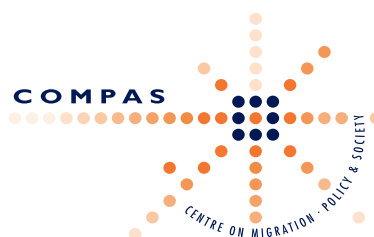


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Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Belgium

Anja Van den Durpel

September 2019





**SAFE REPORTING OF CRIME FOR VICTIMS AND WITNESSES
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Introduction

Although their number cannot be accurately estimated, the presence of migrants with irregular status in Europe is a fact.¹ This is not different in Belgium where, in 2007, it was estimated there were around 100,000 migrants with irregular status – 1% on top of the population.² Migrants with irregular status do not possess a valid residence permit granted by the federal government to justify their stay on the territory. This condition applies both to third-country nationals who entered Belgium to stay or transit through without a legal permission to do so, and also to persons who entered legally but lost their right of residence as a consequence of an expired visa, invalid working permit, or a rejected asylum application. Children who are born in Belgium and whose parents are both irregular migrants ‘inherit’ the irregular status.³ In Belgium, migrants with irregular status are often called ‘*sans-papiers*’ (French), ‘*mensen zonder papieren*’ (Dutch) or ‘*Menschen ohne Papiere*’ (German).

In Belgium, migrants with irregular status are granted access to basic services such as social-legal assistance.⁴ Moreover, although migrants with irregular status cannot obtain a work permit, they are entitled to the same labour rights as all Belgian residents.⁵ Migrants with irregular status often become victims of crimes, such as human trafficking or exploitation by employers and landlords. However, when they witness or become victims of crime, they often do not contact the police or other enforcement authorities.⁶ On the one hand, this is because migrants with irregular status are often afraid of the police and lack knowledge about the possibilities in the law to safely report a crime without risking deportation.⁷ On the other hand, victims with irregular status often fear retaliation by the perpetrator(s) or are afraid that they will lose their job or accommodation if they denounce the perpetrator(s).⁸ Much of this fear and lack of knowledge is not specific to migrants with irregular status, but affects all victims.

¹ Düvell, F., (2011). Paths into Irregularity: The Legal and Political Construction of Irregular Migration. *European Journal of Migration and Law*, 13(3), pp. 275–295; EMN, (2015). *Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities*:

http://www.emnbelgium.be/sites/default/files/publications/info_on_return_inform_final_20102015.pdf;

Carrera, S., Guild, E., (Eds.), (2016). *Irregular Migration, Trafficking and Smuggling of Human Beings: Policy Dilemmas in the EU*. CEPS, Brussels: <https://www.ceps.eu/system/files/Irregular%20Migration,%20Trafficking%20and%20SmugglingwithCovers.pdf>

² Schockaert, I., Morissens, A., Cincinnato, S., Nicaise, I., (2012). *Armoede tussen de plooiën: aanvullingen en correcties op EU-SILC voor verborgen groepen armen*. Leuven: HIVA-K.U. Leuven.

³ Federale Overheidsdienst Binnenlandse Zaken Algemene Directie Dienst Vreemdelingenzaken, (2017).

Verblijfsstatus van een kind dat in België geboren werd uit ouders die geen Belgen zijn:

<http://www.kinderenopdevlucht.be/files/Image/Communiqu-s-de-presse/2017-08-31-DVZ-Verblijfsstatus-van-een-kind-dat-in-Belgie-geboren-werd-uit-ouders-die-geen-Belgen-zijn-1.pdf>

⁴ Article 23, Belgian Constitution covers the right to a decent life (referring to internationally agreed Economic, Social and Cultural Rights).

⁵ Article 191, Belgian Constitution.

⁶ Devillé, A., (2008). *Schuilin in de Schaduw: Mensen Zonder Wettig Verblijf in de Belgische Samenleving*. Mechelen: Kluwer.

⁷ Van Der Auweraert, J., Genard, M., (2001). Huisvesting van vreemdelingen zonder wettig verblijf. *Samenleving & Politiek*, 8(5), pp. 24-34: <https://www.sampol.be/2001/05/huisvesting-van-vreemdelingen-zonder-wettig-verblijf>

⁸ Van Meeteren, M., van San, M., Engbersen, G., (2008). ‘Zonder Papieren’: over de positie van irreguliere migranten en de rol van het vreemdelingenbeleid in België. OASes. Leuven: Acco; Lafleur, J-M., Marfouk, A., (2017). *Migratie in België in 21 vragen en antwoorden*. Universitaire Pers Leuven: https://orbi.uliege.be/bitstream/2268/225608/1/Boek_21vragen.pdf

Research shows that the willingness to make a declaration is generally low, but increases as the possibility to do so anonymously is introduced more widely.⁹

Although responsibility for immigration legislation lies with the federal government, lower Belgian authorities are involved in the execution of such legislation. For instance, mayors are *inter alia* responsible for public order and safety in their municipality, and give substance to the implementation of immigration legislation within their competences and in accordance with their room to manoeuvre. This leads to widely divergent practices whereby several municipalities apply – like some cities and states in the USA – “sanctuary measures” to prevent cooperation with the Immigration Office (IO). Installing a “firewall” between the different tiers of government, for example, ensures that personal data from migrants with irregular status is not passed on to the IO. “Sanctuary measures” in relation to crime reporting in the USA are understood to comprise three aspects, namely: “don’t ask” policies, according to which local police officers should not investigate the migration status of people reporting a crime; “don’t tell” policies requiring local police officers not to communicate the immigration status of the reporter to immigration enforcement authorities; and “don’t enforce” policies, which discourage local police from cooperating in the enforcement of national legislation on immigration.¹⁰ This terminology is used in this report to describe measures adopted in Belgium in the area of crime reporting.

