

**SAFE  
REPORTING**

for victims of crime  
with irregular  
migration status

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# COUNTRY REPORT ABOUT PIONEERING STRATEGIES ON SAFE REPORTING OF CRIME IN BARCELONA

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## VISA RoC

Victims with Irregular Migration Status' Safe Reporting of Crimes

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# CONTENTS

<b>1. RESEARCH DESIGN AND METHODOLOGY</b>	<b>3</b>
1.1 Purpose and objectives of the report	3
1.2 Methodology	3
1.3 Structure	5
<b>2. LEGAL FRAMEWORK ON IRREGULAR MIGRATION AND SAFE REPORTING OF CRIMES BY VICTIMS AND WITNESSES</b>	<b>6</b>
2.1 Context and state of play on safe reporting	6
2.2 Legal framework for safe reporting	8
2.3 Safe reporting and the distribution of powers between the different actors involved	9
2.4 Legal framework on safe reporting at the local level	11
<b>3. LEGAL OPTIONS FOR SAFE REPORTING</b>	<b>13</b>
3.1 The situation of safe reporting in Spain	13
3.2 Legal options and avenues that facilitate safe reporting	14
<b>4. ACTORS INVOLVED IN SAFE REPORTING IN BARCELONA</b>	<b>16</b>
Barcelona City Council	16
Regional police	17
Barcelona Local Police	17
NGO	17
Other actors	17
<b>5. SAFE REPORTING PRACTICES AT THE LOCAL OR NATIONAL LEVEL</b>	<b>18</b>
5.1 Reporting at Mossos d'Esquadra police stations and NGOs	18
5.2 Safe reporting through Barcelona City Council units	20
<b>6. IMPROVING SAFE REPORTING PRACTICES</b>	<b>22</b>
<b>7. REFERENCES</b>	<b>24</b>

# 1. RESEARCH DESIGN AND METHODOLOGY

## 1.1 PURPOSE AND OBJECTIVES OF THE REPORT

This report presents the results of the socio-legal study on safe reporting practices in the city of Barcelona. This report was conducted within the framework of the European project *Victims with Irregular Migration Status' Safe Reporting of Crimes (VISA RoC)*, funded by the Directorate-General for Justice of the European Union, and it is part of one of the deliverables of the work package 2 (WP2). The main objective of the VISA RoC project is to identify and promote safe environments for irregular migrants to report when they are victims or witnesses of crime.

The Report on the development of pioneering strategies for safe reporting takes as its starting point the research carried out by Professor Markus González in the project *Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in the USA and Europe (2018-2019)*<sup>1</sup>. The project, coordinated by the University of Oxford (COMPAS), focused on identifying national and local “firewall” measures to enable the safe reporting of victims or witnesses with irregular migration status in the Netherlands, Belgium, Italy and Spain. In the case of Spain, it was concluded that, although there was no tradition in the Spanish literature and the concept of safe reporting was practically unknown, there were some firewall practices that facilitated the possibility of filing a complaint without the subsequent opening of a removal procedure. Specifically, it was observed that the distribution of powers in security matters, within the context of the autonomous state structure, fostered a conducive environment for safe reporting in Catalonia.

The second document that serves as a basis for the development of this report (together with the interviews carried out) is the report entitled *Migration and Safe Reporting – European Experiences and Challenges for the Development of Safe Reporting Mechanisms for Victims of Crime in an Irregular Administrative Situation in Spain*<sup>2</sup>. This report describes the different breaches in the Spanish case that hinder safe reporting. Some of the obstacles described are deficiencies in the implementation of legal procedures; lack of information to crime victims about their rights; inadequate police attitudes; and the lack of protocols among law enforcement agencies that prioritize victim assistance and protection.

The study on the development of pioneering safe reporting strategies of the project *Victims with Irregular Migration Status' Safe Reporting of Crimes (VISA RoC)* has the following objectives: 1) to increase knowledge on safe reporting for migrants with an irregular status; 2) to build on the research carried out in 2019 to identify and evaluate existing safe reporting practices in the city of Barcelona developed by both City Council units and NGOs; 3) to identify the actors involved in safe reporting in the case of the city of Barcelona (local units, police, NGOs) and 4) to propose ways of improving existing practices through the anticipation of partnerships between the actors involved.

## 1.2 METHODOLOGY

For the identification of existing safe reporting practices in the city of Barcelona, three methods were used. The first one was the mapping of the actors involved; the second one was to conduct interviews and hold two workshops with migrants with an irregular migration status; and the third way was to conduct interviews with key institutional actors such as Barcelona City Council units, regional police, and NGOs. During the qualitative research, two cases of migrants who had been victimized by crime and who were being supported by an NGO were monitored.

<sup>1</sup> González Beilfuss, M. (2019) Safe reporting of crime for migrants with irregular status in Spain, COMPAS: Oxford. Available at <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Spain-country-report.pdf>

<sup>2</sup> Migration and safe reporting. European experiences and challenges for the development of safe reporting mechanisms for victims of crime in an irregular administrative situation in Spain (2022). Andalucía Acoge; Cepaim Foundation; Red Acoge. PICUM. Available at <https://www.cepaim.org/wp-content/uploads/2022/12/Informe-migracion-y-denuncia-segura.pdf>

In order to draw up the mapping, the first step was to identify the key actors in the area of safe reporting. To accomplish this, the organization structure of Barcelona City Council was examined to identify the units that provide information, advice, and/or legal assistance to those most at risk of becoming victims of crime. During this phase, a total of 8 units were identified, which are described in detail in section 4 of this report. Another key actor in safe reporting is the police and, in the case of the city of Barcelona, the Catalan regional police (*Mossos d'Esquadra*). It is this institution that receives, and processes reports filed with the police station. Lastly, an overview of NGOs offering information and legal advice related to immigration was undertaken.

Following the identification of key actors, a total of 12 interviews were conducted, of which 5 were with City Council units, 3 with the police, 3 with NGOs and 1 with trade unions: Office For Non-Discrimination (OND) (interview 1); Labour Defence Offices (PDL) (interview 2); Assistance, Recovery and Reception Service (SARA) (interview 3); ABITS Agency (SAS-Abits) (interview 4); LGTBI Centre (interview 5); Barcelona Cuida (interview 6); Regional Police of Catalonia (interview 7); Regional Police of Catalonia (interview 8); National Police (interview 9); Domestic Workers Union (interview 10); IRIDIA (interview 11); Caritas (interview 12); Migra Studium (interview 13); CCOO Union (interview 14).

To conduct the interviews, an interview guide was crafted in collaboration with the project's research team. This guide was later discussed and refined during a videoconference in November 2022 with project partners from Victims with Irregular Status: Safe Reporting Crime (VISA RoC) who are involved in WP2. For interviews involving the Barcelona City Council units and NGOs, the primary interviewees were those responsible for legal consultation and/or guidance in each respective unit<sup>3</sup>. In the case of Barcelona City Council, some interviews were conducted with the coordinator of the unit and others with professionals such as social educators or social workers. The interviews were semi-structured, and most of them were conducted in person (except for PDL, which were online). The interviews were structured around a guide, which was previously discussed with the VISA RoC project partners in WP2 during a videoconference in November 2022<sup>4</sup>. All interviews were recorded in compliance with the data protection standards delineated in the VISA RoC Project's Data Management Plan<sup>5</sup>. Additionally, two consultations were held with legal professionals: the first with an attorney specializing in gender-based violence (expert meeting 1) and the second with representatives from the national Labour Inspection Agency (expert meeting 2)<sup>6</sup>.

Interviews with migrants were conducted using two methodologies. Firstly, in-depth interviews were held with 20 migrants with an irregular migration status<sup>7</sup>. Secondly, two workshops on safe reporting were organized attended by persons in regular and irregular migration status<sup>8</sup>. These in-depth interviews were facilitated in collaboration with the NGO *Migra Studium*, partner of the VISA RoC project. The project's coordinator introduced the initiative to migrants attending free training courses provided by the organization. Afterward, *Migra Studium* selected the interviewees, emphasizing their place of origin and duration of stay in Spain. The interviews were structured around a guide, which was previously discussed with the VISA RoC project partners in WP2 during a videoconference in November 2022<sup>9</sup>. Although this guide shaped the interviews and ensured all topics were addressed, there was flexibility in the conversation, allowing for spontaneous comments or a shift in the order of the questions. All interviewees had an irregular migration status. Each interview was recorded in adherence to the data protection protocols stipulated in the VISA RoC's Data Management Plan<sup>10</sup>. Of all the interviewees, 14 were men and 6 were women. Regarding the duration of their stay in Spain, 8 of them had been in Spain for

<sup>3</sup> The interviews were conducted by Oriol Nebot i Nieto, research assistant of the VISA RoC Project. Nebot O, *Final assessment of the interviews with key actors about safe reporting in Barcelona*, VISA RoC, 2023.

<sup>4</sup> See annex 2

<sup>5</sup> Milestone for the Victims with Irregular Status' Safe Reporting Crime (VISA RoC) Project. Data Management Plan. January 2023.

<sup>6</sup> Those meeting were held by Natalia Caicedo, the coordinator of the VISA RoC Project.

<sup>7</sup> The interviews were conducted by Corina Tulbure, a researcher contracted by the VISA RoC Project to conduct the interviews. Tulbure, C., *Report of the interviews with migrants regarding Safe Reporting of Crime for Victims and Witnesses with Precarious Legal Status in Spain*, VISA RoC, 2023.

