims of family violence can keep their residence permit in the context of family reunification; 164. Improving the communication between the police and the IO's Bureau Family Reunification with regard to victims of domestic violence through optimising the use of the existing alert sheet." (RvM, 2021: 118).

violence. This includes better protection, communication and access to the Sexual Assault Centres (RvM, 2021)<sup>48</sup>.

The “fight against gender-based violence” has been given a clear place in the federal Coalition Agreement of 30/9/2020 (p.86). In recent years, the various governments in Belgium have invested in tackling this topic, including through the establishment of Sexual Assault Centres (SACs) (De Backer, 2019). All primary services are bundled in these so-called ‘*sexual reference centres*’ (Aertsen, 2020). For example, victims can receive medical, psychological and legal help in the SAC of the relevant hospital, as well as file a formal complaint with a police officer (Baert & Keygnaert, 2019). Nevertheless, in their recommendations following the Belgian self-report on the implementation of the Istanbul Convention, the Council of Europe urged Belgium, amongst other things, to ensure that all victims of violence against women and domestic violence -regardless of their condition or residence situation- have access to specialised emergency services and shelter (CoE, 2020). That irregular migrant victims of sexual violence experience more barriers and are at greater risk of ‘*secondary victimisation*’ when they file a complaint, is shown by various studies, including the INHeRE project, the FRA study on exploited domestic workers (2018) and the evaluation of GRETA (2022) on access to justice and effective remedies for victims of human trafficking in Belgium. In particular, the lack of a firewall between the victim services and treatment on the one hand and the police enforcement assignment to call in the IO is often an insurmountable obstacle for irregular migrant victims (Boychenko et al., 2021; Verelst et al., 2021).

## 4.5 OPTIONS FOR SAFE REPORTING OF CRIME BY VICTIMS AND WITNESSES IN BELGIUM

Belgian law provides four options for victims and witnesses of a crime to report the crime anonymously to the police or the competent Public Prosecutor’s Office. These four options can also be used by irregular migrant victims and witnesses.

### 4.5.1 Reporting of crime by a third party

The Belgian legislator provides for the possibility of a third party acting on behalf of a victim (Article 21bis §1 CCP). Third parties are divided into three categories: 1) Persons acting in the rights of the victim or who are responsible for the victim; 2) Injured parties who make a statement (registered party); 3) Injured parties who become a civil party (Article 63 CCP). Both Myria and the recognised specialised reception centres for victims of human trafficking and human smuggling<sup>49</sup> can become a civil party in cases of irregular migrant victims (KB, 18/4/2013). Since autumn 2022, also Coördination et initiatives pour les réfugiés et les étrangers (CIRÉ), the Regional Integration Centre Foyer Brussels and Fairwork Belgium can “take legal action in defence of the rights of illegally in Belgium staying third-country nationals who are or were employed there” (Article 1 KB 14/7/2022).

### 4.5.2 Anonymous reporting of crime

Any crime can be reported informally to the police, Labour Inspectorate or the Public Prosecutor’s Office, via an anonymous letter or in an oral conversation (Cass. No. 40, 21/1/2003; Article 14 PAA). The crime victim or witness then provides information without disclosing their identity. In that case, no official statement or report will be drawn up. Consequently, there is no obligation -unlike with a formal complaint- to pass on the report to the Public

<sup>48</sup> Key measures 176 to 180: “176. Improving communication between the police and IO so that, when the police comply with its legal obligation to inform the IO that an irregular migrant has been found, the police always clearly mention that it concerns a victim of (sexual) violence who reports. This is to ensure that the IO can take this into account when following up on the report and can take the appropriate action; 177. In the context of the advice given to victims, make better known the practice of the IO that if an order to leave the territory (OLT) is issued with regard to an irregular migrant who lodges a complaint for partner violence, in general there is no detention; 178. Facilitate the reception of irregular migrant victims in the SACs: ensure that SAC staff do not have to ask for an identity card in order to provide access to care and counselling. Communicate widely on this accessibility, in particular through partnerships with the actors on the ground who are in contact with undocumented migrants; 179. Ensure effective protection for girls who are at risk of female genital mutilation in their country of origin, as well as effectively guarantee their right to respect for their family life with their parents, taking due account of the best interests of the child; 180. Consider how the Istanbul Convention can be taken into account when drafting the [New] Migration Code.” (RvM, 2021:122-123).

<sup>49</sup> These are: Payoke (Antwerp), Sürya (Liège), Pag-Asa (Brussels).

Prosecutor's Office (Cass. no. 180, 23/3/2005). If the information is considered relevant and is therefore passed on to the Public Prosecutor's Office, it will always request the personal data of the reporter (Article 75 CCP). The relevant police or labour inspector then has three options: Requesting the personal data from the reporter and 1) Add them to the statement (the soft information is converted into a formal report); 2) Send it in a closed envelope, separately from the statement, to the Public Prosecutor who requested the data (the soft information is transformed into an anonymous statement (Cass. no. 28, 14/1/2009)); 3) Not pass it on to the Public Prosecutor, invoking professional secrecy (Article 458 CC regarding the police; Article 58-59 SCC regarding labour inspectors). The competent Public Prosecutor judges on dismissal, additional investigation, judicial intervention or further prosecution (Article 28quater CCP).

#### **4.5.3 Anonymous declaration of crime**

In accordance with Article 78 of the Belgian Constitution, any person can anonymously report a crime by making an anonymous statement. The police will then draw up a report without stating the identity of the complainant in the report. The personal details of the complainant are written down, but on a separate sheet that is sent to the Public Prosecutor's Office in a sealed envelope together with the official report. In this way, the identity of the complainant is only disclosed to the competent Public Prosecutor, so that the complainant can be informed of the file's progress. In the context of the rights of defence<sup>50</sup>, a suspect must be able to test each statement in the file for truth and value, so that an anonymous statement (just like an anonymous report) can only serve as supporting evidence in a court case (Article 189bis CCP). This means that different evidence is always required, and that the anonymous statement may not be the dominant evidence (Cass. 27/6/2000). Anyone who makes an anonymous statement is (as with an anonymous report) not a registered victim or civil party and is therefore not entitled to compensation (Article 66S CCP).

#### **4.5.4 Anonymous testimony of crime**

The big difference between an anonymous report or declaration on the one hand and an anonymous testimony on the other is that the former only concerns the passing on of information about a crime, while an anonymous testimony counts as evidence (Cass. 30/5/1995). However, even anonymous testimony cannot be used as sole evidence (Cass. 27/6/2000). The law of 8 April 2002 on the anonymity of witnesses introduced two forms of anonymous testimony: partial (Article 2-10) and completely anonymous testimony (Article 11-16). It is the Investigating Judge who decides whether a person can testify (partially or completely) anonymously, and no appeal is possible against this decision (Article 75bis and 86bis § 5 CCP).

In the case of a partial anonymous testimony, the identity (and therefore also the residence status) of the witness remains anonymous, also in court (Article 155bis CCP). A partial anonymous testimony is possible when the Investigating Judge considers that there is a reasonable suspicion that the witness, or a person in their immediate environment, could be seriously disadvantaged if the identity is known (Article 75bis CCP).

With completely anonymous testimony, both the person's identity and physical appearance remain anonymous (Article 86bis § 1 CCP). Before deciding whether or not to grant complete anonymity, the Investigating Judge takes note of the full identity of the witness and examines their reliability (Article 86bis § 3 CCP). A completely anonymous testimony is only possible if two conditions are met, namely: 1) On the basis of the information provided by the witness, the Investigating Judge decides that it can be assumed that the safety of the witness -or of a person in their immediate vicinity- is seriously threatened (Article 86bis § 1 CCP); 2) The investigation into the facts requires complete anonymity, and moreover other means of investigation prove insufficient to discover the truth, and moreover it concerns a crime of serious violation of humanitarian law (in accordance with the Law of 5 August 2003)<sup>51</sup>, a crime committed within the framework of a criminal organisation (Article 324bis CC), or an (attempted) crime as stated in Article 90ter § 2-4 CCP<sup>52</sup> (Article 86bis § 2 CCP).

<sup>50</sup> This general principle of law is based on Article 6 of the European Convention on Human Rights (ECHR) and includes, amongst others, that every suspect has the right to a fair trial (Article 6.1 ECHR) and to a fair defence, such as the right to questioning the reporter(s) of a crime (Article 6.3 ECHR).

<sup>51</sup> This law includes the following crimes: slavery, rape, forced prostitution, serious harm to health (Article 136quater CC) and violation of personal dignity (Article 136quater CC).

<sup>52</sup> More specifically, it concerns: Sexual harassment and rape; Prostitution and public sexual offences; Abduction of minors and vulnerable persons; Human trafficking; People smuggling; Captivity of a person; Theft or extortion by force or threat; Drug trafficking; Prohibited possession of weapons.