Structure of the report

This report describes the legal and policy framework governing reporting of crime by victims of crime with irregular migration status in Belgium. It contributes to a wider project of the University of Oxford's Centre on Migration, Policy and Society (COMPAS) analysing policy and law governing “safe reporting of crime” by victims with irregular migration status in Europe and the USA. The project explores law and policy in the United States and four European countries to assess the avenues irregular migrants have to report crime safely without risking deportation. It aims to assess the legal and political “replicability” of “firewall” practices across different countries, including the replicability in Europe of any aspects of US “sanctuary” policies. As well as the Belgian report, the project includes similar reports for Italy, the Netherlands, Spain, and the United States.

In the next section, the research design and methodology used for this report are described briefly. The third section zooms in on the competences and assignments of the Belgian entities involved in immigration law enforcement, to wit, the Immigration Office (IO), the (federal and local) police, and the Labour Inspectorate. This is followed by an overview of the avenues to safely report a crime in Belgium. After outlining the reporting of crime in general, the fourth section zooms in on reporting of crime regarding human trafficking and smuggling with aggravating circumstances, and the reporting of employment offenses and crimes. The fifth section describes the application of safe reporting at the Belgian municipal level.

⁹ Tolsma, J., (2011). Aangiftebereidheid: welke overwegingen spelen een rol bij de beslissing om wel of niet aangifte te doen. In Smets, L., De Kinder, J., Moor, L.G., (Eds.). *Proces-verbaal, aangifte en forensisch onderzoek*. Maklu, Antwerpen. In this Dutch study, 690 respondents indicated whether or not they would file a declaration regarding 210 fictitious scenarios.

¹⁰ Rodriguez, C., (2017). Enforcement, Integration, and the Future of Immigration Federalism. *Journal on Migration and Human Security*, 5(2), pp. 509-540: <https://journals.sagepub.com/doi/abs/10.1177/233150241700500215>; Kittrie, O.F., (2006). Federalism, Deportation, and Crime Victims Afraid to Call the Police. *Iowa Law Review*, 91, pp. 1449-1508: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=926766

Subsequently, the report discusses the division of powers between the federal and municipal authorities; the interpretation of the obligation to enforce immigration law by municipalities; cooperation between the municipal and federal tiers of government; and the transfer of the data of migrants with irregular status from the municipal to the federal level. The last section before the conclusion includes potential actions to improve safe reporting of crime in Belgium.

Methods

The Belgian case study is the result of desk research and expert interviews. The Belgian policy and legislation was scrutinised on the basis of primary sources, including legislation, case law and policy documents. In this regard the *Belgian Aliens Act*, the *Police Administration Act (PAA)* and the *Social Criminal Code (SCC)* are particularly relevant. As regards secondary sources, the annual reports of the IO and various reports from the federal Migration Centre, Myria,¹¹ were used extensively. In the framework of this report, eight interviews with 13 experts were carried out. In particular, semi-structured interviews were conducted with experts from the Labour Inspectorate, the police, the judiciary, policy-makers, and relevant NGOs. The interviews took place between January and February 2019 in different Belgian municipalities and in the three Belgian Regions. Given the political saliency and policy sensitivity of the research topic, the interviews are kept anonymous, in accordance with the Code of Ethics for scientific research in Belgium.¹² On average, the interviews lasted one and a half hours each. In addition, five experts contributed via written input regarding specific topics. The input of the interviews and written contributions were triangulated with a review of relevant literature.

¹¹ Myria is an autonomous, independent public institution with three complementary legal tasks: guarding the basic rights of foreign nationals; informing about the nature and extent of migratory flows; and stimulating the fight against human trafficking and smuggling.

¹² See www.kuleuven.be/english/research/integrity/practices/belspo-code

1. The Belgian legal framework on irregular migration and the entities involved in its enforcement

1.1 The Belgian legal framework on irregular migration

The Belgian Aliens Act – which forms the main legal basis of immigration policy in Belgium – was adopted in 1980. Since then, migrants with irregular status who received an entry ban or overstayed an Order to Leave the Territory (OLT) are punishable with a prison sentence of eight days to three months and/or a fine of 26 to 200 Belgian francs (about 0.5 to 5 euro). Upon repeated infringement, the penalty increases from one month to one year detention and/or a fine of 100 to 1,000 Belgian francs (about 2.5 to 25 euro).¹³ Through the introduction of Article 4bis, Aliens Act in 2007, “illegal entry and stay” as such became an administrative offense. On the basis of this Article, the State Secretary for Asylum and Migration added with the Circular Letter of 16 June 2016¹⁴ an administrative fine to the issuance of an OLT. The IO automatically added the fine of 200 euro when issuing an OLT, applying also to migrants with irregular status who had entered Belgium legally but stayed unlawfully, or whose unlawful border crossing could not be demonstrated.¹⁵ Only after several Courts of First Instance ruled that such an application is unlawful did the practice eventually stop in 2017.¹⁶

1.2 The Belgian Immigration Office (IO)

Competence over immigration policy lies solely with the federal government, Ministry of Home Affairs and State Secretary for Asylum and Migration. The IO is responsible for the policy enforcement. IO officials work either in the Brussels office or in one of the five closed detention centres: the “Caricole transit centre”, the “127bis Repatriation Centre”¹⁷ (both close to the Brussels international airport), the “Merksplas Centre for illegal immigrants” (Antwerp province), the “Bruges Centre for illegal immigrants” (West Flanders province), and the “Vottem Centre for illegal immigrants” (Liège province). In addition, one liaison officer is based in Antwerp and one in the Belgian coastal region.¹⁸ The IO is *inter alia* responsible for issuing visas and processing asylum applications, applications for humanitarian and medical authorisations to stay, providing support for unaccompanied foreign minors, and the management of foreigners on the country’s territory.¹⁹ The IO can verify migrants’ identity

¹³ Article 75, Aliens Act. In 2018, the fines have to be increased with a multiplication factor of eight.

¹⁴ Staatssecretaris voor Asiel en Migratie, (2016). *Omzendbrief inzake de toepassing van de administratieve geldboetes van 200 euro op basis van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen*: http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=16-07-14&numac=2016000415.