<sup>8</sup> The workshop was conducted by Natalia Caicedo, coordinator of the VISA RoC project, and it was also attended by the research team.

<sup>9</sup> See annex 1

<sup>10</sup> Milestone for the Victims with Irregular Status' Safe Reporting Crime (VISA RoC) Project. Data Management Plan. January 2023.

less than 2 years and 12 had been for more than 2 years. Notably, out of the 20 people interviewed, only three stated they had never been victims of any crime. This means that 17 out of the 20 had experienced criminal offenses, but merely two had taken the step to file a criminal complaint. The crimes of which they were victims are labour exploitation, scams linked to renting rooms, victims of racist insults and discriminatory treatment in access to transport or public services such gyms.

Two workshops on safe reporting were conducted in May in Barcelona. These were aimed at enhancing the data accumulated from the in-depth interviews and, especially, to spotlight the experiences of migrant women. In the first workshop, there were 20 participants, of which 18 were women and 2 were men. The second workshop saw the participation of 22 participants. The workshops were organized in collaboration with the NGO “*Europa sense Murs*”, which provides information and referral services to domestic workers. The participants had different migration status and most (but not all) were engaged in domestic work. A conducive and trust-filled environment was fostered during these sessions. This allowed participants to candidly share their experiences. In the workshops, participants discussed how they interacted with local authorities and the police, the crimes they had been victims of, and any deterrents that might have held them back from reporting these incidents.

### **1.3 STRUCTURE**

This report is divided into a total of six sessions, presenting the primary findings of the research conducted. The structure of the report was collaboratively decided upon with the partners of the VISA RoC Project involved in WP2 and WP3. The purpose of a unified structure for the report is to facilitate the comparative analysis of the 4 cities part of the VISA RoC project and derive shared conclusions.

Section 1 covered the research design and methodology.

Section 2 delves into the legal framework concerning irregular migration and safe reporting of crimes by victims and witnesses. This section places particular emphasis on the stipulations outlined in the migration law about the rights accorded to migrants with irregular status in Spain. Additionally, it outlines the regulations related to sanctioning procedures resulting from such irregular statuses.

Section 3 analyses the legal options for the safe reporting of crimes by victims and witnesses of crime with an irregular status. This section brings to the forefront the multi-tiered perspective of laws or rules that support secure reporting, especially for victims of human trafficking, gender-based violence, sexual assault, and labour exploitation.

Section 4 describes the key actors involved in the safe reporting of victims and witnesses of persons with an irregular migration status in the case of Barcelona. Specifically, it describes the actors from the Barcelona City Council services, the regional police forces responsible for collecting complaints, and NGOs.

Section 5 analyses local practices of safe reporting of crime by victims and witnesses with an irregular migration status. Beyond providing a description and analysis of these practices by the various stakeholders, this section also encompasses the challenges or factors that impede secure reporting in the examined contexts.

Section 6 suggests potential strategies to improve safe reporting of crime for victims and witnesses with irregular migration status. This section focuses on possible avenues for the implementation of partnerships in safe reporting of crimes.

## 2. LEGAL FRAMEWORK ON IRREGULAR MIGRATION AND SAFE REPORTING OF CRIMES BY VICTIMS AND WITNESSES

### 2.1 CONTEXT AND STATE OF PLAY ON SAFE REPORTING

The right to access to justice without discrimination of any kind is enshrined in the European Convention on Human Rights<sup>11</sup>, in the Charter of Fundamental Rights of the Union and in the Constitutions of European Countries. However, in practice, victims of crime often face barriers that hinder the restoration of their violated rights. In response to the difficulties faced by victims of crime, in 2012 the European Union issued Directive 2012/29/EU<sup>12</sup> on the protection of victims. This directive ensures that crime victims are furnished with appropriate information, support, and protection, and are empowered to participate in criminal procedures.

In the area of immigration, however, victims of crime face an additional obstacle. In 2008, the Special Rapporteur on the Human Rights of Migrants noted that state policies focused on security and criminalization of irregular immigration had the effect of preventing effective access to justice<sup>13</sup>. When the victim or witness of a crime is in an irregular migration status, bringing his or her situation to the attention of the authorities may result in a sanctioning procedure leading to an expulsion order. Directive 2012/29/EU on the protection of victims guarantees access to the courts and recognizes the rights of victims without discrimination (Art. 1) but does not provide for any protection mechanism against sanctions arising from administrative status. In fact, Directive 2012/29/EU itself states that reporting and participation in criminal proceedings does not give rise to any rights regarding the victim's residence status (recital 10).

The defenselessness of irregular migrants cannot be underestimated. The consequences of the obstacles to reporting a crime brought about by the controlling migration flows policy and expulsion procedures are various. On the one hand, a lower level of protection of migrants' rights, especially the access to justice and the restoration of violated rights. On the other hand, a high rate of under-reporting, which results in less knowledge of criminal situations on the part of the security forces. Failure to guarantee a safe space for the reporting of irregular migrants results in the loss of information for the effective prosecution of crime. This is particularly relevant if we consider that people with an irregular migration status are often victims of labour or sexual exploitation networks, fraud, among others<sup>14</sup>.

Given the difficulty of modifying the sanctioning procedures provided in the immigration legislation and European legislation (Return Directive), in the last decades options have arisen to facilitate or encourage safe reporting. As solutions, these options aim to protect migrants' rights and facilitate the work of police forces in pursuing criminals. For some cases, European or national regulations guarantee non-opening of sanctioning procedures and provide some kind of protection for the victims of crime. The other possibility is that a local or regional policy establishes some kind of practice that facilitates the filing of complaints in a safe environment. Usually, these practices involve a wide range of key actors (police, NGOs, administrations). Considering the existing safe reporting options, this report proposes a classification into three main categories.

<sup>11</sup> Kudła v. Poland, ECtHR, 2000, para. 157.

<sup>12</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

<sup>13</sup> United Nations General Assembly (UNGA), Report of the Special Rapporteur on the Human Rights of Migrants, 2018, UN Doc. A/73/178/Rev.1

<sup>14</sup> Tamaritt, S., et al (2011) The Victimisation of Migrants, in Electronic Journal of Criminal Science and Criminology, 2011, no. 13-11.

Firstly, there are the safe reporting practices initiated at the local or regional level whose success has produced a replication effect in other cities or regions. This is the case of the so-called sanctuary cities and the implementation of firewalls under the “*don't ask, don't tell and don't enforce*” policy in the context of different US cities<sup>15</sup>. According to the UN Special Rapporteur, “*Firewalls*” establish a strict and real separation between immigration enforcement and public services, meaning that immigration authorities cannot have access to information regarding the migration status of visitors to public services, and that the institutions responsible for providing such services are not required to investigate or share information on the migration status of their users<sup>16</sup>.

Another example of policy that facilitates safe reporting is the “*Free In Free Out*” practice implemented in different Dutch cities<sup>17</sup>. In these cases, there are public practices that are institutionalized and well known. For these cases, a special attention should be paid to their implementation in police stations that promote a safe reporting environment by ensuring that sanction will not be imposed based on the irregularity of the stay. It is important to note that one of the main characteristics of the local initiatives is their general scope, i.e., applicable to all types of victims, and the provision of a normative framework.

Secondly, there are the safe reporting practices promoted by the EU or national legislations. This case does not involve an institutionalized local or regional practice. It relates to legislative procedures promoted by European legislation, as in the case of victims of human trafficking with Directive 2004/81/EC<sup>18</sup> or the case of persons subjected to particularly abusive working conditions with Directive 2009/52/EC<sup>19</sup>. Together with the regulations coming from EU law, in the case of Spain it is pertinent to highlight the procedure that ensures safe reporting for women victims of gender-based violence introduced with Organic Law 2/2009<sup>20</sup> and, recently, safe reporting for women victims of sexual violence with Organic Law 10/2022<sup>21</sup>. As will be explained in section 3 on legal options for victims of crime and witnesses with an irregular migration status, legal provisions facilitate safe reporting by recognizing a set of rights, by non-opening of sanctioning procedures that could lead to an expulsion order, as well as the possibility, in certain cases and under certain circumstances, regularization maybe facilitated.

Thirdly, there is a set of practices which are not regulated by law and are not necessarily institutionalized. These practices promoted by institutional actors or NGOs at different territorial levels facilitate safe reporting through consolidated practices, as in the case of the Catalan regional police<sup>22</sup>. It would also include practices such as reporting through third sector organizations<sup>23</sup>. In fact, Directive 2004/81/EC provides for this possibility and exempts entities from liability. In this category, it could also include the local public services that assist in the filing of complaints. This is the case with some Barcelona City Council units, as will be explained throughout this report.

<sup>15</sup> Delvino, N. (2019) Safe reporting of crime for victims and witnesses with irregular migration status in the United States, COMPAS: Oxford. Available at <https://www.compas.ox.ac.uk/2019/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-united-states/>

<sup>16</sup> UNGA, supra note 1, para. 33: “Firewalls establish a strict and real separation between immigration enforcement and public services”. <https://emm.iom.int/handbooks/human-rights-migrants-overview/specific-rights-relevant-migration-context>

<sup>17</sup> Timmerman, R., Leerkes, A., & Staring, R. (2019) Safe reporting of crime for migrants with irregular status in the Netherlands, COMPAS: Oxford. Available at <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Netherlands-country-report.pdf>

<sup>18</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

<sup>19</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

<sup>20</sup> Organic Law 2/2009, of 11 December, on the reform of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration. BOE num. 299, 12 of December of 2009.