# 5. RELEVANT ACTORS ON SAFE REPORTING OF CRIME BY VICTIMS AND WITNESSES WITH IRREGULAR STATUS IN BELGIUM

The overview of relevant actors in the context of the implementation of the Victims' Rights Directive regarding irregular migrant victims and witnesses in Belgium includes the three categories mentioned in the Victims' Rights Directive, namely: victim support, restorative justice organisations and competent authorities (Recital 21 Directive 2012/29/EU). "Competent authorities" is further broken down into law enforcement actors and actors within the Public Prosecutor's Office. In addition, actors with specific expertise that may be relevant with regard to the further implementation of the VISA RoC project have been added in this section. On the other hand, no overview has been included of all relevant NGOs that represent the interests of (also) irregular migrants and/or that (also) support irregular migrants. Although their expertise and commitment is beyond dispute, trying to list all these organisations -if possible at all- does not add value to this research report. However, five such NGOs shared their experiences and visions through a semi-structured interview, and two organisations -Amal Gent<sup>53</sup> and Orbit<sup>54</sup>- are partners in the Belgian VISA RoC project group.

## 5.1 VICTIM SUPPORT AND RESTORATIVE JUSTICE ACTORS

### 5.1.1 Specialised reception centres for victims of human trafficking

Each of the three specialised centres in Belgium (**Payoke** (Antwerp), **PAG-ASA** (Brussels), **Sūrya** (Liège)) offers victims of human trafficking residential or outpatient care and multi-disciplinary support, such as psychosocial, medical and legal assistance and administrative support (V.b Circular Letter of 26/9/2008).

### 5.1.2 Fairwork Belgium

**Fairwork Belgium** supports the labour rights of migrant workers (without a valid combined residence/ work permit) through a helpdesk, information provision to employees, policy work and a specific focus on empowering domestic workers (Fairwork Belgium, 2022).

### 5.1.3 Victim Support Centres

Victim Support Centres are organised at Community level: (**Centra Algemeen Welzijnswerk**) **Centres General Welfare Work** operate in the Flemish Community and Brussels; (**Service d'Aide aux Victimes**) Victim Support Service operate in the Francophone Community and Brussels. These Centres offer information, emotional support and integral personal consultancy after psychological trauma (Aertsen, 2020).

### 5.1.4 Police Victim Treatment

Police Victim Treatment offers, immediately after the crime, victims and their relatives: relief and a listening ear, information, practical help and support with next steps to be taken, and referral (Mangelschots, 2016). Police Victim Treatment is organised per police zone (Aertsen, 2015).

<sup>53</sup> As an external independent agency in Ghent, it carries out the Flemish government's civil and civic integration policy (In-Gent vzw, 2022).

<sup>54</sup> Social-cultural non-profit organisation that is committed to: 1) Democratic dialogue and cooperation of and within cultures, religions and ideologies, and the experience thereof; 2) An equal social position for all citizens; 3) Respect for the (fundamental) rights and dignity of migrants with and without legal residence, with a special focus on the causes of migration (Axcnt, 2021).

### **5.1.5 Victim Support Reception Services**

A Victim Support Reception Service of a **House of Justice** assists the Public Prosecutor's Office and the courts by supporting victim(s) and their close relatives throughout the entire course of the legal proceedings: from the time a complaint is lodged through to the execution of the sentence (De Backer, 2019). A request for intervention by the Victim Support Reception Service is made by the competent Public Prosecutor, or by the victim, and/or by third parties with the consent of the competent Public Prosecutor (AJH, 2022). Houses of Justice are organised at Community level (Aertsen, 2020).

### **5.1.6 Sexual Assault Centres**

The seven **Sexual Assault Centres** (SACs) in Belgium offer victims of sexual violence comprehensive care 24/7, including medical and psychological care, forensic investigation, support in reporting to the police (Baert & Keynaert, 2019).

### **5.1.7 Coordination et Initiatives pour les Réfugiés et les Étrangers (CIRÉ)**

**CIRÉ** advocates the interests of (irregular) migrants, including the fight against detention and deportation policies (Dieudonné, 2022). CIRÉ offers, amongst others, general reception and socio-legal assistance, temporary shelter, information and awareness-raising activities (Dieudonné, 2022). This non-profit organisation based in Brussels is financed by the Brussels French Community Commission and the French Community (Dieudonné, 2022).

## **5.2 LAW ENFORCEMENT ACTORS**

### **5.2.2 Local police**

The **local police**, under the authority of the mayor (Article 5 PAA), carries out both administrative and judicial tasks (Article 3 IPA). The tasks of the local police are the same as those of the federal police (Article 14-25 PAA). The administrative assignments have a preventive character and concern the maintenance of public order and the supervision of compliance with laws and regulations, the prevention of crime and the protection of persons and property (Article 14 PAA). The judicial assignments are repressive and aimed at detecting and establishing crimes (Article 15 PAA). These are investigative acts, such as gathering evidence.

### **5.2.3 Federal police**

The **federal police** investigate (inter)national crimes and guards the Belgian borders, controls rail, shipping and air traffic and enforces the laws during national, regional and provincial events (Article 3 IPA). However, there is no strict separation between the tasks of the federal and local police (Article 14-25 PAA). In this way, mayors can ask the federal police to support the local police in administrative local assignments (Article 109-110 IPA). In that case, the federal police fall under the authority of the mayor (Article 8/4 PAA).

### **5.2.3 Supervision of the social laws**

The **labour inspectors** -working within the Federal Public Service (FOD) Supervision of Social Laws- are responsible for preventing, checking and establishing violations of Belgian labour law, such as social fraud and illegal employment (KB, 12/5/2019). Important tasks they take on are: 1) Providing information and advice to employees, employers and professional associations; 2) Identifying labour law violations, and enforcing compliance with the employer and/or reporting the identified violation to the Labour Auditor for possible criminal prosecution; 3) Entering a workplace in order to carry out investigative acts and/or a visitation, amongst others in the context of combating social fraud and social dumping (FOD WASO, 2020).

### **5.2.4 Immigration Office (IO)**

The **Immigration Office** decides on and is responsible for enforcing the federal legislation on entry (Article 2.2°; Article 11 Aliens Act), residence (Article 9-9ter; Article 11; Article 13 Aliens Act), settlement (Article 14 Aliens Act) and removal (Article 8 Aliens Act) of foreigners in Belgium. The IO officials work either in the central office in Brussels or in one of the



six closed detention centres and 28 housing units alternatives to detention that are spread across the country (IO, 2022).

## 5.3 ACTORS WITHIN THE PUBLIC PROSECUTOR'S OFFICE

### 5.3.1 Public Prosecutor

Apart from the police (who forward every official report to the Public Prosecutor's Office), anyone can also submit a complaint directly to the **Public Prosecutor's Office** (Article 22 CCP). However, anonymous complaints are not acted upon<sup>55</sup>. Based on the investigation carried out, the competent Public Prosecutor decides whether to: 1) Dismiss the complaint; 2) Propose an amicable agreement; 3) Impose mediation and other measures between perpetrator and victim; 4) Prosecute the suspected perpetrator of the offenses; 5) Open a judicial investigation (Article 28quater CCP).

### 5.3.2 Magistrate of Reference

A Magistrate of Reference or Liaison Magistrate is a specialised magistrate. For example, each Prosecutor's General Office, First Instance Prosecutor's Office, Auditorate General and Labour Auditorate has a Liaison Magistrate for human trafficking (FOD Justitie, 2004b). A Liaison Magistrate follows up on complaints about a specific theme, is the point of contact for the authorities involved, and takes decisions -like any other competent Public Prosecutor- on the basis of the criminal investigation and available specific measures (e.g., (not) granting the victim status to a victim of trafficking or smuggling in human beings with aggravating circumstances) (FOD Justitie, 2004a).

### 5.3.3 Investigating Judge

An **Investigating Judge** is in charge of a judicial investigation to compile a criminal file (Article 28bis CCP). An Investigating Judge is called in for investigative acts that the Public Prosecutor's Office is not allowed to carry out, such as a house search or other investigative act that seriously interferes with the private life of a suspect and/or if a victim is a registered third party (Article 28septies CCP). Based on a judicial investigation carried out, the Investigating Judge decides whether to: 1) Not prosecute the suspect; 2) Have the file investigated further by the Public Prosecutor; 3) Charge the suspect by referring the file to the appropriate court, while the suspect is: A) Released (with or without certain conditions)<sup>56</sup>; B) Taken into pretrial detention; C) Placed under electronic supervision (Article 28quater CCP).

### 5.3.4 Crown Prosecutor

A Crown Prosecutor leads the **Public Prosecutor's Offices within a judicial district** (Article 150§1 CCP) and is in charge of a criminal investigation to find evidence (Article 22 CCP). The police, Public Prosecutor's Office magistrates and substitutes cooperate in an investigation, possibly together with an Investigating Judge (Article 26 CCP).