¹⁵ Vlaamse Vereniging van Steden en Gemeenten (VVSG), (2017). *Informatie gemeenten over administratieve geldboete vreemdelingen*: http://www.vvsg.be/sociaal_beleid_en_werk/Vreemdelingen/_layouts/15/WopiFrame.aspx?sourcedoc=/sociaal_beleid_en_werk/Vreemdelingen/Documents/2016%2008%2030%20Informatie%20gemeenten%20over%20administratieve%20geldboete%20vreemdelingen.docx&action=default&DefaultItemOpen=1.

¹⁶ Amongst others, Cases 16/6636/A (25/11/2016), 16/7774/A (03/02/2017), 16/8945/A (10/02/2017), 16/4813/A (20/02/2017), 16/3997/A (27/02/2017) of the Court of First Instance in Brussels.

¹⁷ Since 13 September 2018 this Centre is also used to detain irregular migrants transiting through Belgium, whereby permanent federal police surveillance is foreseen.

¹⁸ With the introduction of Sefor (system for the follow-up of OLTs) in 2011, four liaison officers were deployed: in Antwerp, Ghent, Liège and Charleroi. The latter three are no longer active in these cities.

¹⁹ Article 75, Aliens Act. In 2018, the fines have to be increased with a multiplication factor of eight.

documents and residence permit and decide on issuing an OLT, detention order and/or entry ban. These decisions are taken on a case-by-case basis according to the Aliens Act and internal instructions from the State Secretary for Asylum and Migration, which limit the IO's freedom of interpretation. In addition to the internal instructions, practical obstacles such as insufficient space in the detention centres or limited prospects of repatriating a migrant with irregular status within the statutory period also play a significant role in determining the IO's decisions.²⁰

An OLT, detention order and/or entry ban is delivered either via the local or federal police (in situations when a migrant with irregular status is detained²¹ while awaiting the outcome of investigations over her/his identity and residency right), or via the municipality in cases of migrants who applied for a residence permit at the municipality. However, an OLT is not a coercive instrument (contrary to a detainment order).

Every police report of a crime is passed on to the public prosecutor, who decides whether or not to investigate the crime further. When it concerns a victim of crime with irregular status, the public prosecutor often dismisses the OLT due to a lack of capacity to prosecute the "irregular entry and stay" or the overstay of the OLT.²² In such cases, the public prosecutor does not instruct the involved police to check whether the migrant with irregular status has left after the expiration of the OLT. Furthermore, the deadline of an OLT can differ according to the specific case. For example, if a migrant with irregular status needs medical care, the duration of the treatment is usually respected.²³ This way, the migrant with irregular status possesses a document that justifies his/her presence, which avoids detention following another identity check.

1.3 The Belgian police

Since the Law of 7 December 1998 on the organisation of an integrated police service (IPA), the Belgian police is structured on two levels. The federal Minister of Interior Affairs is responsible for the federal police, and mayors are in charge of the local police. Both the federal and local police carry out administrative and judicial tasks (Police Administration Act (PAA)). The administrative assignments are preventive in nature and concern the maintenance of public order and compliance with laws and regulations, the prevention of crime, and the protection of persons and property (Article 14, PAA). The judicial tasks are repressive and aim at detecting and determining crimes. These are investigative acts, such as gathering evidence (Article 15, PAA) under the authority of the public prosecutor (Article 7, PAA).

The federal police investigate (inter)national crimes and guard the Belgian borders, control the rail, shipping and aviation traffic, and enforce the laws during national and county events.²⁴ Mayors can ask the federal police to support the local police in its administrative

²⁰ Circular Letter of 23 November 2009; IO, interviewed by author, February 2019 (Interview no. 2); NGO, interviewed by author, January 2019 (Interview no; 5).

²¹ In accordance with Article 74/7, Aliens Act the police may enforce a period of administrative detention for a foreigner who does not carry the identity or residence documents required by law with her/him.

²² Public prosecutor, interviewed by author, January 2019 (Interview no. 3).

²³ IO, interviewed by author, February 2019 (Interview no. 2).

²⁴ Lemmens, L., (2014). *Nieuwe structuur federale politie vanaf 1 oktober*:

<https://polinfo.kluwer.be/newsview.aspx?contentdomains=POLINFO&id=VS300259862&lang=nl>

assignments. In this case, the federal police officers fall under the authority of the mayor(s).²⁵ However, there is no strict division between federal and local police assignments. For example, both the federal and local police may check the identity of someone who is suspected of committing a criminal or administrative offense.²⁶ In this way, the identity and residence status of someone who is caught, for example, breaching a municipal regulation²⁷ or traveling without a valid train ticket can be checked by both the federal and local police. When verifying a foreigner's identity and residence documents, both the federal and local police can request the assistance of the IO (Article 44/11/9, PAA) by completing an administrative report. This report must be filled in by the police with respect to the IO. It includes various sections relating to the identity, nationality, physical and psychological condition of the foreigner. The foreigner's fingerprints and available identity document(s) must also be added to the administrative report.²⁸ On the basis of the administrative report, the IO must take a decision within 12 hours, if an identity document is attached, or 24 hours if no identity document is available. If the IO identify that the foreigner is an unaccompanied minor, the police must fill in an "identification sheet" for the Guardianship Service of the Federal Public Service Justice. This service must then take a decision within the same 12 or 24 hours.²⁹ In the event of irregular stay, the federal or local police must carry out the decision of the IO or Guardianship Service.³⁰

If the police clearly indicate in the administrative report that the foreigner is a crime victim, the IO will not order detention. In an official response to Myria,³¹ the IO communicated in 2016 that it applies this internal instruction if the victim with irregular status is not a (co)perpetrator who is prosecuted by the judiciary, and if s/he does not constitute a threat to the public order and safety. This internal instruction allows crime victims to cooperate with the judicial investigation. Victims with irregular status then still receive an OLT, but the deadline of the OLT can be postponed to coincide with the completion of the judicial investigation, if the IO is informed of this by a public prosecutor.³² However, in its daily practice the IO often cannot deduce from the administrative report whether it concerns a crime victim, and thus victims might be sent mistakenly to a closed centre. A request to be released can be approved after the IO has ascertained the irregular migrant's situation.³³ The detainee therefore must inform an IO employee of the closed centre (return officer) about his/her victimhood, so that the IO can contact the relevant police to determine whether the

²⁵ Royal Decree of 23 August 2014 concerning the organisation and powers of the federal police, in execution of the Optimisation Act of 26 March 2014.