<sup>21</sup> Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom. BOE no. 215, of 07/09/2022

<sup>22</sup> González Beilfuss, M. (2019) Safe reporting of crime for migrants with irregular status in Spain, COMPAS: Oxford. Available at <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Spain-country-report.pdf>

<sup>23</sup> See, Van Den Durpel, A. (2019) Safe reporting of crime for migrants with irregular status in Belgium, COMPAS: Oxford; Taverri, S. B. (2019) Safe reporting of crime for victims and witnesses with irregular migration status in Italy, COMPAS: Oxford. Available at <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

## 2.2 LEGAL FRAMEWORK FOR SAFE REPORTING

In Spain legal regulation about safe reporting encompasses a wide range of provisions. On the one hand, Immigration Law<sup>24</sup> and its regulation<sup>25</sup>, set out the rights of persons with an irregular migration status and, at the same time, regulate the sanctioning procedure in cases of irregularity. On the other hand, there is a set of laws linked to the right to effective judicial protection and, in what is relevant for this report, the right to access to the courts. These include the Law on Free Legal Aid<sup>26</sup> and the Law on the Protection of Victims<sup>27</sup>, which transposes the European Directive on the protection of victims.

The legislation described above must be interpreted bearing in mind that Spain is a highly decentralized State. For this reason, distribution of powers between the State, the Autonomous Communities and the local authorities must be considered. At the local level, the Local Government Law<sup>28</sup> and, in the case of Barcelona, the Barcelona Municipal Charter<sup>29</sup> are relevant for the subject of this report.

The Immigration Law recognizes a set of rights for persons with an irregular migration status. Among these rights are freedom of assembly and demonstration, freedom of association, the right to join trade unions and to strike, the right to health care, the right to education for minors and the right to a minimum of social benefits. The entitlement of these rights has also been endorsed by the Constitutional Court<sup>30</sup>. Under labour regulations, people who work without the administrative permit are entitled to certain rights such as working hours, holidays, salary, and compensation<sup>31</sup>.

As mentioned previously, effective judicial protection is particularly relevant in safe reporting. In accordance with the Immigration Law, persons with an irregular migration status have the right to effective judicial protection and free legal aid. The Spanish Constitutional Court in 2003 and later in 2007 affirmed that access to free legal aid is instrumental and must be recognized regardless of the administrative status of the person<sup>32</sup>. The Law on Free Legal Aid establishes that legal assistance will be provided through the Bar Associations and requires that the person lacks the resources to litigate.

In many cases, migrants with an irregular status are in a vulnerable position. Due to this situation, the risks are increased and the means of preventing harm are reduced. As has been said, fear of a deportation order after filing a complaint is an obstacle to accessing justice<sup>33</sup>. But also, the lack of economic resources to initiate criminal proceedings is also an obstacle for people with limited resources, such as those with an irregular status. In this sense, free legal aid is necessary for safe reporting.

On the other hand, according to the Immigration Law, being in an irregular migration status leads to sanctioning procedure that can end, depending on the circumstances, with a fine or an expulsion (art. 53.1a. and art. 57 immigration Law). In the courts, there has been a debate over the provision in the immigration law that provides for two alternative sanctions (fine or expulsion). In 2015, the CJEU (Court of Justice of the European Union) ruled that the provision of a fine in the Spanish Immigration Law as a sanction for unlawful residence was

<sup>24</sup> Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration. BOE" no. 10, of 12/01/2000.

<sup>25</sup> Royal Decree 557/2011, of 20 April, approving the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following its reform by Organic Law 2/2009. BOE" no. 103, of 30/04/2011

<sup>26</sup> Law 1/1996, of 10 January, on free legal aid. BOE no. 11, of 12/01/1996.

<sup>27</sup> Law 4/2015, of 27 April, on the Statute of the Victims of Crime. BOE no. 101, of 28/04/2015

<sup>28</sup> Law 7/1985, of 2 April 1985, Regulating the Bases of the Local Regime. BOE num. 80, of 03/04/1985

<sup>29</sup> Law 22/1998, of 30 December 1998, on the Barcelona Municipal Charter.

<sup>30</sup> SSTC 236/2007 of 7 November 2007.

<sup>31</sup> Art. 33.3 of LO 4/2000, states that in an employment relationship the absence of a work permit does not invalidate the employment contract with respect to the rights of the foreign worker.

<sup>32</sup> STC 95/2003, of 22 May; SSTC 236/2007, of 7 November

<sup>33</sup> Preventing harm, promoting rights: achieving safety, protection and justice for people with insecure residence status in the EU. PICUM 2021; [https://picum.org/wp-content/uploads/2021/02/Preventing-harm-promoting-rights\\_EN.pdf](https://picum.org/wp-content/uploads/2021/02/Preventing-harm-promoting-rights_EN.pdf) Migration and safe reporting. European experiences ... op.cit.,, González Beilfuss, M. (2019) Safe reporting of crime ..op. cit...,



contrary to the EU Return Directive 2008/115/EC<sup>34</sup>. The consequence was that the immigration authorities should always impose the expulsion as a sanction for irregular stays and a fine could not be imposed.

However, in 2020, the CJEU changed its opinion<sup>35</sup> and accepted the fine as a sanction for irregularity when there are no aggravating circumstances. Specifically, the Luxembourg Court stated that “*where national legislation makes provision, in the event of a third-country national staying illegally in the territory of a Member State, for either a fine or removal, and the latter measure may be adopted only if there are aggravating circumstances concerning that national, additional to his or her illegal stay, the competent national authority may not rely directly on the provisions of that directive in order to adopt a return decision and to enforce that decision, even in the absence of such aggravating circumstances*”<sup>36</sup>. As a result, immigration authorities responsible for issuing sanctions will need to consider the specific circumstances of each case. Following an assessment based on the principle of proportionality, authorities should impose a fine or an expulsion. Furthermore, in 2022, a new ruling of the European Court of Justice acknowledged the possibility of initiating a procedure to regularize the stay during the voluntary period to leave Spanish territory (30 days). After these 30 days, execution of the expulsion order is required<sup>37</sup>. Recently, the Spanish Constitutional Court declared that since the Immigration legislation has not been reformed to remove the fine as a sanction for irregularity, the State cannot impose expulsion based on the Return Directive (direct inverse effect to the directive<sup>38</sup>).

In summary, currently the sanction for an irregular administrative status is a fine when there are no aggravating circumstances. If aggravating circumstances do exist, the sanction is an expulsion order. This scenario tends to favor safe reporting since the sanction for irregularity is not automatically an expulsion order. However, fine as a sanction has also considerable limitations. It is at the discretion of the immigration authorities to impose a fine or expel a person. There are no uniform criteria for what is considered an aggravating circumstance, so it is up to each Central Government Representation in each Autonomous Communities (Sub-delegation) to impose a fine in one case or expulsion in another. On the other hand, a fine per se also constitutes a dissuasive sanction for the reporting of crimes<sup>39</sup>.

## 2.3 SAFE REPORTING AND THE DISTRIBUTION OF POWERS BETWEEN THE DIFFERENT ACTORS INVOLVED

As mentioned above, safe reporting by persons with an irregular administrative status involves areas in the hands of the State, but competences from regional and local authorities are also relevant. Safe reporting encompasses matters such as immigration, criminal proceedings, security, the administration of justice and the provision of services and resources to groups in vulnerable conditions.

According to Article 149.1.2 of the Spanish Constitution, immigration is an exclusive competence of the State. Only the Spanish Parliament has the power to legislate on the rights of migrants, the regulation of residence permits and sanctioning procedures. The State's competence also includes handling all procedures, as only the central government has the authority to grant residence permits and issue sanctions for irregular stays and expulsion orders. Immigration procedures (residence permits and sanctions) are handled by the Immigration Offices and the Central Government Representation (Delegation or Sub-dele-

<sup>34</sup> CJEU Zaizoune of 23 April 2015. Available at <https://curia.europa.eu/juris/document/document.jsf?docid=163877&doclang=es>. This doctrine was ratified by the Supreme Court, STS of 12 June 2018, rec. 2958/2017.

<sup>35</sup> CJEU, Case C568/19, *MO v Subdelegación del Gobierno en Toledo*, of 8 October 2020. Available at <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX:62019CJ0568>

<sup>36</sup> The Supreme Court, STS of 17 March 2021, rec.2870/2020, unified the criteria applied as an aggravating circumstance to decree expulsion instead of a fine. And the Directorate General of Immigration, with Instruction 11/2020 of 23 October 2020, incorporated the criteria set by the Supreme Court.

<sup>37</sup> CJEU; Case C-409/20, *UB v Subdelegación del Gobierno en Pontevedra*, 3 March 2022. Available at [https://curia.europa.eu/juris/document/document\\_print.jsf?docid=254963&text=&dir=&doclang=ES&part=1&occ=first&mode=req&pageIndex=0&cid=1857025](https://curia.europa.eu/juris/document/document_print.jsf?docid=254963&text=&dir=&doclang=ES&part=1&occ=first&mode=req&pageIndex=0&cid=1857025)  
The Supreme Court ruling stated that in the legal system there was no expulsion procedure following non-compliance with the order to voluntarily leave Spanish territory, therefore, it could not be applied. STS of 21 February 2022, rec 8385/2019.

<sup>38</sup> Judgment, STC 47/2023, 10 May.