### 5.3.5 Board of Attorneys General

The Attorneys General of the Courts of Appeal together form the Board of Attorneys General (Act of 4 March 1997). This Board is responsible for the coordination and coherent implementation of criminal policy, in accordance with the Directives of the Minister of Justice (Article 143bis §1-2 CCP). **Each (of six) Attorney General (AG)** is competent for a specific topic, e.g., human trafficking and smuggling and social laws (AG in Liège); Immigration law (AG in Bergen); Victim policy (AG in Brussels) (KB, 9/12/2015).

### 5.3.6 Labour Auditor

A Labour Auditor manages the Public Prosecutor's Office at the labour courts: the Labour Auditorate (FOD WASO, 2017). The employees of the nine Belgian Labour Auditorates carry out the tasks of a Public Prosecutor with regard to the supervision of social laws. A Labour

<sup>55</sup> According to the information on the webpage of the Public Prosecutor's Office and Auditor General of Ghent: <https://www.om-mp.be/nl/uw-om/parketten-arbeidsauditoraten-general/gent/parketten/klacht-dienen>

<sup>56</sup> Conditional release is not the same as supervised release: while conditional release can be applied prior to a court decision, supervised release can only follow a conviction of effective imprisonment.

Auditor can intervene in all disputes before the labour court and must intervene if it concerns the rights of citizens in the field of social security and assistance. Furthermore, the Labour Auditor acts as the Public Prosecutor for the criminal court in case of violations of social criminal laws (FOD WASO, 2020).

## 5.4 ACTORS WITH SPECIFIC EXPERTISE

### 5.4.1 Myria

The **Federal Migration Centre Myria** independently carries out three complementary legal tasks: 1) Monitoring the fundamental rights of foreigners; 2) Informing about the nature and extent of migratory flows; 3) Promoting the fight against human trafficking and smuggling (Law of 15 February 1993).

### 5.4.2 Fedasil

The **Federal Agency for the Reception of Asylum Seekers** is amongst others responsible for the reception of applicants for international protection (asylum applicants) and other foreigners entitled to reception, and coordinates the programmes for voluntary return from Belgium (Law of 12 January 2007). In addition, **Fedasil's Reach Out team** informs migrants who have (no longer) right to use the official reception facilities (Fedasil, 2022).

### 5.4.3 Institute for the Equality of Women and Men (IEWM)

As an independent federal government institution, the **Institute for the Equality of Women and Men (IEWM)** is responsible for guaranteeing and promoting equality between women and men and combating all forms of discrimination and inequality based on sex (Law of December 16, 2002). To this end, IEWM develops and puts into practice an appropriate legal framework and suitable structures, strategies, instruments and actions (IGVM, 2022).

### 5.4.4 Victim Support Europe (VSE)

**Victim Support Europe** is a European civil society organisation that represents the voice of victims, and is committed to: 1) Strengthening rights and services for all victims of crime; 2) Promoting the establishment and development of victims' rights and services across Europe; 3) Promoting the interests of victims through policy recommendations, advice and practical support to national, European and international actors (VSE, 2022).

### 5.4.5 Platform for International Cooperation on Undocumented Migrants (PICUM)

The **Platform for International Cooperation on Undocumented Migrants** is a network of organisations committed to social justice and human rights for irregular migrants (Picum 2022b). Based on the principles and values of social justice, anti-racism and equality, PICUM is committed to ensuring that irregular migrants can live with dignity and can effectuate all their rights (Picum, 2022a).

# 6. PRACTICES AND EXPERIENCES REGARDING SAFE REPORTING OF CRIMES BY VICTIMS AND WITNESSES WITH IRREGULAR STATUS IN BELGIUM

## 6.1 PRACTICES AND EXPERIENCES OF VICTIMS REGARDING THEIR PRECARIOUS RESIDENCE SITUATION IN BELGIUM

### 6.1.1 Under-reporting of crimes

Several studies show that there is a large under-reporting of crimes in Europe (FRA, 2021; Gutierrez & Kirk, 2017). Careful research among 690 respondents in the Netherlands unveils that the willingness to report is generally low, but increases as the option to report anonymously is introduced more widely (Tolsma, 2011). Migrants in general and irregular migrants in particular often become victims of crimes, such as human trafficking or exploitation by employers and landlords (EC, 2021; Picum, 2021; van der Laan, 2017). Although there are no reliable figures or estimates of the number of irregular migrants who are a victim of crime, research by FRA (2018) displays that (especially female) domestic workers are systematically abused and exploited to such an extent that these crimes are often not considered (anymore) a violation of human rights. Furthermore, research by Keygnaert (2012) and by De Schrijver (2018) exhibits that 58% of immigrant women and 32% of immigrant men are a victim of sexual violence. However, when irregular migrants witness or are a victim of a crime, they rarely report it to the police or any other authority (Devillé, 2008; Scherrer et al., 2017). This is due to a multitude of factors such as fear of being expelled (see 6.1.2), psychological pressure and shame (see 6.1.3) and/or lack of knowledge and reliable information (see 6.1.4).

In addition, irregular migrants often feel compelled to commit a crime themselves (Hastie & Crépeau, 2014; Picum, 2021). Of the 12 interviewees in a precarious residence situation in Belgium, everyone had experience with unlawful employment and four persons had ever committed or participated in identity fraud. On the other hand, each of them has been a victim of labour exploitation in the past, albeit to varying degrees. Furthermore, 11 respondents reported having different experiences with deceit and 10 of them gave multiple examples of being a victim of theft and/or extortion in their interview. Damage to property (such as a smartphone or laptop) was mentioned four times and crime against the bodily integrity was also mentioned four times, the latter by four of the five women interviewed.

### 6.1.2 Fear of being expelled

Research by De Genova (2002) reveals that it is the possibility of being expelled, rather than deportation itself, that frightens irregular migrants. This is confirmed by recent research by Kox & Staring (2021) in the Netherlands. Fear was also an explanation that came up prominently in the interviews with the persons in a precarious residence situation. For fear of being expelled, most avoid certain public places or activities, such as train and subway stations and parks where police regularly patrol (Interview no. 2; no. 4; no. 14; no. 22; no. 23; no. 26; Sigona, 2012). For example: *“I always use a bicycle or scooter, because there are sometimes police at the bus stop, or there are inspectors on the bus who think that all migrants do not pay (...) and then papers can be checked (...). I don't want to be deported for something so stupid.”* (Interview no. 22); *“Even when it was really hot I didn't dare go outside to the [park], there were so many people and sometimes also police. I didn't want them to be able to catch me and send me back.”* (Interview no. 23).



Fear also leads to literally running away when the police or other inspectors are too close or arrive at the workplace (Interview no. 2; no. 4; no. 6; no. 10; no. 14; no. 19; no. 23): *“First I worked for a fruit farmer. At that time I still had a residence permit as a seasonal worker. There was once an inspection with the police. And, woosh, almost everyone was gone, running away. The police could laugh about it themselves (...). The fruit farmer got a fine anyway, I don't know why. I was then able to show my permit, which was valid, I didn't have to be afraid of being deported, they could not do that to me at the time.”* (Interview no. 14).

*“The fear of being expelled is not a real fear”* (Interview no. 7). This acute and persistent stress seems to decrease the longer one stays in a certain region because one gets insight in the local customs and/or gets to know them through interaction with others (Le Courant, 2016; Interview no. 3; no. 5; no. 25). Some further questioning about the reasons for fear led almost all respondents to the answer *“(...) fear of getting an order [to leave the territory] (...) it is a confirmation of the fact that I am not supposed to be here.”* (Interview no. 2). It is also confirmed in literature that this fear *“arises from a lack of mental space”* (Interview no. 16). Crimes such as (sexual) abuse, exploitation, extortion and harassment are often endured because the fear of the unknown and unpredictable –by going to the police– takes precedence, just as is the case for anyone who has been exposed repeatedly and/or for a long time to anxiety (Derluyn et al., 2023; Giacco et al., 2018). Moreover, irregular migrants are in a survival mode, which usually absorbs all energy, leaving neither time nor psychological space to rationalise events and make conscious, considered choices (Giacco et al., 2018; Van Meeteren, 2014). As one of the interviewees aptly put it: *“Taking the step to the police is handing over your own safety.”* (Interview no. 16).