²⁶ Article 21, Law of 07/12/1998 and Article 17, Law of 21/03/2018 (in effect since 25/05/2018) in conjunction with Article 34, PAA.

²⁷ Municipal regulations differ from municipality to municipality, but mostly include fines for illegal dumping, vandalism and excessive noise.

²⁸ Circular Letter of 23 November 2009. The basis for this administrative report is Article 74/7, Aliens Act.

²⁹ Article 3, §2,2° Programme Law of 24 December 2002.

³⁰ Article 21, PAA and Article 74/7, Aliens Act; Circular Letter of 9 July 2001 of the Minister of Interior on the transfer of illegal aliens. Ministerie van Binnenlandse Zaken, (2001). *Overbrenging van illegalen*. — *Precisering*: <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2001/07/26/72038.pdf>

³¹ Myria, (2016). *Vreemdeling zijn in België in 2016*: https://www.myria.be/files/Vreemdeling_zijn_in_2016-final.pdf

³² IO, interviewed by author, February 2019 (Interview no. 2).

³³ IO, interviewed by author, February 2019 (Interview no. 2); NGO, interviewed by author, January 2019 (Interview no. 5).

information is correct. If so, and if the person is not prosecuted nor is a threat to public order and safety, the detention order will be withdrawn.³⁴

1.4 The Belgian Labour Inspectorate

The Labour Inspectorate lies within the federal government's authority and the Federal Public Service Employment, Labour and Social Dialogue. This Service contains *inter alia* 24 decentralised Directorates³⁵ that are responsible for preventing, inspecting and ascertaining infringements of Belgian employment law, such as social fraud and irregular employment.³⁶

Labour inspectors cannot impose criminal sanctions.³⁷ Their first assignment is to provide information and advice to employees, employers and professional associations by means of a daily telephone and visitor service. Secondly, labour inspectors can – based on their discretion³⁸ – impose a period within which the employer who violates a law must comply with the legislation, and/or labour inspectors can draw up a written report ("*pro justitia*") to be transferred to the Labour Auditor for possible criminal prosecution. This report must include the identity of the presumed offender(s) but not the identity of the complainant.³⁹ Finally, labour inspectors have a number of investigative powers (Articles 22-49 SCC) such as the right to access a workplace without prior permission⁴⁰ and visitation authority. The latter is often carried out in cooperation with the local or federal police and includes a visual inspection of workspace, identification and interrogation of persons, and retrieval of certain data. It is always the involved police service who check people's identities and, if there is doubt about the validity of a residence permit, contact the IO.⁴¹ An investigation can be based on received reports and complaints, research assignments from the judiciary, and labour inspectors' own initiatives in the context of the priority objectives, such as the fight against undeclared work.

³⁴ IO, interviewed by author, February 2019 (Interview no. 2); NGO, input via e-mail, February 2019 (Expert no. 1).

³⁵ 13 are located in the Flemish Region, nine in the Walloon Region (of which one for the German-speaking Community) and one in the Brussels-Capital Region.

³⁶ Law of 6 June 2010 to introduce the Social Criminal Code (SCC) and Act of 2 June 2010 on the provisions of Social Criminal Law.

³⁷ The SCC states that only the public prosecutor (here, the Labour Auditor) is allowed to assess criminal prosecution.

³⁸ This discretion is described as 'appreciation right' in Article 28b, §3 of the Code of Criminal Procedure (CCP).

³⁹ Articles 58-59, SCC. In this framework it is also relevant to consider Article 458, Criminal Code (CC), which penalises any violation of the professional secrecy with a prison sentence of eight days to six months and a fine of 100 to 500 euro (in 2018, to be increased with a multiplication factor of eight).

⁴⁰ Prior to entering occupied areas, approval is required from the resident or investigating judge (Article 23, SCC).

⁴¹ Labour inspector, interviewed by the author, January 2019 (Interview no. 1); Local police, interviewed by the author, January 2019 (Interview no. 7).

2. Safe reporting of crime by migrants with irregular status in Belgium

2.1. Reporting of crime in general

When a victim or witness of a crime wants to file a complaint, the local and federal police must draw up the declaration in a police report and must deliver it to the public prosecutor.⁴² The latter always requests the personal data of the complainant (Article 75, CCP).

As well as crime prosecution, the federal and local police are obliged to provide assistance to all victims (Article 40, PAA). However, these assignments can be at odds with each other when it comes to a victim or witness with irregular status. In this situation, the police must provide victim support and, at the same time, act against the administrative (in case of "illegal entry and stay") and/or criminal (in case of violation of Article 75, Aliens Act) offense. Although the federal and local police have a right to professional secrecy (Article 458, Criminal Code or CC), they also have the duty to report crimes to the public prosecutor (Article 29a1, CCP), and are obliged to follow the measures prescribed by law regarding migrants with irregular status (Article 21, PAA). This means that they have to write an administrative report for the IO regarding migrants with irregular status, and are then obliged to execute the IO's decisions. For example, when a victim (regardless of residence status) files a complaint against her/his slumlord, the possibility of shelter or accommodation can be offered.⁴³ But at the same time, the identity of a victim whom the police doubt has a valid residence permit must be checked with the IO. If the IO decides on detention, the police can neither continue to support the victim nor investigate the crime further.