<sup>39</sup> According to the Immigration Law, the fine for irregular stay is between 501 to 10,000 euros (art. 55.1 Immigration Law)

gations). The Immigration Offices located in each provincial capital (a total of 40) are responsible for providing residence permits. Government sub-delegations are responsible for issuing administrative sanctions for irregular stays, including expulsion orders and, also, some specific types of residence permit. Regional and local authorities do not have competences related to the legal status of migrants, although in some cases they may issue some reports necessary for some immigration procedures (family reunification, regularizations (*arraigo*), and initial work permit)<sup>40</sup>.

After the detection of a person with an irregular status (generally because of raids), a procedure is initiated by the Sub-delegation of the Government that can lead to a fine or an expulsion order that will be executed by the Immigration Brigade. In accordance with the latest case law of the CJEU and the Spanish Constitutional Court the Sub-delegation of the Government should assess the principle of proportionality to determine whether the sanction imposed is a fine or an expulsion. It means considering aspects like the level of integration, the length of presence in the territory and the existing family ties. The sanction imposed can be appealed in administrative proceedings before the Government Delegation and subsequently in judicial proceedings.

The State also has competence over public security (art. 149.1.29 CE). Law 2/1986 describes the security forces' activity and functioning. The national police forces have two units. One is the National Police Force (*Cuerpo Nacional de Policía*), which is responsible for public security, criminal and judicial investigations, investigations related to terrorism, immigration, among others. The second is the Civil Guard (*Guardia Civil*), which oversees public security in rural areas and other matters such as gun control.

As far as migration control is concerned, the National Police Force is responsible for enforcing sanctions and expulsion procedures from irregular administrative status. Sanctions and expulsion orders are issued by the Sub-delegation of the Government. Migration control is carried out by a specific unit of the National Police called the General Commissariat for Immigration and Borders (*Comisaría General de Extranjería y Fronteras*). At the provincial level, the Provincial Immigration Brigades are responsible for controlling irregular immigration.

The Spanish Constitution provides for the existence of regional police forces as established in the Statutes of Autonomy. This holds for three Autonomous Communities: Catalonia (*Mossos d'Esquadra*), the Basque Country (*Ertzaintza*), and Navarre (*Policía Foral*), which have their own police forces. The three regional police forces in each territory serve as the primary police and are responsible for public security and criminal investigations as judicial police. Regarding Catalonia, which is the focal territory for the VISA RoC project, the Catalan/regional police (*Mossos d'Esquadra*) are responsible for collecting complaints, transferring them to the judicial bodies, and initiating investigations.

Besides the aforementioned police forces, there's also the local police, which is the responsibility of the municipalities<sup>41</sup>. The local police are mainly responsible for traffic control and administrative policing concerning compliance with local regulations. They also perform support functions for the regional (in the case of Catalonia, the Basque Country, and Navarre) or local police.

To sum up, the Sub-delegation of the Government, a State administrative body, issues sanctions and expulsion orders, while the control of migratory flows and the enforcement of expulsion orders is the responsibility of the National Police through the provincial Immigration Brigades. For its part, the regional police in Catalonia are responsible for collecting complaints filed for the commission of crimes and initiating the respective investigations.

As previously mentioned, regional and local authorities aren't competent in immigration control, as expulsion procedures (orders and enforcement) fall within the competence of the State. However, regarding safe reporting, these authorities play a crucial role in guaranteeing the rights of victims or witnesses of crime, namely: care for victims of crime, labour inspection, and public policies and services for women victims of gender-based violence.

<sup>40</sup> The immigration Law incorporates the concept of "arraigo". This is an administrative procedure through which, after some years of previous presence in Spanish territory, the person who is in an irregular situation, and after fulfilling certain requirements, can request the regularization of their stay (art. 123-124 RLODYLE).

<sup>41</sup> Art. 25.f). Law 7/1985, of 2 April, Regulating the Bases of the Local Regime.

In Spain, the Victim Support Offices were established by law in 2015, with an extensive territorial presence<sup>42</sup>. These Offices exist in all the Autonomous Communities, in almost all provincial capitals, and even in other small cities. The Offices are under the authority of the Ministry of Justice in those Regional Autonomous Communities that do not have competence in the field of justice administration. In territories that do have jurisdiction, these offices are managed by the regional government, such as the Generalitat in Catalonia.

Regarding labor issues, the State holds authority over labor inspection and is responsible for issuing the corresponding regulations, which include legislation, Royal Decrees, and ministerial orders. However, in Catalonia and in the Basque Country, the competence for the execution of labour inspection corresponds to these two territories. The Generalitat holds the executive authority over public inspection in the case of Catalonia<sup>43</sup>, which means that all the regulations on this matter correspond to the State, but the enforcement of these regulations is the competence of the Generalitat. At the regional level, it's necessary to emphasize that the Autonomous Communities are responsible for awareness-raising policies, and for providing related to gender-based violence services<sup>44</sup>.

## 2.4 LEGAL FRAMEWORK ON SAFE REPORTING AT THE LOCAL LEVEL

The city of Barcelona enjoys a special regime of legislatively guaranteed autonomy, granting the municipal government a broader scope for action. This system is enshrined in Law 22/1998 of the Barcelona Municipal Charter (CMB). Generally, the powers vested in city councils are exhaustively delineated in local government legislation. However, in the case of Barcelona, the special regime means that Barcelona City Council can promote all kinds of activities and provide all public services that affect the general interest of citizens, services not expressly designated to other public entities. In such instances, the City Council undertakes supplementary actions to those of these other public bodies<sup>45</sup>. Explicitly, the Barcelona Municipal Charter empowers the City Council with authority over social services (art. 107 CMB), promoting gender equality (art. 112 CMB), and overseeing public safety (art. 128 CMB). In Barcelona, the municipal police force (*Guardia Urbana*) besides the outlined competencies, shoulders the responsibility of instituting preventive measures and efforts to prevent criminal activities.

In terms of safe reporting, it is important to bear in mind that the Municipal Charter incorporates an active mandate for municipal authorities to ensure that there is no negative discriminatory conduct on the grounds of race, religion, color, descent, age, gender, sex, disability, or place of birth (art. 38). The mandate to safeguard against discrimination, combined with the entrusted powers anchored on delivering public services of general interest, legally empowers the City Council to shape and implement public policies. Moreover, it facilitates the creation of entities that underscore the non-discrimination principle. This expansive authority has enabled the establishment of services tailored for groups facing discrimination. Although these services don't have the express purpose of ensuring safe reporting, in practice, as analyzed in section 5, they might pave the way or foster a conducive environment for safe reporting for individuals in an irregular administrative situation.

Existing safe reporting practices in Barcelona have been significantly influenced by the welcoming policies introduced over the past 30 years<sup>46</sup>. Such policies have catalyzed the inflow and settlement of migrants across the city's neighborhoods. Linking reception to resource accessibility and territorial inclusion has framed immigration as an integral facet of the city's identity<sup>47</sup>. Within this setting, individuals with an irregular migration status are also incorporated into these inclusive policies. Concurrently, the 2017 government initiative, '*Barcelona Ciutat de Drets*' (Barcelona, City of Rights), underscores full citizenship as a priority. This measure targets migrants, recognizing that those with irregular status might

<sup>42</sup> Art. 27 et seq. Law 4/2015, of 27 April, on the Statute of the Victim of the Crime

<sup>43</sup> Art. 170.2 Organic Law 6/2006, of 19 July, on the reform of the Statute of Autonomy of Catalonia. "BOE" no. 172, of 20/07/2006

<sup>44</sup> Art. 153. c). Organic Law 6/2006, of 19 July, on the reform of the Statute of Autonomy of Catalonia. "BOE" no. 172, of 20/07/2006.

<sup>45</sup> Art. 58.3, Law 22/1998, of 30 December, of the Municipal Charter of Barcelona

<sup>46</sup> See section 5.

<sup>47</sup> Sanahuja i Velez, R (2007). *La política de acollida a Barcelona, Trenta anys d'experiències i aprenentatges*. Barcelona Societat. p.58-72

not have unfettered access to all the city's rights. As a result, diverse strategies have been deployed to champion the comprehensive rights of these migrants <sup>48</sup>.

At the municipal level it should be noted that, according to the Local Government Act, anyone living in a municipality has the right and duty to register with the municipality<sup>49</sup>. Registration is guaranteed for all persons regardless their migration status. In fact, the municipal register (“*padrón*”) is the gateway to rights for persons with an irregular status. Essential rights encompassing health, minors' education, and some social benefits are interlinked with this municipal registry. Additionally, aligning with the Immigration Law, regularization procedures demand, among other prerequisites, a minimum three-year residency. This period of presence in the territory is proven by registration in the municipal register.

In Barcelona's context, this municipal registry avails access to public amenities like libraries or civic hubs. Furthermore, as detailed in the report's 5 section, the *padron municipal* is pivotal in ensuring entry to specialized services, focusing on assistance, informational guidance, and counseling for individuals in an irregular migration status. To conclude, this municipal registry establishes the initial point of contact between the administration and persons with irregular administrative status. Thus, the registry can be leveraged to build public strategies that improve information and services available regarding safe reporting.

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<sup>48</sup> Mesura de Govern (2017). Programa Barcelona Ciutat de Drets Accions de prevenció i garantia de drets de ciutadania i accions per incloure l'enfocament de drets humans.