### **6.1.3 Psychological pressure and shame**

Many migrants experience enormous pressure from the ones *‘left behind’* to be successful in the country of arrival (Bilgili & Amigi, 2015; Kreichauf, 2018). This feeling is also prevalent among many irregular migrants (Van Meeteren, 2014). Moreover, it emerged from various interviews that this psychological pressure is often reinforced by the idea (or rationality?) that they have only one chance of success (Interview no. 4; no. 14; no. 18), because *“if the police catch me, I will be sent back immediately (...). I cannot face my family then (...). I will have [my family] very much disappointed.”* (Interview no. 4). In other words, the psychological pressure experienced is also closely related to shame and the unwillingness to lose face towards loved ones and relatives (Kreichauf, 2028; Wanki et al., 2022). Indeed, migration is often used as a means of achieving upward mobility in the country of arrival, in the country of origin, or in both (De Jong, 2000; Saunders, 2011; Van Meeteren, 2014). Research shows that the more pressure or moral obligations one experiences from the community, the more one is willing to endure and undergo in the country where one is without a legal residence permit (Leerkes et al., 2012; Van Meeteren, 2014). Several employees of civil society and victim organisations seem to confirm this and formulate it as: *“They do not see themselves as victims because they have a responsibility to the people at home.”* (Interview no. 11). One of the interviewees in a precarious residence situation explained that *“(...) not having a valid residence permit and a work permit is mentally tough. (...) the mental pressure results in me not being able to negotiate or give arguments to the [employer] who is underpaying me.”* (Interview no. 22). The mental fatigue experienced by people who are under constant stress inevitably leads to psychological and physical complaints (Giacco et al., 2018; Picum, 2021). This was confirmed by all 12 respondents in a precarious residence situation.

### **6.1.4 Lack of knowledge and reliable information**

Throughout all the interviews with all categories of actors, it became clear how big the need for correct and reliable information is. After all, immigration legislation, the functioning of the Belgian judiciary and the fragmentation in the care and services offer make it complex and difficult to explain to those who have no experience with it. For irregular migrants, the lack of knowledge often comes down to a lack of experience. For example, police interventions often proceed very differently and practices for accessing services and justice sometimes differ greatly from those in the country from which people emigrated (FRA, 2021; Gutierrez & Kirk, 2017). Together with a lack of reliable information, this regularly leads to incomprehension and misunderstandings, for example when an official of the IO gets angry when being offered money to arrange the person's file (Interview no. 5). The lack of knowledge largely explains the massive under-reporting of crimes and the under-representation of irregular migrant victims, regardless of the availability of legal options for safe reporting and effective access to legal assistance and care (Crépeau & Hastie, 2015; Delvino, 2017; FRA, 2017). In addition, a persistent lack of clear information results in uncertainty

and distrust (FRA, 2018; Giacco et al., 2018; Sigona, 2012) and reduces hope and prospects for a future in the country of residence for many (FRA, 2017; Kox & Staring, 2021): *“I must avoid being a victim (...), inform myself properly (...), not look for trouble, avoid the police (...), only have contact with people who can be trusted (...), I trust nobody really here.”* (Interview no. 22).

### **6.1.5 When the tolerance capacity limit is exceeded**

People who leave their country behind and travel a long journey often experience a lot of things along the way that can be traumatic (Derluyn et al., 2023, Lamonaca et al., 2021). For example, the recent study by Derluyn et al. (2023) finds high trauma rates among unaccompanied minors who have been imprisoned in Libya. Most of these young people were at least victims and/or witnesses of violence, sometimes also of sexual violence. Furthermore, most also experienced other traumatic experiences, such as forced separation from the family, war, forced labour, and incarceration. An important factor in dealing with such events is that the persons often depend on the perpetrator(s) along the way, sometimes for as long as they are without a valid residence permit (Gutierrez & Kirk, 2017; Myria, 2023; Picum, 2021). Not surprisingly, several studies show that post-traumatic stress disorder, depression and anxiety disorders are much more common among refugees than among the general population (Derluyn et al., 2023; Giacco et al., 2018). Since the limits of what is and what is not acceptable are often already very stretched, the threshold for going to the police is usually much further away for irregular migrants (FRA, 2018; Kox et al., 2020). One of the interviewees in a precarious residence situation formulated very clearly how far their burden capacity extends: *“I will only go to the police if someone kills me!”* (Interview no. 25). Indeed, various studies indicate that most irregular migrant victims are only willing to file a complaint *“when they are finally fed up with the exploitation”* (Interview no. 19). Victims of sexual violence, for example, are generally only willing to report this if the violence has been committed repeatedly and/or by several perpetrators, and if they are very concerned about the consequences of the event(s) for themselves and their loved ones, and if they are very upset, and if they admit to oneself being a victim (Keygnaert et al., 2018). Finally, European (FRA, 2019) and American (Delvino, 2019) research unveils that the ability to be recognised as a victim and thus qualify for a residence permit encourages irregular migrant victims to file a formal complaint more quickly at the police.

## **6.2 PRACTICES AND EXPERIENCES REGARDING VICTIM SERVICES**

### **6.2.1 Under-representation of crime victims with irregular status in victim organisations**

Financial, cultural and organisational barriers are well-known explanations for the structural under-representation of migrants in care and with assistance services (Dieudonné, 2022; FRA, 2015). In general, these thresholds are experienced in the same way by all victims, regardless of residence status. For example, shame is a common reason for all victims not to seek help (De Backer, 2019; Verelst, 2021). Cultural thresholds are mainly based on the social, cultural and economic capital of victims (Maier & Straub, 2011; Van Meeteren, 2014) and financial thresholds on income (Dieudonné, 2022). Although much of the victims care in Belgium is free of charge (in accordance with Article 8 of the European Victims' Rights Directive), this is not always the case (De Backer, 2019). Furthermore, many (victim)organisations suffer from a shortage of capacity, as a result of which, for example, there is not enough place available in the (crisis)shelter, or a waiting list is in use for receiving certain care (De Backer, 2019; Myria, 2023). Victim organisations are often aware of these barriers and try to provide solutions, such as: *“Putting yourself in a situation of dependency and admitting that you can no longer cope on your own is a very big step. We see that self-help groups often work better.”* (Interview no. 16). To remove administrative barriers, victim and other organisations can (better) apply the principles of ‘don't ask’ and ‘don't tell’, for example: only requesting those personal data that are really necessary to be able to offer help, on a moment and in a room that strangers cannot overhear, and accompanied by an explanation of why the personal data are needed, how the data will be used and with whom the data can and will be shared. Only when victims feel safe is it helpful to *“[offer] a listening ear. Trust first and be patient. Only in the end people tell about the pain they have.”* (Interview no. 8).

One major obstacle specific to irregular migrant victims and witnesses of a crime is their access to victim care and treatment: these doors only open by registering as a victim or civil party. As already described in detail, when a complaint is filed with the police, there

is a very good chance that the IO is called in and - at least - an OLT will be issued to the victim. Under these conditions it is, consequently, not surprisingly that irregular migrant victims and witnesses almost never go to the police. Only those who have no knowledge of the functioning of the legal system in Belgium can react with surprise, such as: *“(…) it is even worse than I thought (…). This is also the case for those [irregular migrants] who testify or who are called upon by the police to make a statement?”* (Interview no. 27). Organisations that support irregular migrants and represent their interests therefore look for (sometimes creative) alternatives, and are regularly met by police who use their discretion to *“catch the perpetrators and protect victims, as the law requires”* (Interview no. 3). In addition, through advocacy, NGOs are committed to *“achieve societal changes for all irregular migrant victims”* (Interview no. 11) by providing additional support to victims who are willing to bring out their story and to file a formal complaint: *“Through case law and the verdict of one brave [irregular migrant], societal change can be realised for many. We have to make rational choices, because due to a lack of time and staff we cannot support every irregular person individually.”* (Interview no. 19).

## 6.3 PRACTICES AND EXPERIENCES REGARDING LAW ENFORCEMENT

### 6.3.1 The power of individual discretion

In Belgium, the enforcement actors -in particular the police and labour inspectors- have a great deal of individual discretion, including with regard to the use of a firewall towards the IO (Van den Durpel, 2019). Numerous local law enforcement practices have been described in the Belgian research report of the ‘safe reporting’ project led by the University of Oxford (2019). For example, it turned out that the available police capacity plays an important role in the individual discretion of whether or not to arrest a foreign national who is suspected to be without a valid residence permit and to draw up an administrative report for the IO, which then checks whether the arrested person is effectively in an irregular residence situation, and in that case takes a decision that the police must carry out (Van den Durpel, 2019). To date, during interventions, patrols in public places, and/or in the police station, police seem to suspect to vastly varying degrees whether someone has an irregular residence status (Interview no. 3; no. 6; no. 7; no. 15; no. 27), ranging from, for example: *“If everyone of colour is to be suspected of perhaps not having a valid residence permit, then the police patrols here will never get farther than this street, so to speak”* (Interview no. 3); or: *“The police tell irregular migrants to apply for asylum (…), that is because they don’t know the migration laws, they think that applying for asylum is just directly and for everyone an option. I also once met a creative police. He said that someone without legal residence is a tourist to him.”* (Interview no. 7); to: *“There are police who, if there is any suspicion of irregular residence, arrest that person and contact [the IO].”* (Interview no. 15).