An exception to this concerns victims of rape, attempted manslaughter, or physical injury within the family context, who obtained a temporary residence permit on the basis of a family tie.⁴⁴ In these cases, the IO cannot decide to deliver an OLT,⁴⁵ and thus victims have the right to keep their residency rights irrespective of their family relationship with the abuser. Regarding other forms of domestic violence, the IO must take the victimhood of migrants with a temporary residency into account when deciding on whether or not to issue an OLT (Article 11, §2,4, Aliens Act). These rules have been interpreted as responding to Belgium's obligations under the "Council of Europe Convention on preventing and combating violence against women and domestic violence" (known as "The Istanbul Convention"). Despite Belgium's ratification of the Istanbul Convention, however, victims of domestic violence with irregular status have few opportunities to obtain a residence permit. No special permits for these victims are foreseen in the legislation, only the possibility of interrupting expulsion proceedings against those who already had residency rights on the basis of family ties. Victims with irregular status are not covered by this provisions. Victims can sometimes request a residence permit for humanitarian reasons, but the law does not lay down any criteria for this

⁴² Circular Letter of 4 May 2007.

⁴³ Article 433quinquiesdecies, CCP. In addition, the shelter or accommodation is paid for by the perpetrator, or – if the accused was acquitted – the State or the competent Public Centre for Social Welfare (OCMW/CPAS).

⁴⁴ Articles 375, 398-400, 402, 403, 405, CC.

⁴⁵ Article 42quater, §4,4°, Aliens Act in conjunction with Judgment No. 17/2019, Constitutional Court. The Judgment states that imposing additional conditions (such as having sufficient means of subsistence and possessing a health insurance for dependents of EU-citizens) violates Articles 10-11, Belgian Constitution. Although this Judgment does not change Article 42quater, §4,4°, Aliens Act, it does imply that the IO must adjust its internal instructions.

and administrative practice shows that domestic violence is not always accepted.⁴⁶ If the domestic violence is interpreted by the public prosecutor as human trafficking (see Section 4.2), the victim may receive a residence permit if he or she cooperates in the criminal investigation against the perpetrator.⁴⁷

However, there are several legal provisions allowing “safe” reporting of crime that can be used by migrants with irregular status. Firstly, a crime can be reported anonymously by informing the local or federal police, public prosecutor or labour inspector about the crime, without revealing the identity of the person providing the information (this can also be done through an anonymous letter).⁴⁸ This information is called “soft information” from “a source” because no official statement is drawn up. Reporting anonymously can lead to an investigation, although further action is not guaranteed.⁴⁹ Article 28quater, CCP stipulates that the public prosecutor assesses the opportunity to prosecute, which is decided on the basis of the Guidelines of Criminal Law Policy⁵⁰ (Article 143quater, Judicial Code). Moreover, if the reported crime results in the case appearing in court, the judge may not grant legal proof of value to information obtained anonymously by the police.⁵¹ If the public prosecutor decides to dismiss the case, there is no legal obligation to inform the anonymous crime reporter(s).⁵²

Secondly, in accordance with the Belgian Constitution (Article 78), anyone can declare a crime anonymously through an anonymous statement. In this case, the police draw up an official statement report without mentioning the complainant’s identity. This police report is handed over to the public prosecutor, who decides on further prosecution or dismissal. Because the complainant's identity data must always be delivered to the public prosecutor (Article 75, CCP), this happens in a separate file. An anonymous statement can only be used as supporting evidence. This means that other proof is necessary and that the anonymous statement should not be the sole or dominant evidence.⁵³ Furthermore, no rights – such as compensation – can be claimed via an anonymous statement.

Thirdly, to lower the threshold, the Belgian legislator also provided the possibility for third parties who act on behalf of a victim to report a crime (Article 21bis, §1, CCP) and/or to

⁴⁶ Belgische Kamer van Volksvertegenwoordigers, (2016). *Hoorzittingen over de wettelijke bepalingen over de gezinshereniging en de misbruiken waartoe zij aanleiding geven. Verslag*:

<http://www.dekamer.be/FLWB/PDF/54/2013/54K2013001.pdf>; Human Rights Watch, (2012). *De wet was tegen mij. Toegang van migrantenvrouwen tot bescherming tegen huiselijk geweld in België*:

<https://www.hrw.org/sites/default/files/reports/belgium1112flemForUpload.pdf>

⁴⁷ State Secretary for Equal Opportunities, (2015). *National action plan to combat all forms of gender based violence 2015-2019*: https://igvm-iefh.belgium.be/sites/default/files/comprehensive_press_file_0.pdf; in conjunction with Article 11, §2.4°, Aliens Act.

⁴⁸ Article M2.,2.2, Common Directive MFO-3 of the Ministers of Justice and of Home Affairs concerning the information management of judicial and administrative police; Article 14, PAA.

⁴⁹ Explained in detail in R.W. 2006-2007, 829, Belgian Court of Cassation 23/11/2005.

⁵⁰ These Guidelines are Circular Letters from the Board of prosecutors-general and are binding on the prosecutors-general at the Courts of Appeal, the federal prosecutors, and all members of the public prosecution service: <https://www.om-mp.be/nl/meer-weten/omzendingbrieven>

⁵¹ Unless the procedure and the protective measures for anonymous witnesses are applied on the “source” (judgment of the Court of Cassation, 14 January 2009, P.2008.1350).

⁵² Wyseur, B., (2012). *De plaats en het belang van de aangifte in het strafrechtelijk onderzoek*. Universiteit Gent: https://lib.ugent.be/fulltxt/RUG01/001/892/199/RUG01-001892199_2012_0001_AC.pdf

⁵³ Court of Cassation 27 June 2000, Cassation Judgment 2000, 1204. In order to guarantee the right to a fair trial and fair defence, an accused person must be able to test every statement made against him/her for value and truth (Article 189bis, CCP).

become a party (“*partie civile*”) if the third party can claim to have been disadvantaged by the crime (Article 63, CCP). Organisations such as Myria, FAIRWORK Belgium,⁵⁴ and the recognised specialised guidance centres for victims of human trafficking and smuggling,⁵⁵ regularly use both possibilities. For example, Table 1 shows that the vast majority of complaints lodged against employers for undeclared work of third-country nationals is reported to labour inspectors by third parties.⁵⁶