[https://ajuntament.barcelona.cat/dretsidiversitat/sites/default/files/MesuraGovernBCNDrets\\_CAT.pdf](https://ajuntament.barcelona.cat/dretsidiversitat/sites/default/files/MesuraGovernBCNDrets_CAT.pdf)

<sup>49</sup> Art. 15, Law 7/1985, of 2 April, Regulating the Bases of the Local Regime.

# 3. LEGAL OPTIONS FOR SAFE REPORTING

## 3.1 THE SITUATION OF SAFE REPORTING IN SPAIN

The Immigration Law does not ensure safe reporting. As previously explained, irregularity in residency status can trigger the initiation of a sanctioning immigration procedure. Besides specific exceptions which will be discussed below, there's no explicit legal provision guaranteeing that an expulsion procedure won't be initiated after filing a complaint. Nevertheless, the absence of legal guarantees for safe reporting doesn't imply an active policy of communication between different police units when they interact with someone in an irregular migration status. In Spain, there's no explicit duty to notify the National Police or the Immigration Brigade about someone in an irregular situation. Contrary to some other countries, Spain hasn't internalized migration control within local or regional police bodies<sup>50</sup>. Furthermore, there isn't an obligation to inquire about a foreigner's administrative status, an obligation which could even be constitutionally questionable<sup>51</sup>. While there's a foundational principle of collaboration between distinct police bodies, such collaboration mandates a legal stipulation or a bilateral agreement<sup>52</sup>. This reality does create a conducive atmosphere for safe reporting, albeit without legal guarantees.

However, this ostensibly favorable framework hasn't precluded instances where filing a complaint has set off an expulsion procedure. The Ombudsman has referred to the initiation of expulsion proceedings following a complaint as a "repeatedly observed administrative practice"<sup>53</sup>. Yet, determining its prevalence and frequency remains challenging<sup>54</sup>. In 2004, 2009, and 2019, the Ombudsman issued three recommendations to the General Directorate of Police and the Secretary of State for Security. These recommendations advised against sanctioning irregular foreign individuals who approached police stations to report crimes<sup>55</sup>. The Ministry of Interior, in response, affirmed the need to uphold the Immigration Law in such cases, leading potentially to the sanctioning process, which might culminate in an expulsion order. In 2023, replying to a parliamentary query from the Podemos parliamentary group about this matter, the Ministry of Interior once more confirmed that violations of the Immigration Law would warrant the necessary sanctioning actions. This stance doesn't contravene the non-discrimination principle inherent in the victim's status, since the penalty process doesn't invariably result in expulsion<sup>56</sup>.

On another note, determining the number of irregular migrants who abstain from reporting due to expulsion fears is quite challenging. National and regional police reporting statistics don't provide data concerning the immigration status of the complainants<sup>57</sup>. Only data indicating whether a complainant is national or foreign is available. Thus, discerning how many irregular migrants file complaints and their proportion relative to all complaints is tough. Gauging the percentage of irregular migrants who report is hard enough; identifying the number who don't is even harder. Current estimates only stem from NGO reports, particularly those discussing offenses linked to discrimination or hate crimes. As per the

<sup>50</sup> In this respect see, Van Den Durpel, A. (2019) Safe reporting of crime for migrants with irregular status in Belgium, COMPAS: Oxford.

<sup>51</sup> González Beilfuss, M. (2019) Safe reporting of crime for migrants, op.cit. p.10.

<sup>52</sup> Ídem.

<sup>53</sup> <https://www.publico.es/sociedad/gobierno-seguira-permitiendo-personas-papeles-puedan-multadas-expulsadas-denuncian-comisaria.html>

<sup>54</sup> The Report Migration and safe reporting. European experiences and challenges . . op. cit., incorporates a total of 4 cases.

<sup>55</sup> <https://www.defensordelpueblo.es/resoluciones/no-incoar-expediente-de-expulsion-a-persona-que-presenta-denuncia-como-presunta-victima-de-delito/>

<sup>56</sup> Secretary of State for Relations with Parliament and Constitutional Affairs. Government response (184) Written question Congress. Madrid: Government of Spain, 2023. Available at: [https://www.congreso.es/entradap/l14p/e26/e\\_0264556\\_n\\_000.pdf](https://www.congreso.es/entradap/l14p/e26/e_0264556_n_000.pdf)

<sup>57</sup> Statistics of complaints by the Mossos d'Esquadra. [https://mossos.gencat.cat/es/els\\_mossos\\_desquadra/indicadors\\_i\\_qualitat/estadistica/](https://mossos.gencat.cat/es/els_mossos_desquadra/indicadors_i_qualitat/estadistica/) National Police Complaints Statistics <https://estadisticasdecriminalidad.ses.mir.es/publico/portalestadistico/>

latest report from SOS Racisme Catalunya, merely 3 out of 10 racist aggressions get reported<sup>58</sup>. Interviews within the *Victims with irregular Status. Safe Reporting Crime* (VISA RoC) project framework, involving irregular migrants, disclosed that out of 20 interviewees, 17 had fallen victim to a crime. Out of these 17, just 4 lodged a complaint. The crimes ranged from labor exploitation, fraud related to room renting, racist slurs, to discriminatory behavior in accessing public transportation or venues like gyms<sup>59</sup>. These interviews further substantiated reports suggesting that longer stays in Spain tend to promote reporting.

## 3.2 LEGAL OPTIONS AND AVENUES THAT FACILITATE SAFE REPORTING

### Safe reporting through the Immigration Law

The Spanish Immigration Law provides for five specific paths that protect crime victims with an irregular migration status from expulsion. Since 2009, a safe reporting procedure has been introduced for victims of trafficking in human beings (art. 59bis) and for victims of gender-based violence (art. 31 Immigration Law). In 2022 this protection was extended to victims of sexual assaults. Two procedures for cooperation with the authorities are also foreseen: one for collaboration in the fight against organized crime, and another for cooperation with the police, as well as judicial and administrative authorities. The fifth procedure is related to humanitarian reasons.

Regarding the protection of victims of trafficking in human beings, it should be noted that the Immigration Law (Art. 39 bis) and the Regulation provide that once a victim of trafficking has been identified by the police authorities, he/she will be granted a reflection period. During this time, victims are protected against the sanctions outlined in the legislation, specifically against the expulsion procedure. The topic of trafficking victims is delved into more deeply in Work Package 3 of the project *Victims with Irregular Migration Status' Safe Reporting of Crimes* (VISA RoC) with a report on *Trafficking in human beings and safe reporting strategies in Barcelona*.

In the realm of safe reporting, the situation of victims of gender-based violence is particularly significant. The Immigration Law dictates that once a gender-based violence complaint has been made, any administrative sanctioning proceedings concerning their irregular stay cannot be initiated, or they will be suspended if already in motion. Furthermore, any prior expulsion order must be halted (art. 31bis 2). A woman victim of gender-based violence can apply for a provisional residence and work permit (including their minors under 18), under specific conditions<sup>60</sup>. This authorization, provided by the Spanish government, allows the victim and her children to live and work in Spain during the trial. If the final verdict validates the gender-based violence claim and convicts the offender, the temporary residence authorization becomes a residence for 5 years.

Recently, the Sexual Freedom Act<sup>61</sup> introduced changes to the immigration law, ensuring that women victims of sexual violence with an irregular migration status, when they file a report, are not faced with administrative sanctions. This reform equates the status of women victims of sexual offenses to those suffering from gender-based violence. Moreover, the Sexual Freedom Act introduces two scenarios where a residence and work permit will be provided (for gender-based violence and sexual violence) even without a formal conviction: either when the investigation is closed due to the suspect's unknown location or if the case is temporarily dismissed because the accused was expelled. For other cases lacking a conviction, some Immigration Offices opt not to initiate expulsion proceedings, leading to the expiry of the temporary residence permit, leaving the woman in an irregular status, yet without starting the expulsion process.

Another pathway for safe reporting involves collaboration with the justice system in battling criminal organizations (art. 59 of the Immigration Law). People who fall victim to

<sup>58</sup> Eurobarometer of Discrimination in the European Union. Hate Crime Survey Report 2021

<sup>59</sup> Tulbore, C., Report of the interviews with migrants regarding Safe Reporting of Crime for Victims and Witnesses with Precarious Legal Status in Spain, VISA RoC, 2023. See also, the NGO Valencia Acoge states that this is a frequent situation. <https://www.levante-emv.com/comunitat-valenciana/2019/10/03/inmigrante-irregular-denunciar-expulsado-13642132.html>

<sup>60</sup> The residence and work permit may be requested from the moment an expulsion order is issued in their favour, or when the Public Prosecutor's Office indicates the existence of signs of gender violence (art. 31bis.section 3).

<sup>61</sup> Organic Law 10/2022 of 6 September on the comprehensive guarantee of sexual freedom.

specific crimes<sup>62</sup> and come forward, revealing the criminals or their accomplices, and cooperate with the concerned authorities might be exempted from any consequences and not face expulsion. The primary intention here is to encourage reporting to bring criminals to justice, rather than ensuring the victims' protection<sup>63</sup>.

The fourth procedure involves authorizations to collaborate with the judiciary. This encompasses collaboration with the police and administrative officials concerning all other types of offenses, especially those not connected to criminal groups<sup>64</sup>. This can sometimes lead to a different kind of residence permit. Yet, in practice, collaborating with the justice system is scarcely used. This is mainly due to the lack of development in the procedure and the absence of legislation implementation. Moreover, the legislation does not expressly guarantee that the immigration sanctioning process will not be initiated or suspended (as it does for cases of gender-based violence, sexual violence, and trafficking in human beings).