These and similar practices undoubtedly hamper irregular migrant victims’ access to the police and justice system (Delvino, 2017; Delvino & Beilfuss, 2021). After all, it is impossible to estimate how a victim will be treated and whether any follow-up will be given to the crime. Consequently, it makes sense that NGOs/ CSOs, many lawyers, and sometimes also victim organisations, discourage irregular migrant victims from going to the police alone (without the company of a potential third party), due to the perception and/or experience that there is no guarantee for safe reporting (Interview no. 5; no. 7; no. 9; no. 27). One interviewee summarised it aptly: *“I can’t advise someone to do something of which I can’t assess the consequences myself, can I! Perhaps that person will be taken to a detention centre for deportation. Then I really didn’t help that person, did I! I can’t take that risk, supposedly helping someone and then that person might be sent back [to the country of origin].”* (Interview no. 27). One of the important conclusions from the ‘Safe reporting’ study in Belgium (Van den Durpel, 2019) was therefore that -due to the high degree of individual discretion with law enforcers- there are many challenges to effectively, coherently and consistently implement safe reporting options.

However, the study also revealed a number of good examples and promising applications of individual police discretion. For example, there are police who, at the request of intermediaries, are willing to record a victim’s complaint (formal or informal) in a safe or neutral place (Interview no. 1; no. 3; no. 11; no. 16; Van den Durpel, 2019). This willingness is sometimes prompted by *“respect and concern for the victim”* (Interview no. 1; no. 16) and/or pragmatism, for example when an identity check has become a precondition for having access to the police station due to digitisation (Interview no. 7; no. 11). Some of these practices have since expanded. For example, meanwhile there are several local police stations in the wider

Brussels region that consistently apply the principles of 'don't ask' and 'don't tell'<sup>57</sup>, so that the residence status of victims and witnesses is not a condition for access to, for example, Police Victim Treatment. There also exist some so-called 'gentlemen's agreements' between an NGO/CSO or specific victim care service on the one hand, and a particular local police unit, such as the Vice Squad, on the other hand, to enable safe reporting. Via such agreement the police do not contact the IO when a victim comes forward. For example, some interviewees told that *"If a victim registers themselves and is willing to file a complaint, the police will not draw up an administrative report for the IO. That is only the case if they spontaneously register themselves, not if the police ascertain during an intervention that someone is a victim (...) and the relevant person must of course also file a complaint."* (Interview no. 11).

Not only police, but also other law enforcers have individual discretion. Although the various actors within the Public Prosecutor's Office act on the basis of guidelines and instructions and regularly exchange experiences among colleagues in order to assess similar situations in an equal way and to learn from each other, each Prosecutor, Investigating Judge and Crown Prosecutor also has room for own interpretation based on them discretion power (Breyne, 2010; De Backer, 2019). In accordance with Article 10 of the Victims' Rights Directive, registered victims may request detection and/or investigative measures, and the responsible actor must justify its decision if the request is not accepted (De Backer, 2019).

Finally, the internal instructions of the IO also leave some discretion to the individual civil servants who prepare the decisions of the IO Director-General (DVZ, 2017; Myria, 2023). How this individual discretion is dealt with appears to differ from unit to unit: *"There is no current practice or system for comparing similar files in order to arrive at similar decisions."* (Interview no. anonymous). This promotes neither the transparent operation of the IO (Myria, 2023) nor the confidence of NGOs/CSOs, migrants and other actors in the IO: *"(...) the same situations are sometimes assessed differently by the IO (...) and when an explanation is asked, there is no answer or they hide behind procedures."* (Interview no. 5).

<sup>57</sup> Both principles are part of the so-called 'Sanctuary measures' regarding the reporting of crimes by irregular migrant victims and witnesses. Sanctuary measures consist of three aspects: 'don't ask' policy, whereby police do not ask about the residence status of the person who files a complaint or who informally reports a crime; 'don't tell' policy, which indicates that the police do not communicate the person's immigration status to the IO, and; 'don't enforce' policy, meaning that the police do not participate in enforcing national immigration laws.



# 7. PROPOSALS FOR IMPROVING SAFE REPORTING OF CRIME BY VICTIMS AND WITNESSES WITH IRREGULAR STATUS IN BELGIUM

The formulated proposals for improvement result from the combination of: 1) The literature study; 2) Analysis of the legislation, policies and various practices regarding safe reporting of crimes by victims and witnesses with irregular status in Belgium, and; 3) Concrete recommendations from the interviewed adults in a precarious residence situation, victim support organisations, enforcement authorities and relevant NGOs. In other words, the proposals for improvement reverberated repeatedly. Throughout the research these proposals were sharpened from the perspective of theory, legislation versus practice analysis, and the experiences of experts.

In terms of content, the proposals for improvement are aimed at achieving safe reporting of crimes to the police, Labour Inspectorate, Public Prosecutor's Office or Labour Auditor for victims and witnesses with irregular status, in accordance with the minimum standards for the rights, support and protection of crime victims and their family members, as included in the EU Victims' Rights Directive 2012/29/EC. In other words, recommendations that do not specifically relate to migrants in an irregular residence situation, as well as recommendations on aspects other than safe reporting that contribute to a sense of security of victims and witnesses, fall outside the scope of this research report. Since the obstacles to safe reporting of crime are not situated with the victims and witnesses with irregular status in Belgium, but with the structures (namely the lack of a firewall between the IO, and other enforcement and victim services) and service actors (namely a lack of the necessary knowledge, skills and attitudes), there are no improvement proposals to reduce underreporting, for example. Unfortunately, it is not unjustified that persons in an irregular residence situation are afraid to go to the police for fear of being deported.

The proposals for improvement are primarily addressed to the partners of the Belgian VISA RoC project group. Together with other actors to be involved (see Annex 7), they can take these proposals further. Depending on the available resources, (legal) possibilities and ambitions, the proposals taken further must be refined into a step-by-step plan for local, regional and/or national implementation. Within the framework of the EU-funded project VISA RoC, also the findings and practices from Barcelona, Utrecht and Milan can be used to improve safe reporting of crime by victims and witnesses with irregular status in Belgium.

## 7.1 INSTALLING AND OPERATING A FIREWALL BETWEEN IMMIGRATION ENFORCEMENT ON THE ONE HAND AND POLICE AND VICTIM SERVICES ON THE OTHER

With the EU Victims' Rights Directive and its transposition into Belgian law, it is clear that being a victim of crime takes precedence over residence status. However, because the police are involved in the IO's immigration enforcement regime<sup>58</sup>, this principle of supremacy is often negated in practice or is an obstacle that police face in their individual discretion. The basis of a victim-oriented approach that offers justice and protection to every crime victim and witness regardless of their residence status is that safe reporting of crime is guaranteed (Verelst et al., 2021).

<sup>58</sup> The police can call in the IO if there are doubts about the validity of the residence status of the foreigner (Article 21 Law of 7/12/1998 and Article 17 Law of 21/03/2018) and must do so in the case of a (suspected) perpetrator of an administrative (such as being in an irregular residence situation) or criminal offense (Article 17 Law of 17 March 2018).

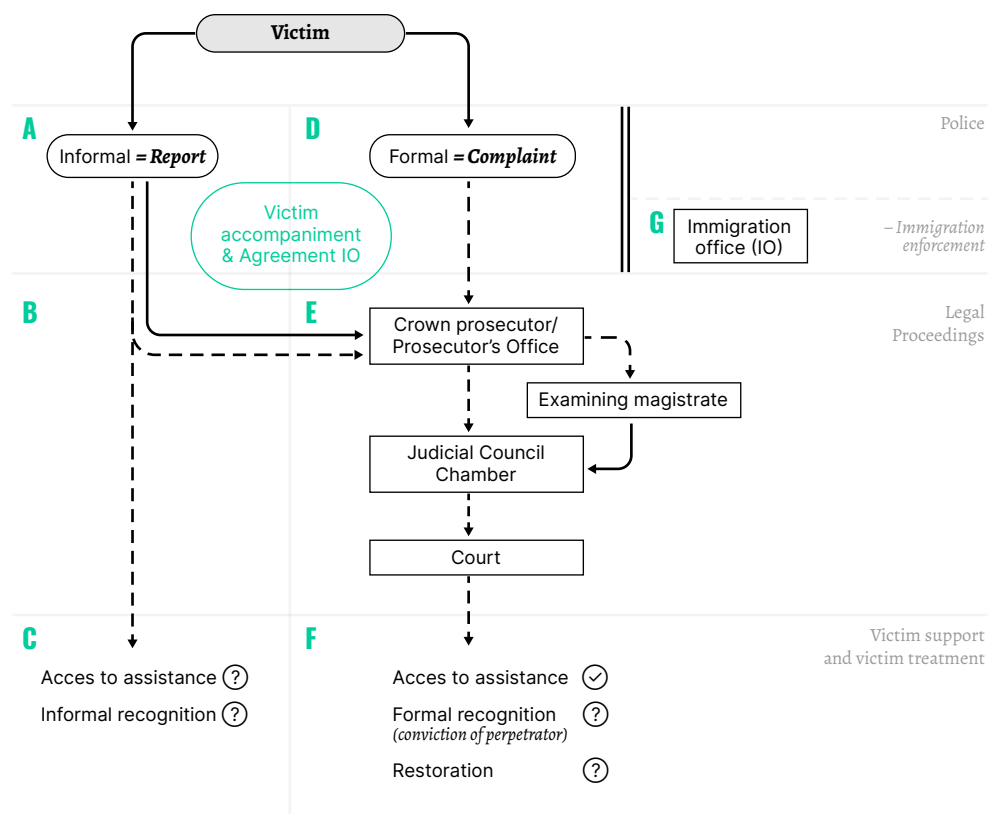
In order to give victims and witnesses with irregular status in Belgium effective access to justice in accordance with the minimum standards for the rights, support and protection of victims of crime, a so-called firewall must be installed so that there is no data exchange between the Belgian immigration enforcer IO on the one hand, and victim support services and non-immigration law enforcement on the other. The legal basis for a firewall between the police and the IO with regard to victims and witnesses with irregular status is contained in Article 22 of the Victims' Rights Directive (Individual assessment of victims to determine specific protection needs) and in the General Data Protection Regulation (GDPR), which prohibits the transfer of personal data without the explicit consent of that person (Mallet-Garcia & Delvino, 2020; Picum, 2021).