Table 1: Complaints against employers for undeclared work by third-country nationals

	2014	2015	2016
Complaints lodged by a third-country national	4	1	5
Complaints lodged by a trade union	2	3	1
Complaints lodged by an employers association	10	1	0
Complaints lodged by FAIRWORK Belgium	17	32	16

Fourthly, victims and witnesses of crime can testify anonymously. While an anonymous statement only concerns the declaration of a crime, an anonymous testimony provides evidence.⁵⁷ Anyone who testifies should possess as much evidence as possible and know the identity of the perpetrator(s). An anonymous testimony cannot be used as sole evidence.⁵⁸ The Law of 08/04/2002 concerning the anonymity of witnesses introduced two forms of anonymous testimony in the Belgian CCP, namely partial and complete anonymous testimony.⁵⁹ In the former, the identity (and thus the residence status) of the witness remains anonymous, including in court (Article 155bis, CCP). In the latter, both the identity and the physical appearance of the person remain anonymous. In relation to both, one must personally request to testify anonymously. A partial anonymous testimony is possible when the investigating judge deems that there is a reasonable suspicion that the witness, or a person in her/his immediate vicinity, could experience serious disadvantage if the identity is known (Article 75bis, CCP). Before deciding whether or not to grant full anonymity, the investigating judge becomes aware of the full identity of the witness and investigates his/her reliability (Article 86bis, §3, CCP). A complete anonymous testimony is possible under two conditions. Firstly, based on information from the witness, the investigating judge must deem that it can be assumed that the witness’ safety – or the safety of a person in his/her immediate environment – is seriously threatened (Article 86bis, §1, CCP). Secondly, full anonymity can only be obtained if the investigation of the facts requires full anonymity and other means of investigation do not appear to be sufficient to discover the truth, and if it concerns a serious

⁵⁴ An NGO that supports employees with irregular status in exercising their labour rights, formerly OR.C.A.
⁵⁵ These are: Payoke (Antwerp), Sürya (Liege), Pag-Asa (Brussels). Because none are adapted to provide specific housing and guidance to minors, these services are offered by Esperanto (Walloon Community) or Minor-Ndako (Flemish Community). The legal and administrative support stays with the specialised guidance centre.
⁵⁶ Data published in: EMN, (2017). *Illegal employment of third-country nationals in the European Union – Synthesis report*. European Migration Network, Brussels: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_illegal_employment_synthesis_report_final_en_0.pdf
⁵⁷ Chamber of Indictment Ghent, 26 June 2003, RABG 2004, 358-364; Court of Cassation, 30 May 1995, Cassation Judgement 1996, 150.
⁵⁸ Court of Cassation 27 June 2000, Cassation Judgment 2000, 1204.
⁵⁹ Partial anonymous testimony is described in Articles 2-10, complete anonymous testimony in Articles 11-16, Law concerning the anonymity of witnesses.

violation of humanitarian law,⁶⁰ a crime committed within the framework of a criminal organisation,⁶¹ or an actual or attempted crime recorded in Article 90ter, §2-4, CCP (Article 86bis, §2, CCP). The latter concerns sexual harassment and rape; prostitution and public sex offenses; abduction of minors and vulnerable persons; trafficking in human beings; human smuggling; imprisonment of a person; theft or extortion through violence or threats; drug trafficking; and prohibited gun possession.

2.2. Reporting of crime regarding human trafficking and smuggling with aggravating circumstances

Human trafficking is defined in the Belgian Criminal Code (CC) as the recruiting, transporting, or sheltering of a person, or taking or transferring control over a person, with the aim of sexual exploitation or prostitution, economic exploitation by begging,⁶² or in other circumstances conflicting with human dignity; of physical exploitation by removing organs or other human bodily material; or when the person is forced to commit a crime against his/her will (Article 433quinquies, CC). Human smuggling with aggravating circumstances relates to smuggled third-country nationals who are minors, and smuggled third-country nationals against whom violence was committed or whose lives were endangered (Article 77quater, CC). In particular, there are six aggravating circumstances, deemed to have occurred when the crime is committed: 1) in relation to a minor; 2) by taking advantage of a vulnerable condition due to an unlawful or precarious administrative or social situation, age, pregnancy, disease or physical or mental deficiency of the person concerned, so that the person had no other genuine and acceptable choice than to be abused; 3) through direct or indirect use of ruses, violence, threats or any form of coercion, or through abduction, abuse of power or deception; 4) by offering or accepting payments or any benefits to obtain the consent of a person; 5) by endangering the person's life deliberately or through gross negligence; 6) by causing an incurable disease, or an inability to perform personal work for more than four months, or the loss of use of an organ, or a serious mutilation.

Belgium has a long and substantial reputation for action against human trafficking and smuggling. Since the early 1990s, the Belgian legislator *de facto* grants specific residence permits to victims of trafficking who cooperate with the relevant authorities. The federal government officially implemented its policy on combating human trafficking and smuggling in 1995.⁶³ Gradually, the judiciary introduced specialised reference magistrates and specialised units at the federal and local police to address human trafficking and smuggling.⁶⁴ Through Royal Decree of 16 May 2004, a federal interdepartmental coordination unit in the fight against human trafficking and smuggling of human beings was established, under the

⁶⁰ In accordance with the Law of 16 June 1993 on the punishment of serious violations of international humanitarian law. This Law contains, among others, the following crimes: slavery, rape, forced prostitution, serious damage to health (Article 136quater, CC), violation of the personal dignity (Article 136quater, CC).

⁶¹ Article 324bis, CC.

⁶² In accordance with Article 2.3, Directive 2011/36/EU; detailed in the Law of 10 August 2005 to strengthen the fight against human trafficking and smuggling and against practices of slumlords.

⁶³ Law of 13 April 1995 on provisions to combat trafficking in human beings and child pornography only included trafficking in human beings for the purposes of sexual exploitation. Human trafficking by economic exploitation, exploitation of begging, removing organs and committing a crime was only introduced in 2005 with Article 433quinquies, CC.