Lastly, there's the provision for a temporary residence permit for humanitarian reasons. Here, victims of certain crimes are eligible for a specific type of residence. This includes victims of offenses against workers, crimes aggravated by discrimination, and violent acts within the family<sup>65</sup>. It should be noted that the residence permit only comes after the final judgment, implying that protection is granted at the process's conclusion. Further, the decision to grant these permits is frequently at the discretion of the authorities and any protection against expulsion is providing for reporting the crime<sup>66</sup>.

### **Other forms of safe reporting not linked to the immigration legislation**

Another potential route for secure reporting under Spanish law is through anonymous complaints. National, regional and local police forces provide free telephone lines, email services, web-based reporting systems, and message drop boxes for the public. Yet, as highlighted in the 2019 Safe Reporting Report, interviews with certain police units affirmed that these tools were actively employed, leading to the commencement of some police inquiries. However, these interviews also underscored the fact that anonymity does not always guarantee secure reporting. This is because the Spanish legal system requires the complainant's identification to initiate any legal action. Practices like seeking police intervention through intermediaries appear to be uncommon in Spain<sup>67</sup>.

Additionally, Spanish regulations allow for the filing of grievances via the labor inspectorate. This option, which is anchored in labor law, primarily addresses administrative violations associated with breaches of workers' rights<sup>68</sup>. Complaints to the labor inspectorate can be made personally or digitally. Anonymous reporting isn't permitted but, the system does ensure that the information remains confidential. In Spain, even individuals with irregular immigration statuses can lodge complaints with the labor inspectorate. Specifically, in Catalonia, if the individual reporting is in an irregular status, no punitive measures are taken against unauthorized labor work, and the National Police (Immigration Brigade) remain uninformed<sup>69</sup>. However, it's crucial to note that within the scope of Spanish regulations, labor-related violations are treated as administrative rather than criminal offenses.

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**62** Smuggling of human beings, illegal immigration, labour exploitation or illicit trafficking in labor or exploitation of prostitution

**63** Art. 135 of the Immigration Regulation.

**64** Art. 127.1 of the Immigration Regulation.

**65** Art. 31.3 of the Immigration Law and art. 62 to 69, 103 to 108, 123 to 130 of the Immigration Regulation.

**66** Preventing harm, promoting rights: achieving safety, protection and justice ...op.cit., p.25

**67** González Beilfuss, M. (2019) Safe reporting of crime for migrants ... op. cit.

**68** Law 23/2015, of 21 July, regulating the Labour and Social Security Inspection System. BOE no. 174, of 22 July 2015.

**69** Meeting with experts 2.

# 4. ACTORS INVOLVED IN SAFE REPORTING IN BARCELONA

## BARCELONA CITY COUNCIL

**Office for Non-Discrimination (OND):** A service by Barcelona City Council dedicated to addressing human rights violations related to non-discrimination. This office offers information, raises awareness, and provides assistance and guidance to human rights violation victims. Notably, when a violation equates to a crime, the office gives legal counsel for filing the appropriate discrimination complaint. In other instances, it seeks extrajudicial resolutions. In 2017, the city council created a table of 22 NGOs and entities to enhance services for discrimination victims.<sup>70</sup>

**Recovery, Care, and Reception Service (SARA services):** Managed by Barcelona City Council, this service caters specifically to victims of gender-based violence, including women, minors, adolescents, LGTBI individuals, and those in their immediate surroundings impacted by such violence. It offers legal support in filing claims. It also provides psychological care to women and LGTBI victims of gender-based violence.

**ABITS Agency (SAS-Abits):** An initiative by the City Council dedicated to assisting sexual workers or those subjected to sexual exploitation. The agency collaborates with organizations that work with these groups and informs sexual workers about available public services, and provides access to educational and employment resources.

**LGTBI Centre:** A comprehensive public facility delivering information, orientation, and direct assistance to the LGTBI community, collaborating with various entities and governmental bodies. The center also offers legal support and works alongside the Office for Non-Discrimination to address hate crime complaints.

**Legal Guidance and Mediation Service (SOJ-SOM):** A collaboration between the Barcelona City Council and Bar Association, this service provides preliminary legal advice on issues presented by citizens. Its primary aim is to inform about the feasibility of legal proceedings or alternative dispute resolution avenues.

**Points for the Defence of Labour Rights:** A service by the Barcelona City Council, offering in-person and telephonic legal consultation for those with labour-related inquiries. A team of specialized labour lawyers addresses these queries.

**Barcelona Care (Barcelona Cuida):** This initiative focuses on individuals working in caregiving roles. The center disseminates information on available resources, conducts awareness and training sessions for caregivers, and fosters networking opportunities among stakeholders. Additionally, it offers legal consultation in the labour domain for household workers.

**Service for Immigrants, Emigrants, and Refugees (SAIER):** Operating since 1989, this municipal service specializes in international mobility. SAIER provides information and guidance on matters like immigration, international protection, emigration, and voluntary repatriation for all Barcelona residents. Its array of services includes initial reception, social assistance, legal guidance on international protection and immigration, voluntary repatriation assistance, counsel for diploma recognition, language training, and psychological support.

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<sup>70</sup> Aviñoa, I (2022) L'Observatori de les discriminacions a Barcelona. Barcelona Ciutat de Drets, p. 131-140.



## REGIONAL POLICE

**Central Victim Assistance Unit:** Units of the regional police (*Mossos d'Esquadra*) that have specialized training to support and track victims of gender-based violence and other vulnerable individuals. Every police station has a victim assistance unit.

**Central Citizen Service Group.** Group responsible for collecting complaints. It is dependent upon the Central Victim Care. The Central Citizen Service Group operates through the Citizen Attention Offices, located within the Police Stations. They provide support with filling complaints and give support to victims.

**Hate Crime Unit:** A specialized division within the regional police that investigates hate crimes and discrimination.

## BARCELONA LOCAL POLICE

**The Community Police Unit:** A branch of Barcelona's local police (*Guardia Urbana*) focused on fostering relationships between residents and the police. This police body works to enhance harmony at the street or neighborhood level and offers insights into evolving issues and challenges.

## NGO

**Municipal Immigration Council:** An advisory and participatory organ of the Barcelona City Council, voluntarily comprised of immigrant and hosting entities, social stakeholders, municipal political groups, and observers. This council coordinates and deliberates on Barcelona's immigration policies.

**Migra Studium:** A foundation committed to issues of migration. It champions the dignity and rights of the most at-risk individuals and promotes an understanding of cultural and religious diversity. The foundation offers language training, vocational education, and legal advice to vulnerable migrant populations.

**Diocesan Caritas of Barcelona:** A third-sector organization that provides social care to vulnerable communities and individuals. In the context of immigration, Caritas offers legal counsel related to immigration.

**Information Centre for Foreign Workers (CITE):** Affiliated with the "Comisiones Obreras" Trade Union, this center offers legal advice on immigration, international protection, and the social and labor rights of migrants.

**FICAT:** An organization that offers legal guidance and accompaniment to those at risk of social exclusion. FICAT specializes in legal advice in both criminal law and immigration.

## OTHER ACTORS

**Victim Assistance Offices:** Offices under the Generalitat de Catalunya (Catalonia's regional government) and are tasked with offering crime victims the necessary information and support to exercise their legally recognized rights.

**Labour Inspection:** An organ of the Generalitat de Catalunya (Catalonia's regional government) responsible for ensuring that labor laws are adhered to. It conducts inspections in businesses or work environments and is authorized to levy administrative penalties.

# 5. SAFE REPORTING PRACTICES AT THE LOCAL OR NATIONAL LEVEL

## 5.1 REPORTING AT MOSSOS D'ESQUADRA POLICE STATIONS AND NGOS

In Catalonia, there exists a secure avenue for filing complaints. This system results from the interplay between different security forces and the distribution of competences in public security matters. It's essential to note that only the authorities responsible for migration control, the Immigration Brigade, have the authority to initiate sanctioning procedures for unlawful stay, which includes expulsion. On the other hand, regional and local police do not have competence in migration issues but are competent in processing and investigating a complaint. Specifically, in cases of complaints involving individuals with irregular migration status, the 2009 research on safe reporting revealed established guidelines between national and regional police forces that facilitate or foster a conducive environment for safe reporting. According to these guidelines, which are not publicly disclosed, regional police will notify the national police and the migration control body about an individual with irregular status in two scenarios: when the individual has been arrested for a crime, or when they are detained, and identification proves impossible. However, this latter circumstance is an exceptional measure, akin to detention<sup>71</sup>. For all other scenarios, current guidelines don't require notifying the national police about the irregular administrative migration status.

Within the scope of the "Victims with irregular Status. Safe Reporting Crime (VISA RoC)" project, interviews were conducted, which confirmed this consolidated practice and its adherence by law enforcement<sup>72</sup>. During these interviews, police units conveyed that they don't gather data regarding the migration status of victims. Yet, they do verify if any legal or police-related outstanding warrants, including matters of immigration and subsequent expulsion orders. If there's an existing warrant, the complaint is duly recorded, but the National Police (Immigration Brigade) are informed. In situations where no such warrant exists, the Immigration Brigade isn't notified. These interviews also underscored the absence of a differential procedure or pathway when the complainant possesses an irregular administrative status.