Belgium has experience with the structural use of a firewall between services and immigration enforcement in the interest of public safety. For example, the expertise built up during the period of COVID measures can be used to extend its application to safe reporting of crime by victims and witnesses in an irregular residence situation. After all, being able to report a crime in a safe manner results in:

- Increasing security in society;
- Perpetrators being held responsible for damage inflicted;
- Victims being effectively supported;
- Increasing trust in public institutions (such as the police and the judiciary), and;
- Public resources being spend efficiently (Picum, 2021).

Figure 3 provides a schematic overview of the two proposals through which a firewall can effectively be (re)installed between, on the one hand, immigration enforcement by the IO and, on the other hand, services by the police and victim organisations. Both proposals stem from the interviews and extra discussions with experts in the field.

**Figure 3: (re)installing a firewall between immigration enforcement and services provided by police and victim organizations**



### **7.1.1 A protocol for victims and witnesses with irregular status in Belgium**

1. Firstly, a protocol should be developed for the safe reporting of crimes by victims and witnesses with irregular status in Belgium, for example under the aegis of the Belgian coordinating body for assistance to victims, the National Forum;
2. After this protocol has been drawn up, it must be made known to the police and victim services as well as to the IO, for example via a Ministerial Order and an information campaign;
3. Via a Circular Letter, the IO communicates the further procedure for ticking the box victim of a “general crime” in the administrative report of the police to the IO;
4. When the IO comes into contact with a crime victim or witness with irregular status in Belgium, an Annex 15<sup>59</sup> is issued. To this end, the scope for issuing an Annex 15 has to be expanded to include a category “reporting a procedure victim of a general crime”

### **7.1.2 A Firewall between the police and victims and witnesses with irregular status in Belgium**

1. (Victim) organisations that support irregular migrants take on a role as a bridge between the police and victims and witnesses with irregular status in Belgium. The intermediary ensures that it is agreed between the IO and the police that there is no follow-up on the unlawful stay of the victim or witness of the crime, or -if such an agreement already exists- that this agreement is applied.
2. (Victim) organisations that support irregular migrants act -just like lawyers can- on behalf of their client by filing the complaint. Subsequently, the organisation is registered as a victim or as a civil party.

## **7.2 PROVIDING AND PROMOTING SIMPLE AND ACCESSIBLE INFORMATION**

The operation, capabilities and limitations, powers, practical organisation, etc. of both victim care and law enforcement authorities is extensive and complex. For example, the entire process of a formal complaint falls under the competence of the federal government, while services to victims -with the exception of Police Victim Treatment- are a regional matter since the 2016 Belgian state reform (De Backer, 2016). This complex organisation and fragmentation of services results in victims and organisations supporting them having difficulties to see the wood for the trees.

This major obstacle can be tackled fairly simply and without spending too much (financial and capacity) resources. Moreover, pursuant Article 3 of the Victims' Rights Directive, the Belgian authorities must communicate in simple and accessible language so that every crime victim can understand and be understood from the first contact with a competent authority and up to and including the full course of the criminal proceedings. This can be done, amongst others, by:

### **7.2.1 Developing an information booklet based on images and pictograms for victims and witnesses of crime**

### **7.2.2 Drawing up a simple information sheet about the entire course of the criminal procedure (including assistance options) for civil society organisations, and making this available via the digital communication channels of all involved governments**

### **7.2.3 Developing of a Contact Card that victims and witnesses with irregular status who have reported a crime to the competent authorities can show to the police, so that the IO does not have to be called in**

<sup>59</sup> This is a temporary residence permit valid for 45 days, which is issued by the IO to a suspected victim of human trafficking or human smuggling with aggravating circumstances.

## **7.3 PROVIDING EDUCATION AND CONTINUOUS TRAINING FOR ANYONE WHO MAY COME INTO CONTACT WITH VICTIMS AND WITNESSES WITH IRREGULAR STATUS IN BELGIUM**

In almost every interview, it was demonstrated with various examples that both police and other law enforcers, victim care workers, and employees of other NGOs are in need of (more) specific information and skills with regard to crime victims with irregular status in Belgium. Provision of basic and specialised education and training for government staff who may come into contact with victims, and for victim care workers is extensively included in Article 25 of the Victims' Rights Directive. Such training should aim to "enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner", as reads Article 25.5 Directive 2012/29/EU.

Inspiration and tips for the implementation of these courses and trainings can be obtained from the results of the EU-funded INHeRE project, coordinated by Ghent University. All information and tools are available at: <https://www.icrhb.org/en/projects/inclusive-holistic-care-for-migrant-victims-of-sexual-violence-inhere>

In particular, two substantive education and training needs emerge from this VISA RoC Belgium study:

**7.3.1 General knowledge of Belgian legislation on immigration law and victim support (whether or not in the context of criminal proceedings)**

**7.3.2 Tailored basic skills to interact in a correct, respectful and safe manner with victims and witnesses with irregular status**



# ANNEXES

## ANNEX 1: OVERVIEW OF FREQUENTLY USED ABBREVIATIONS

ATD	Alternatives To Detention
CC	Criminal Code
CCP	Code of Criminal Procedure
CGWW	Centres for General Welfare Work
EC	European Commission
ECHR	European Convention on Human Rights
ECRI	European Commission Against Racism and Intolerance
EU	European Union
IO	Immigration Office
IPA	Integrated Police Act
NGO	Non-governmental organisation
OLT	Order to Leave the Territory
PAA	Police Administration Act
PCSW	Public Centre for Social Welfare
PP	Public Prosecutor
RD	Royal Decree
R&O	Reception and Orientation
SAC	Sexual Assault Centre
SCC	Social Criminal Code
SIS	Schengen Information System
VISA RoC	Victims with Irregular migration Status' Safe Reporting of Crimes

## ANNEX 2: INFORMATION AND CONSENT FORM

### Research VISA RoC Belgium

This research is carried out by the Centre for the Social Study of Migration and Refugees (CESSMIR) of Ghent University, commissioned by the City of Ghent and its partners: Orbit vzw, FAIRWORK Belgium, CAW East-Flanders, IN-Gent/Amal.

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### Information about the research

We would like to invite you for an interview in the context of a study on the implementation of the EU Victims' Rights Directive (2012/29/EU) in Belgium. This research is part of VISA RoC, an EU project with Barcelona, and the cities of Utrecht, Milan and Ghent. VISA RoC is funded by the DG Justice "Call for proposals for action grants to support transnational projects strengthening the rights of persons suspected or accused of crime and the rights of victims of crime (JUST-2021-JACC)". VISA RoC is coordinated by the University of Barcelona, Faculty of Political Science, Constitutional Law and Philosophy of Law. The Belgian

research is carried out by the Centre for the Social Study of Migration and Refugees (CESS-MIR) of Ghent University, commissioned by the City of Ghent.

Please take sufficient time to read this information letter carefully before deciding to participate in this study by means of a pseudonymised interview. Do not hesitate to ask questions if there are any uncertainties or if you would like additional information. Make sure you understand everything. Once you have decided to participate in the study, we will together, at the start of the interview, fill in the consent form at the back of this bundle.

### **Aim of the research**

The VISA RoC project focuses on the Victims' Rights Directive which sets minimum standards for the rights, support and protection of victims of crime, regardless of victims' residence status. In line with the EU strategies for victims of crime, non-discrimination and gender equality, VISA RoC explicitly promotes equal access to victims' rights for migrants in an irregular residence situation through safe reporting of crimes.

The Belgian research includes: 1) 1 literature study on the legal possibilities and limitations with regard to the rights of victims and witnesses in an irregular residence situation in Belgium; 2) Semi-structured interviews with persons in a precarious or irregular residence situation and with NGOs, victim support and enforcement institutions about safe reporting of crime by victims and witnesses in an irregular residence situation in Belgium. Based on the findings, two training courses will be organised for professionals (services and organisations that provide victim support and/or come into contact with victims and witnesses in an irregular residence situation).