⁶⁴ Spapens, T., Kolthoff, E., Stol, W., (2016). Georganiseerde misdaad in de 21^{ste} eeuw. *Tijdschrift voor Criminologie*, 58(2), pp.3-18.

direction of the Minister of Justice.⁶⁵ With the Minister of Internal Affairs' Circular Letter of 4 May 2007 concerning the treatment of victims by the federal and local police,⁶⁶ specific attention was paid to (minor) victims of abuse and sexual violence. Belgium transposed the Victims Directive 2012/29/EU via no fewer than 34 measures at the federal, Regional and Community levels. Among these measures are Regional welfare and health decrees, and Community measures on language assistance and assistance to minors.

In general, the Belgian policy on human trafficking and smuggling aims to assist victims and punish (co-)perpetrators. This vision is also expressed in the National Security Plan, in which the fight against human trafficking and smuggling is one of the ten priorities.⁶⁷ Furthermore, the federal government has a National Action Plan "Fight against trafficking in human beings 2015-2019" and an "Action Plan to combat human smuggling 2015-2018". In the execution of these Plans, Regional consultation bodies regularly bring together the Labour and Social Security Inspectorates, Labour Auditors, Public Prosecutors Offices and the federal police services.

Victims of human trafficking or smuggling with aggravating circumstances are offered a specific form of protection via the "victim procedure" and "victim status". The current victim procedure was introduced in 2006,⁶⁸ in transposition of Directive 2004/81/EC, through which minors also qualified for victim status. This procedure refers to the conditions under which a victim with irregular status can receive a temporary residence permit from the start of the criminal investigation up to and including the trial before court. "Victim status", which leads to permanent residency rights, is granted by the presiding judge to a victim with irregular status who meets the conditions.

The way in which victims of human trafficking and smuggling with aggravating circumstances should be detected and treated, and the victim procedure, are further detailed in Circular Letter of 23 December 2016 on the introduction of multidisciplinary cooperation with regard to victims of trafficking and/or certain heavier forms of smuggling of human beings.⁶⁹ Persons who are (presumably) victims of human trafficking or smuggling with aggravating circumstances can enter into the victim procedure if they: break all contacts with the suspected perpetrator(s), accept the support offered by a recognised specialised guidance

⁶⁵ Bouckaert, S., (2007). *Documentloze vreemdelingen. Grondrechtenbescherming doorheen de Belgische en internationale rechtspraak vanaf 1985*. Maklu, Antwerpen.

⁶⁶ Ministerie van Binnenlandse Zaken, (2007). *Omzendbrief GPI 58 betreffende politionele slachtofferbejegening in de geïntegreerde politie, gestructureerd op twee niveaus*:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007050443&table_name=wet

⁶⁷ Federale Overheidsdienst Justitie, (2016). *Samen, naar de kern van de zaak*:

<https://www.politie.be/5998/sites/default/files/downloads/NVP2016-2019.pdf>

⁶⁸ Law of 15 September 2006 amending the Aliens Act, Articles 61/2-61/5.

⁶⁹ Federale Overheidsdienst Justitie, (2016). *Omzendbrief inzake de invoering van een multidisciplinaire samenwerking met betrekking tot de slachtoffers van mensenhandel en/of van bepaalde zwaardere vormen van mensensmokkel*:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2016122380.

This Circular Letter is signed by the Federal Ministers of Justice, Foreign Affairs, Work and Economy, Interior Affairs, Social Affairs and Health, Finance; by the State Secretaries of Asylum and Migration, and of Fight against Social Fraud; and by the College of Prosecutors-General.

centre,⁷⁰ and cooperate with the judicial authorities.⁷¹ In addition to having to inform the (presumable) victim and bring him/her into contact with one of the specialised guidance centres, the relevant police must also report the (presumable) foreign victim, regardless of residence status, to the IO (Bureau MINTEH).⁷² If the (presumable) victim is staying irregularly, the specialised guidance centre can request a special residence permit for victims⁷³ (“*Bijlage 15*”⁷⁴ – Annex 15, valid for 45 days) from the IO, allowing the (presumable) victim to have a “reflection period”. This period is the first phase of the victim procedure, and serves to let the victim recover and think about whether or not to make a statement against the suspected perpetrator(s), to prepare for voluntary return, or another alternative (Article 61/2, Aliens Act). As soon as the (presumable) victim made a statement against the suspected perpetrator(s), the second phase starts. The (presumable) victim then automatically receives a legal residence permit, called “Attestation of Immatriculation”, which is valid for three months. This Attestation can be renewed once at the request of the specialised guidance centre, if the extension is deemed necessary – based on the elements of the investigation file – by the public prosecutor (Article 61/3, Aliens Act). Thereafter, in the third phase that runs as long as the procedure is on-going, the (presumable) victim who still meets the conditions receives a provisional “victim status”. This means that the (presumable) victim receives a temporary residence permit valid for six months. The provisional status is granted by the public prosecutor on the advice of the involved partners, to wit: the recognised specialist guidance centre, the IO, and the police and/or inspection service (Article 61/4, Aliens Act). Before the expiry date of this residence permit, the IO consults the public prosecutor, who extends the temporary legal stay for a further six months if the (presumable) victim still meets the conditions. When the trafficker or smuggler is convicted, or when the public prosecutor has withheld the indictment in her/his claim, the victim receives a residence permit of indefinite duration.⁷⁵ For example, in 2017, 74 persons received an indefinite leave to remain, of whom 50 were victims of human trafficking and 24 were victims of human smuggling with aggravating circumstances.⁷⁶

The “*Delocation-case*”, a case of human smuggling with aggravating circumstance, is a clear example of how the victim procedure and the anonymous statement procedure were implemented in practice, as well as of cooperation between the various actors in the field. The case started with an anonymous statement from a third party at the specialised “Trafficking” unit of the local police of Schaerbeek. After evidence on the mobile phone of one of the victims was handed over, the police service contacted the reference magistrate, who allowed the initiation of the victim procedure. Later, the victims succeeded in pointing out the smugglers through Facebook. As a result of the evidence and the identification of the perpetrators, a

⁷⁰ This support includes residential care (if required), psychosocial and medical assistance, administrative and legal assistance, and assistance from an interpreter (Article M4.4, Circular Letter of 23 December 2016).