However, based on this described practice, it's challenging to ascertain the exact number of complaints lodged by individuals with irregular statuses, complicating the assessment of its real impact. The consolidated practice exists and is implemented, but it remains unclear if its results in increased complaints from the irregular migrant community. Fieldwork from the VISA RoC project indicates that the migrant population largely remains uninformed about these consolidated practices. The in-depth interviews with 22 irregular migrants revealed their unfamiliarity with the practice and a prevailing fear of approaching the police due to their irregular residency status<sup>73</sup>. Similarly, two workshops with migrant women reiterated this lack of awareness regarding this practice.

Conversely, interviews with NGO lawyers affirmed their awareness of the guidelines<sup>74</sup>. Yet, they reported never having seen or accessed it. The guidelines'non-public nature, combined with its lack of normative status, contributes to an environment of mistrust. The interviewed lawyers advise not approaching to the police to file a complaint when the victims have an irregular migration status. The predominant opinion is that this consolidated practice will not provide a valid legal basis for challenging an expulsion when it is initiated after filing a complaint at a police station. Several NGOs also highlighted instances where migrants faced discriminatory behaviors, inappropriate interrogations by officials, or even instances of institutional racism.

<sup>71</sup> González Beilfuss, M. (2019) Safe reporting of crime for migrants, op.cit. p.10. The Report includes a third scenario applicable to persons arriving by boat to the Spanish coasts or persons entering through unauthorised places. In these cases, they are detected by National Police or Civil Guard agents and the persons are detained and their presence is reported to the National Police responsible for migration control.

<sup>72</sup> Interview 7 and 8

<sup>73</sup> Tulbore, C. Report of the interviews with migrants regarding Safe Reporting of Crime for Victims and Witnesses with Precarious Legal Status in Spain, VISA RoC, 2023.

<sup>74</sup> Interview 12 and 13

One of the key elements for articulating safe reporting options is the fear migrants experience when considering approaching the police. From the conducted fieldwork, different perceptions of this fear emerge. Interviews with migrants in an irregular administrative status revealed a significant fear of reaching out to the police, particularly among those who had been victims of crimes. They refrained from reporting to the police due to a lack of proper documentation and the fear of deportation<sup>75</sup>. Migrants' distrust of the police is deeply rooted in their past experiences with law enforcement in their home countries, as well as incidents of racial profiling. Most of them have been singled out by the police in public transport or spaces based on their ethnicity. Alongside the fear of expulsion, the issue of irregular residency stands as a significant barrier to interacting with the police. In Spain, being in an irregular migration status migrant is not a criminal offense, but migrants often perceive it as such. Additionally, NGOs highlighted the complexity brought about by the presence of four distinct police bodies operating in Barcelona, and the risk of accidentally being handed over to units dealing primarily with migration control<sup>76</sup>.

In the workshop with migrant women, most of the participants shared their fears of approaching the police due to their lack of a residence permit<sup>77</sup>. This prevailing sentiment of fear among the migrant community was also corroborated by NGOs lawyers<sup>78</sup>. However, city officials, the police, and other institutional actors asserted that migrants choosing to report crimes were not primarily driven by the fear of expulsion orders<sup>79</sup>. Instead, their apprehension was more about potential repercussions from the accused, especially in situations involving gender-based violence, or the risk of the reported individual losing their residency status.

Given the prevailing mistrust towards the police among NGOs, these organizations tend to advise on drafting the complaint itself. Following this, the migrant can present the complaint in court, typically with the aid of a public defender. Legal teams from NGOs have confirmed that courts do not, under any circumstances, inform National Police (Immigration Brigade) about the presence of a person with an irregular migration status<sup>80</sup>. It's worth noting that while anyone, irrespective of their residency status, can request free legal assistance at courts. The primary focus of NGOs remains providing guidance on immigration law<sup>81</sup>. Only occasionally do they encounter cases of crime victims, as their legal advice doesn't revolve around complaint-specific legal matters. In conclusion, the filing of complaints in judicial instances is perceived as a safe place for the reporting by irregular migrants, while reporting in police stations is not. This distrust is not based on experience or knowledge of cases in which an expulsion order has been issued following the filing of a police complaint, but on the fact that this consolidated practice is not known by the migrant population, and that it is not a binding norm that could be subsequently invoked to stop an expulsion order.

NGOs directing complaints to the judiciary is perceived as an alternative, fear-free avenue ensuring minimized risks. However, the judicial system primarily addresses specific pleas linked to the specific case. Unless the process uncovers other offenses, it doesn't usually lead to broader police investigations into related or consequential crimes. During the fieldwork of this Report, one case highlighted a person with an irregular migration status subjected to workplace exploitation. An NGO advised that the complaint be placed through a court-appointed lawyer. However, there were other similar exploitation instances with the same employer. In such scenarios, while labor lawsuits address individual rights violations, they may not necessarily probe into broader offenses like exploitation of foreign workers as per Article 312.1 of the Penal Code. Furthermore, minor infractions, like frequent rental scams highlighted in interviews, do not warrant the provision of a public defender. For such

<sup>75</sup> Tulbore, C. Report of the interviews with migrants regarding ...op.cit.

<sup>76</sup> Interview 13

<sup>77</sup> Some of them intervened by stating that they had sometimes contacted the local police in cases of neighborhood conflicts (arguments in shared flats) and that the irregularity of the stay did not give rise to the opening of expulsion proceedings. They stated, "If you don't have papers, here you can calmly call the police and they won't expel you". Tulbore, C., Report of the interviews with migrants regarding Safe Reporting of Crime for Victims and Witnesses with Precarious Legal Status in Spain, VISA RoC, 2023

<sup>78</sup> Nebot, O., Final assessment of the interviews with key actors about safe reporting in Barcelona, VISA RoC, 2023.

<sup>79</sup> Aside from one unit of the City Council where fear was attributed to previous experiences in the country of origin, the rest stated migrants were not afraid of reporting crimes.

<sup>80</sup> Interview 13 and Interview 10.

<sup>81</sup> Regularization, family reunification, renewal of residence permits, expulsions, among others.

lesser offenses, the only recourse is either to approach the court but with one's own resources or file a complaint at the police station.

Directly filing a complaint in court, bypassing the police station, presents other challenges, one of which is ensuring the complaint's precise wording. At a police station, trained officers document the victim's account, resulting in complaints that accurately encapsulate the incident and the pertinent legal facets, sidelining extraneous details. However, when complaints are directly submitted in courts, they're often drafted by the victims, who might lack the specialized knowledge to highlight crucial trial-related facts<sup>82</sup>. Thus, taking the judicial route for lodging complaints is generally advisable only if preceded by legal counsel. Barcelona lacks a dedicated network of legal resources focused on assisting with complaint submissions. Instead, it's the legal teams offering immigration consultancy who sometimes step in to offer this support. As a result, the number of complaints submitted directly to courts by persons in irregular migration status is very limited.

## 5.2 SAFE REPORTING THROUGH BARCELONA CITY COUNCIL UNITS

Different units within the Barcelona City Council offer support in ensuring safe reporting through legal advice. In certain instances, this support is solely advice-based, while in others, it encompasses case follow-up. Some of these practices are defined by the Immigration Law like offenses involving victims of gender violence and human trafficking. While others stem from the public policies of Barcelona's City Council like cases of discrimination and hate crimes.

Barcelona City Council services are accessible to irregular status migrants. Engaging and providing counsel to someone with an irregular status does not imply that the City Council units will communicate with the National Police in any form. Interviews with both migrants and municipal units confirmed a trust-based environment when interacting with the different city council units. The initial contact point for an irregular status migrant with the City Council, which is the municipal registration, bolsters the trust in the institution.

For crimes connected to gender violence, human trafficking, or hate crimes, a specialized unit exists, dedicated to disseminating information, offering legal counsel, and ensuring support. For instances of gender violence and human trafficking, these are second-tier services, implying individuals are redirected from another City Council service. Concerning hate crimes, the Office operates both as first-tier and second-tier services. People who decide to file a complaint are redirected to the SOJ services, where a legal aid lawyer is appointed, and through whom the complaint is lodged. Since the Barcelona City Council isn't legally authorized to represent individual persons in criminal proceedings, the role of the City Council's legal services is to offer continuous support throughout the process and coordinate with other services. Recently, the Office for No Discrimination has advocated for participation in criminal processes via Article 4c of the Victims Law, allowing victims to be supported by another individual from the outset<sup>83</sup>. The provision of counselling and accompaniment is free of charge to all individuals, including migrants, regardless of their status.

Coordination with police stations and referral of cases is only an option when there is an established collaboration or protocol. For the SARA service, catering to women victims of gender violence, and the UTEH, attending to human trafficking victims, active coordination with the regional police, *Mossos d'Esquadra*, is in place, inclusive of referral processes for filing a report. All such referrals are preceded by joint protocols and are always directed towards specialized police stations. In instances involving the Office for Non-Discrimination, coordination is carried with the Prosecutor's Office and the public defender services. Only in some specific scenarios individuals have been accompanied to the police station to file a complaint.

For another spectrum of crimes, encompassing labor exploitation, sexual assaults, thefts, and renting room-related frauds, the City Council lacks a structured pathway to support reporting to the police or courts. It is difficult for units with limited resources and limit-

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<sup>82</sup> Meeting 1 with expert

<sup>83</sup> Interview 1.

ed operational capabilities, such as Barcelona Cuida, SAS Abits, or the LGTBI Centre<sup>84</sup>, to address situations involving irregular status migrants who have become victims of crime.