### **Ethical approval**

This study was approved by the Ethics Committee of the Faculty of Psychology and Educational Sciences of Ghent University. Under no circumstances should you consider approval by the Ethics Committee as an incentive to participate in this study.

The researchers conduct this study in accordance with the accepted standards of scientific and ethical conduct. In doing so, they adhere to the principles of research ethics in accordance with the European Code for Scientific Integrity (2017), the Policy Plan for Scientific Integrity of Ghent University (2015), the Framework for Good Research Practice of Ghent University (2020), and the Specific Ethical Protocol for scientific research at the Faculty of Psychology and Educational Sciences of Ghent University (2021).

### **Information with regard to privacy and personal data**

All data collected is anonymous from the start. This means that both the researchers and other individuals will not ask your identity, cannot deduce it from the data collected, and your answers cannot be linked to your identity.

### **Information with regard to participation**

#### **What does participating in this research entail?**

If you wish to participate in this study, the researcher will conduct a semi-structured interview with you. At the start of an interview, the research outlines the framework and design of the research and the consent form is completed at the back of this bundle. The interview consists of a number of open questions about your experiences regarding the implementation of the Victims' Rights Directive regarding people in an irregular residence situation. You are free to answer or not to answer each question, to add additional experiences, comments, etc., and to ask the researcher your questions about the study. During the interview, the researcher takes notes. If you agree, the interview will be recorded for the researcher ears only.

The interview will be pseudonymised and the information provided will be treated confidentially. In addition, the researchers use firewalls, which means that potentially rec-

ognisable data is not exchanged between service providers and law enforcement officials (Crépeau & Hastie, 2015; Delvino & Beilfuss, 2021; Geddie et al., 2014).

We estimate that an interview will take about an hour of your time. As the interviewee, you choose the date, time and place of the interview.

You can stop participating in the study at any time without giving a reason. Your decision will not affect the further relationship with the researchers, the research institution, the client City of Ghent and/or its project partners. Your participation and/or decision not to participate or to stop your participation also has no influence on the pseudonymisation offered to you, nor on your residence situation and support you may receive from third parties.

If you wish, you can receive a summary of the findings after the research has been completed and the research report is published.

### **What are the risks and benefits of participating in this research?**

There is no known residual risk associated with this study. Participation in it does not provide the interviewee with any physical, mental and/or material advantages or disadvantages.

### **Is there a compensation or reward provided for participation in this research?**

Your participation in this study will not be reimbursed or otherwise remunerated.

### **Reuse of data**

The research data collected may also be useful in answering future research questions. Therefore, there is a possibility that the pseudonymised research data will be reused at a later date for other research. This research data can be reused both within the own research team and by external researchers within and outside the European Union, e.g., via a dedicated research data sharing platform.

### **Consent regarding participation in the research**

<b>Please tick the appropriate box</b>	<b>Yes</b>	<b>No</b>
I voluntarily participate in this scientific study and give permission to the researchers to process, store, analyse and report on my data.		
I know that I may withdraw from the study at any time without giving a reason for this decision and without this in any way affecting my further relationship with the researcher, research institution, the client City of Ghent and/or the project partners .		
I understand that discontinuing my participation will not negatively affect the pseudonymisation offered to me, my residence situation and third-party support.		
I have received sufficient information about the nature, purpose, duration and expected effects of the study. I was given the opportunity to ask questions and I received a satisfactory answer to all my questions.		
I wish to receive a summary of the findings after the research has been completed and the research report is published.		

Name participant	Name researcher
<b>Not applicable</b> <b>(Interview number: )</b>	
Date:	Date:
Signature: <b>not applicable</b>	Signature

## **ANNEX 3: INTERVIEW GUIDE VICTIMS WITH A PRECARIOUS RESIDENCE**

## STATUS IN BELGIUM

**1. You participate in this interview through organisation X. Do you know X for a long time ...? (= initial question to learn about the interviewee's living situation and history in Belgium, and demographic data)**

**2. Have you yourself been a victim/witness of crime, e.g., theft, extortion, exploitation, violence, abuse...?**

2.1 If yes, which/ how often/ when?

2.2 If yes, per crime experienced: how do you perceive being the victim/witness in a situation without legal residence? Is this different in a situation with valid residence documents?

2.3 If yes, per crime experienced: have you told about this to ... (services, organisations, friends, ...)? Why (not)?

2.4 If yes, per crime experienced: were you able to turn to ... (services, organisations, friends, ...) for help/support? Why (not)?

2.5 If yes, per crime experienced: Has the crime(s) been reported to the police? Why (not)? How did you experience this?

**3. According to you, of which crimes are other irregular migrants you know (most often) victims/witnesses?**

**4. Do you know organisation(s), service(s) where victims and witnesses of crime with irregular status can go for help/ support?**

**5. What could help to report a crime as a victim or witness of crime with irregular status?**

**6. Have you already been in contact with the police? What is(are) your experience(s)?**

**7. In what circumstances/which crime(s) would you report to the police as a victim or witness with irregular status?**

## ANNEX 4: INTERVIEW GUIDE ENFORCEMENT INSTITUTIONS AND VICTIM SUPPORT ORGANISATIONS

**1. What is the purpose of your service/organisation?**

**2. With whom (target group(s)/ victims) do you have contact most often?**

**3. Can (representatives of) irregular migrants contact your service/organisation when they are a victim or witness of a crime?**

3.1 If yes, how often do you have contact with (representatives of) victims and witnesses of crime with irregular status (relative to total)?

3.2 If yes, How do victims and witnesses with irregular status find their way to your service/organisation?

3.3 If yes, which crimes are persons with irregular status (most often) victim or witness of?

3.4 If yes, what are your experiences in providing your services to victims and witnesses with irregular status: can you give some examples of cases that went well? What/why did it go well?

3.5 If yes, what are your experiences in providing your services to victims and witnesses with irregular status: can you give some examples of cases that did not go well? What/why did it not go well?

3.6 If yes, do you cooperate with other organisations/ services to support victims and witnesses of crime with irregular status?

3.7 If no, can you/ do you refer (representatives of) victims and witnesses of crime with irregular status to ...?

**4. Are there other services/organisations that irregular migrants can (also) turn to when they are victims of or witness of a crime?**

**5. Do you have legislative and/or other needs for your institution/organisation to improve safe reporting of crime by victims and witnesses with irregular status (which?)? Is safe reporting of crime by victims with irregular status important to you/ your institution/ organisation?**

**6. Do you see legislative and/or other possibilities to improve safe reporting by victims and witnesses of crime with irregular status, in general (which?)?**

## **ANNEX 5: INTERVIEW GUIDE ORGANISATIONS THAT (ALSO) ADVOCATE THE INTERESTS OF VICTIMS AND WITNESSES IN AN IRREGULAR RESIDENCE SITUATION**

**1. What is the purpose of your organisation?**

---

**2. Who is/are the target group(s) of your organisation?**

---

**3. Do migrants with irregular status tell you (frequency?) about them being a victim or witness of crime?**

---

**4. Can irregular migrants turn to your organisation when they are a victim or witness of crime?**

---

4.1 If yes, what are your experiences with and possibilities to support victims and/or witnesses of crime with irregular status?

---

4.2 If yes, of which crimes are migrants with irregular status (most often) a victim or witness?

---

4.3 If yes, what are your experiences with providing services to victims and witnesses of crime with irregular status: can you give some examples of cases that went well? What/why did it go well?

---

4.4 If yes, what are your experiences with providing services to victims and witnesses of crime with irregular status: can you give some examples of cases that did not go well? What/why did it not go well?

---

4.5 If yes, do you cooperate with other organisations/ services to support victims and witnesses of crime with irregular status?

---

4.6 If no, can you/ do you refer victims and witnesses of crime with irregular status to ...?

---

4.7 Are there other services/ organisations where irregular migrants can (also) turn to when they are a victim or witness of crime?

---

**5. Do you have legislative and/or other needs for your organisation to improve safe reporting of crime by victims and witnesses with irregular status (which?)? Is safe reporting of crime by victims with irregular status important to you/ your organisation?**

---

**6. Do you see legislative and/or other possibilities to improve safe reporting by victims and witnesses of crime with irregular status, in general (which?)?**

**ANNEX 6: CODE BOOK**

Code	Description
<b>Restrictive legislation irregular migrants</b>	
Arrest by police	The interviewee says that an irregular migrants is taken by the police to a police station and is temporarily detained there.
Detention	The interviewee says that an irregular migrant has been/is detained with the intention of forcing that person to return to the country of origin (execution of removal decision).
Order to Leave the Territory (OLT)	The interviewee refers to a document given to an irregular migrant whose residence status has been disclosed by a governmental service.
Illegal employment	The interviewee says that an irregular migrant in Belgium cannot legally work or be employed.
Identity control	The interviewee says that a person's identity documents are checked by the police.
Control work permit	The interviewee says that a person's work permit is checked by a labour inspector.
Administrative report for the IO	The interviewee says that the police transmit personal data to the IO.
Visitation of workplace	The interviewee says that a labour inspector checks compliance with labour legislation at the workplace.
<b>Rights of victim</b>	
Interpreting and translating	The interviewee talks about whether or not an interpreter and/or translation is present in the context of reporting a crime by an irregular migrant.
Firewall	The interviewee says that there is/ is no data sharing between immigration enforcement and other services (such as victim support, non-immigration law enforcement, social services, etc.).
Safe environment	The interviewee talks about the presence/absence of a physically and mentally safe space for reporting a crime by an irregular migrant.
compensation	The interviewee talks about the in/ability to receive financial compensation as an irregular migrant victim.
Tailored information	The interviewee says that an irregular migrant is/ is not offered relevant and understandable information.
<b>Discretion power/ room for interpretation</b>	
Discretion IO	The interviewee says that the Immigration Office decides on a case-by-case basis/per individual case to have an OLT and/or entry ban and/or detention order issued.
Discretion police	The interviewee says that a police officer decides individually (with or without knowledge of facts) whether/how to deal with the administrative offense "without legal residence" and consequently acts/ does not act in a certain way.
Discretion labour inspection	The interviewee says that a labour inspector decides individually whether/how to deal with the administrative offense "without legal residence" and consequently acts/ does not act in a certain way. (appreciation right).
Discretion Public Prosecutor	The interviewee says that a magistrate/ Crown prosecutor decides individually whether/how to deal with the administrative offense "without legal residence" and consequently acts/ does not act in a certain way.
<b>Reporting a crime as a victim or witness</b>	
Reporting a crime	The interviewee says that information about a crime is provided informally (verbally or by letter), without disclosing the identity of the reporter.
Filing a complaint regarding a crime	The interviewee says that a formal complaint about a crime is lodged with the police.
No Order to Leave the Territory (OLT)	The interviewee gives an example of a situation where no OLT was delivered or no OLT should be delivered to an irregular migrant victim.
Annex 15	The interviewee gives an example of a situation where an Annex 15 was delivered or an Annex 15 should be delivered to an irregular migrant victim.



Code	Description
<b>Victim care</b>	
Victim support	The interviewee talks about the services provided to a victim of crime by a Centre for General Welfare (CGW)/ Service d'Aide aux Victimes.
Victim Support Reception Service	The interviewee talks about the services provided to a victim of crime by a House of Justice.
Police Victim Treatment	The interviewee talks about the services provided to a crime victim by the police.
Specialised reception centres for victims of human trafficking	The interviewee talks about the services provided to a victim of human trafficking by Payoke/PAG-ASA/Sürüya.
Sexual Assault Centre	The interviewee talks about the services provided to a victim of human trafficking by a Sexual Assault Centre (SAC).
Barriers to accessing victim care	The interviewee gives an example of an obstacle in the provision of and/or access to victim care for a crime victim.
Advocacy	The interviewee gives an example of how the interests of irregular migrant victims are/should be represented.
<b>Reasons for (not) reporting a crime as an irregular migrant victim or witness of crime</b>	
Fear of being expelled	The interviewee indicates that an irregular migrant victim or witness does (not) report a crime because of fear of receiving a removal/ deportation decision.
Psychological pressure to be successful	The interviewee indicates that an irregular migrant victim or witness does (not) report a crime because of mental stress to be successful in the country in which they are located.
Shame in the case of failure	The interviewee indicates that an irregular migrant victim or witness does (not) report a crime because of embarrassment towards relatives/friend if one does not meet (certain) expectations.
Knowledge/ awareness of being a victim	The interviewee indicates that an irregular migrant victim or witness does (not) report a crime because of (lack of) certain knowledge and/ or (lack of) awareness that one is a victim of a crime.
Burden and bearing capacity	The interviewee indicates that an irregular migrant victim or witness does (not) report a crime because of the mental (in)ability to deal with the event(s).
Support and advice from third parties	The interviewee indicates that an irregular migrant victim or witness does (not) report a crime because of the assistance/help that one does (not) receive from others.
<b>Behaviour of an irregular migrant in order to not disclose their residence status</b>	
Avoiding public places	The interviewee describes a public place that an irregular migrant avoids so that the residence status would not be revealed by a governmental service.
Running away	The interviewee describes a situation where an irregular migrant runs away so that the residence status would not be revealed by a governmental service.
Trusting/ distrusting others	The interviewee describes a situation of (dis)trusting that someone else will (not) disclose the residence status of an irregular migrant.
<b>Being perpetrator and/or victim of crime</b>	
Unlawful residence	The interviewee describes a situation where one is guilty of the administrative offense "without legal residence".
Identity fraud	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of identity fraud.
Illegal employment	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of violating labour law.
Labour exploitation	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of labour exploitation.
Fraud	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of fraud.
Theft/ extortion	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of theft/ extortion.
Property damage	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of property damage.
Crime against bodily integrity	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of a crime against the bodily integrity.
Domestic violence	The interviewee describes a situation in which an irregular migrant is victim/perpetrator of domestic violence.

Code	Description
<b>Improvement proposals regarding enforcement actors</b>	
Educating/ (permanent) training of enforcement actors	The interviewee indicates that enforcement actor(s) (may) benefit from knowledge acquisition, skills acquisition, and/or attitude formation.
Providing information to enforcement actors	The interviewee indicates that enforcement actor(s) (may) benefit from receiving certain information.
<b>Improvement proposals regarding victim care and restoration actors/ Public Prosecutor</b>	
Educating/ (permanent) training of victim care/ restoration/PP actors	The interviewee indicates that victim care and/or restoration and/or PP actor(s) (may) benefit from knowledge acquisition, skills acquisition, and/or attitude formation.
Providing information to victim care/ restoration/ PP actors	The interviewee indicates that victim care and/or restoration and/or PP actor(s) (may) benefit from receiving certain information.

## ANNEX 7: POSSIBLE PARTNERS IN RELATION TO SPECIFIC CHALLENGES

Challenges: (1) Sensitising irregular migrants; (2) Removing barriers at victim care services for irregular migrants; (3) Improving legislation; (4) Safe access to the police when formally filing a complaint

Name organisation/ institution	Actor category	Partner				Website
		1	2	3	4	
Payoke	Victim care	X	X	X	X	<a href="https://www.payoke.be/en/">https://www.payoke.be/en/</a>
PAG-ASA	Victim care	X	X	X	X	<a href="https://pag-asa.be/nl/?lang=true">https://pag-asa.be/nl/?lang=true</a>
Sūrya	Victim care	X	X	X	X	<a href="https://asblsurya.org/fr/">https://asblsurya.org/fr/</a>
FAIRWORK BELGIUM	Victim care	X	X	X	X	<a href="https://www.fairworkbelgium.be/">https://www.fairworkbelgium.be/</a>
Centres for Victim Support	Victim care	X	X	X	X	<a href="https://www.caw.be/">https://www.caw.be/</a> <b>(Flemish Community and Brussels)</b>
Police Victim Treatment	Victim care	X	X	X	X	<a href="https://www.politie.be/5415/contact/diensten/slachtoffers-van-misdrijven-en-verkeersongevallen">https://www.politie.be/5415/contact/diensten/slachtoffers-van-misdrijven-en-verkeersongevallen</a> <b>(Police Victim Treatment Ghent)</b>
Victim Support Reception Services	Victim care	X	X	X	X	<a href="https://www.desocialekaart.be/fiches/498628/algemeen">https://www.desocialekaart.be/fiches/498628/algemeen</a> <b>(Victim Support Reception Service House of Justice Ghent)</b>
Sexual Assault Centres	Victim care	X	X	X	X	<a href="https://www.uzgent.be/patient/zoeken-arts-of-dienst/zorgcentrum-na-seksueel-geweld">https://www.uzgent.be/patient/zoeken-arts-of-dienst/zorgcentrum-na-seksueel-geweld</a> <b>(University Hospital Ghent)</b>
CIRÉ	Victim care	X	X	X	X	<a href="https://www.cire.be/">https://www.cire.be/</a>
Local police	Law enforcement	X		X	X	<a href="https://www.politie.be/5415/">https://www.politie.be/5415/</a> <b>(Local police Ghent)</b>
Federal police	Law enforcement	X		X	X	<a href="https://www.politie.be/5998/nl/contact/diensten/federale-gerechtigde-politie-oost-vlaanderen">https://www.politie.be/5998/nl/contact/diensten/federale-gerechtigde-politie-oost-vlaanderen</a> <b>(Federal judicial police East-Flanders)</b>
Supervision of the social laws	Law enforcement	X		X	X	<a href="https://werk.belgie.be/nl/over-de-fod/structuur-van-de-fod/arbeidsinspectie-ad-toezicht-op-de-sociale-wetten/regionale-6">https://werk.belgie.be/nl/over-de-fod/structuur-van-de-fod/arbeidsinspectie-ad-toezicht-op-de-sociale-wetten/regionale-6</a> <b>(Division East-Flanders)</b>

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