These units provide advice and support within their in their field of expertise (like employment counseling, health rights guidance, etc.), but do not engage in activities related to safe reporting. When faced with knowledge that person with an irregular status has been or is a victim of a crime, these units are devoid of the tools, resources, and coordinated pathways to offer an adequate response or monitor the case progression. Only in scenarios involving discrimination or offenses tied to sexual orientation or gender identity are subsequently redirected from the LGTBI Center to the Office against Discrimination.

In terms of coordination between the City Council's units and the various involved stakeholders, such as the Police, the Public Prosecutor's Office, and the Immigration Office, in some units there is active and fluid collaboration. For example, it is worth mentioning the good practices of the Office for Non-Discrimination in coordination with the Public Prosecutor's Office when it comes to complaints related to hate crimes. The protocol of the Office for Non-Discrimination is also significant as it provides all professionals with clear directives on whom to approach, offering referral sheets for both social entities and units within the City Council. Another key relevant good practice in ensuring safe reporting is the coordination between the SARA service for women victims of gender-based violence and the regional police (*Mossos d'Esquadra*). The SARA service maintains direct liaison with a specialized police station, facilitating easier case referrals. This mechanism greatly reassures victims when visiting the police station to lodge a complaint. A similar referral system is also in place with the SAS-Abits service that provides care for sex workers. They coordinate with the local police (*Guardia Urbana*) for handling assault complaints.

Regarding free legal assistance, it is essential to highlight the following. As described in earlier sections, Spanish law grants the right to free legal counsel even to persons in an irregular migration status. The standard procedure followed by NGOs, and also by certain City Council units which don't consistently liaise with the Mossos d'Esquadra or mistrust the protocol<sup>85</sup>, is to initiate complaints through court filings. In these cases, contact is made with the legal guidance and mediation service (SOJ-SOM) which, if necessary, refers the case to the Public Prosecutor's Office. In the interviews, both the legal teams of NGOs and the units from the Barcelona City Council have expressed concerns over the lack of expertise in legal aid services thought the Bar Associations regarding immigration matters. Specifically, they often lack a comprehensive understanding of immigration, especially concerning individuals in irregular migration status<sup>86</sup>. Interviews have also underscored the need to promote heightened sensitivity among public defense attorneys toward the vulnerable circumstances frequently faced by those in irregular statuses.

Another pivotal issue is the ability of various City Council units to effectively connect with person in irregular migration status. Even with an extensive service network available to support safe reporting like SARA services or Office for Non-discrimination, many migrants remain unaware of the different units or services. It is noteworthy that for some services, migrant engagement remains minimal<sup>87</sup>. However, a broader awareness about these services would also require a strengthening of the staff providing legal advice services.

Persons with irregular migration status usually approach to the city council units either via NGO referrals or through intermediaries. Those coming forward spontaneously are often individuals who are well-informed and empowered about their rights. Additionally, it's crucial to note that migrant interviews have revealed a general unfamiliarity with existing units or offices. The City Council, while perceived as a safe institution, is often associated primarily with administrative procedures. It isn't commonly viewed as a supportive entity aiding or collaborating in the defense of person in an irregular status victim of crime. Many expressed that, if victimized, they would lean on an NGO rather than approach the City Council. Person in an irregular migration status have a deep-rooted acceptance that they don't deserve legal aid. Interviews further uncovered various challenges for safe reporting, such as the digital gap or administrative hurdles in accessing resources.

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<sup>84</sup> With the exception of discrimination or offences linked to sexual orientation or gender identity which are referred to the Office For Non-Discrimination.

<sup>85</sup> For the protocol see section 5.1

<sup>86</sup> Nebot, O., Final assessment of the interviews with key actors...op.cit

<sup>87</sup> This is the case of the Office For Non-Discrimination.

## 6. IMPROVING SAFE REPORTING PRACTICES

The recommendations for enhancing the safe reporting mechanism in Barcelona, stemming from the research in the “*Migrants with Irregular Migration Status’ Safe Reporting of Crimes (VISA RoC)*” project, can be summarized along two primary lines of action.

Firstly, the emphasis is on establishing robust options that bolster the safe reporting at city police stations. While there is a consolidated practice in place to support safe reporting, it remains unknown to persons with irregular migration status. Moreover, apprehensions about approaching the police persist. Though NGOs know this consolidated practice, inherent distrust about its practical application are evident. Therefore, it is proposed to create a specialized pathway that reinforces trust among the stakeholders involved. The following steps of the VISA RoC project will focus on forging partnerships that instill enhanced confidence among the police, NGOs, and units within the Barcelona City Council, particularly the specialized service for migrant and refugee orientation, known as SAIER.

Opening a collaborative channel with the regional police (*Mossos d’Esquadra*) requires a specialized approach by the police stations, replicating existing practices in cases such as gender-based violence or human trafficking. Shared insights from interviews with migrants and units of the Barcelona City Council highlight that an official referral to the police station can alleviate the inherent fears among migrants with irregular migration status, thus promoting safe reporting. Building a strong alliance with the regional police (*Mossos d’Esquadra*) is imperative to offer migrants the assurance and confidence to file complaints.

Secondly, the focus pivots to the internalization of migrants within the City Council’s services, viewing them as integral citizens, while also accentuating the legal expertise of services tailored for individuals. To enhance the efficiency of safe reporting, it is proposed to strengthen those City Council units that currently have limited capacity to address cases in which migrants claim have been victims of crime. This reinforcement should span both internal and external facets.

Internally, this entails amplifying the synergy, awareness, and coordinated referral efforts among units like Barcelona Cuida, the LGBTBI Centre, and SAS-Abits. They need to work in tandem with the legal guidance and mediation services (SOM-SOJ) and the labor rights defense points. The SOM-SOJ unit is responsible for providing a preliminary legal evaluation of each case, subsequently guiding individuals either towards mediation or filing a complaint. It’s crucial for the SOM-SOJ services and labor rights defense points to be well-versed in safe reporting and maintain a communication channel with SAIER’s legal advice services.

Migrant interviews unveiled that while the Barcelona City Council is perceived as a reliable entity for administrative processes, it’s not necessarily viewed as a defender of rights for migrants with irregular migration status. Consequently, a pressing recommendation is to intensify the promotion of all services via the municipal register (*padron municipal*). Currently, while there are brochures detailing individual services, a comprehensive guide focusing on safe reporting for migrants with irregular statuses is lacking. Migrants expressed that an information pamphlet outlining various units would be beneficial, suggesting its distribution during municipal registration as the most effective way to reach migrants with an irregular status.

Another strategy worth considering in enhancing existing safe reporting practices involves liaising and coordinating with the labor inspectorate, especially concerning domestic workers. As detailed in this report, in the case of Catalonia, the labor inspectorate’s oversight is under the competence of the regional government (*Generalitat de Catalunya*). Its primary role is to oversee and ensure adherence to labor standards, encompassing the labor rights of migrants with an irregular status. Through the interviews conducted, a pervasive infringement of the rights of female domestic workers was identified, which is confirmed by

existing studies<sup>88</sup>. Currently, there are no pathways promoting or simplifying safe reporting in this area. Furthermore, for domestic workers who live in, a pronounced interconnection exists between their living conditions and their vulnerability to exploitation and abuse. Addressing this is imperative. Engaging with the labor inspectorate could particularly benefit cases associated with labor exploitation, notably evident in caregiving services.

Finally, the project *Migrats with Irregular Migration Status' Safe Reporting of Crimes (VISA RoC)* is also exploring a potential collaboration or link with the sexual violence services of the health system. The objective is to bridge the City Council units mentioned earlier with these health services, especially for incidents related to sexual violence crimes.

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<sup>88</sup> Parella, S (2021) La situació de les empleades domèstiques d'origen migrant en temps de la covid-19, Barcelona Societat, p. 41-57.

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# Victims with irregular migration status.

## Safe Reporting Crime (VISA RoC)

### Interview Guides for undocumented migrants

Key aspects	
<b>1. Migratory context</b>	<p>Information about his/her current situation from a legal point of view.</p> <p>Information about their social situation: housing, family, economic resources</p>
<b>2. Have you been victim of any kind of crime?</b>	<p>Affirmative case with police report: information about the crime, contacts and if he/she file a report</p> <p>Affirmative case without police report: reason why and if her/his decision would change with a support network</p> <p>Negative case: information about the perception about being protected (by the police, institutions and ONG) in case they are victims of crime.</p>
<b>3. Have you ever filed a report for a crime?</b>	<p><b>Yes:</b> Information about the experience, barriers, personal/economic/psychological support, interaction with the police and others public officer, and consequences regarding their migration status. If they will report again for futures cases</p>
<b>4. Elements that may influence filing a report</b>	<p>Information about the key factors that would make he/she feel confident enough to file a report: personal/economic/psychological support; consular support from the country of origin, translator</p> <p>Information about crime report in the country of origin</p>
<b>5. Perceptions about institutions</b>	<p>Information about institutions, organizations they trust (doctors, social services, NGOs, Police, consulates)? [even putting them on a scale]</p> <p>Information about offices, institutions or NGOs they would trust for a safe reporting of crime.</p>
<b>6. Final comments</b>	<p>Anything to add</p>
<b>7. Final data relative to the <i>background</i> (10 minutes)</b>	<p>Age, gender, years living in the country and city, alone or with family, dependent children or family in the country of origin, friends and networks in Barcelona, intention of staying in Spain or moving to another country.</p>