⁷¹ This cooperation must be interpreted broadly, and can include providing information as well as making a complaint (Article M1.1.4, Circular Letter of 23 December 2016).

⁷² Article M3, Circular Letter of 23 December 2016.

⁷³ Article M4-M5, Circular Letter of 23 December 2016.

⁷⁴ Law of 30 May 2017 amending Article 61/2, Aliens Act to replace the OLT by a temporary residence permit. Through this new document, a (presumed) victim of human trafficking or smuggling with aggravating circumstances can obtain (financial) support from the Public Centre for Social Welfare.

⁷⁵ Article M5, Circular Letter of 23 December 2016, based on Article 61/5 Aliens Act.

⁷⁶ Data published in: DVZ, (2018). *Statistisch jaarverslag 2017*:

<https://dofi.ibz.be/sites/dvzoe/NL/Documents/Statistisch%20jaarverslag%202017%20NL.pdf>

large international smuggling network was shut down, while the victims remained out of the public eye.⁷⁷

Not only the local and federal police, but also labour inspectors can be confronted with cases of human trafficking, as Table 2 shows. The Labour Inspectorate in the province of Walloon Brabant, for example, assesses every severe work accident involving a migrant with irregular status as a potential case of human trafficking.⁷⁸ When labour inspectors suspect human trafficking, they usually involve the federal police.⁷⁹ In addition, labour inspectors can request the Court of First Instance to stop work activities when there is a suspicion of human trafficking.⁸⁰

Table 2: Figures of human trafficking and smuggling in 2017⁸¹

	Human smuggling with and without aggravating circumstances	Human trafficking
Total number of reports in 2017	467	368
- Reported by police	463	329
- Reported by labour inspectors	4	39
Number of cases handed over to public prosecutor	467 ⁸²	328 ⁸³
Number of dismissed cases by public prosecutor (counted on 8 January 2018)	188	81
- Dismissed because perpetrator(s) remained unknown	73	19
- Dismissed for reasons of expediency (which often means lack of investigative capacity)	71	12
- Dismissed because of insufficient evidence	39	32
- Dismissed because of other, technical, reasons	5	18
Number of persons who entered the victim procedure ⁸⁴	19	121

According to Myria, the low number of individuals who enter the victim procedure is mainly due to the fact that victims who transit through Belgium unlawfully with the aim of reaching another country (mostly the United Kingdom), are often unwilling to file a complaint against

⁷⁷ Case described in: Myria (2018). *Annual Report trafficking and smuggling of human beings 2017*: Online: <https://www.myria.be/files/EN-RATEH-2017-DEF.pdf>

⁷⁸ NGO, interviewed by the author, January 2019 (Interview no. 4).

⁷⁹ Labour inspector, interviewed by the author, January 2019 (Interview no. 1); NGO, interviewed by the author, January 2019 (Interview no. 4).

⁸⁰ Article 9, Law of 13 April 1995 containing provisions to combat trafficking in human beings and child pornography.

⁸¹ Data published in: Myria, (2018). *Annual report Trafficking and smuggling of human beings 2017*: Online: <https://www.myria.be/files/EN-RATEH-2017-DEF.pdf>

⁸² 75% of the infringements were registered in the Flemish Region, about 19% in the Brussels-Capital Region and about 5% in the Walloon Region.

⁸³ About 54% of these cases concerned sexual exploitation, 40% economic exploitation (of which 5% by begging), and 5% forced crime.

⁸⁴ Of which five minor victims of human trafficking and four minor victims of human smuggling.

their smugglers. They believe in migration myths, feel threatened by and/or dependent on the smugglers, and/or interpret an OLT not as deterrence but rather as a signal quickly to undertake a new smuggling attempt.⁸⁵ Besides, Myria also sees a number of explanatory factors amongst other actors in the field, such as police officers' lack of knowledge and limited opportunities to offer victims an appropriate first reception and suitable victim support. For example, when smuggling activity is intercepted by police, victims and perpetrators are often arrested together and treated in the same way because it is unclear who belongs to which category.⁸⁶

2.3. Reporting of crime regarding employment

Reporting an employment law offense is possible through different access points, such as via the web application of the federal Reporting Centre for Fair Competition or via phone or e-mail to the federal Contact Centre. Although the reporter's identity is legally protected at all times (Articles 58-59 SCC), no anonymous report can be made at these centres.⁸⁷ Reporting anonymously is only possible via the labour inspectors who work in the 24 decentralised Directorates, through an anonymous letter or via a face-to-face conversation in which the reporter specifies that s/he wishes to remain anonymous. Then, an internal control report is drawn up and the labour inspector visits the workplace if s/he has sufficient data. In this regard, labour inspectors usually ask the anonymous reporter to be present when visiting the workplace.⁸⁸ The federal Public Service Employment, Labour and Social Dialogue states that "[t]he first concern of the inspectors when they identify infringements (...) is to correct the unlawful situation. Consequently, they prefer to use the extensive discretion they have".⁸⁹ Yet migrants with irregular status are not inclined to respond to the request to be present during a visitation. This is due mostly to the actual risk of receiving an OLT – possibly in conjunction with detainment and/or an entry ban. They might also fear getting a fine for working in an undeclared capacity (Article 183/1, SCC).⁹⁰ However, according to figures from the Labour Inspectorate no third-country worker employed unlawfully was fined in 2014 and 2015, and only one person was fined in 2016 out of 836 workers who were caught working informally.⁹¹ In this context the specialised guidance centre Pag-asa, Myria and FAIRWORK Belgium agreed with the Labour Inspectorate in a written statement⁹² that employees who file a complaint

⁸⁵ Myria, (2013). *Trafficking and smuggling of human beings: The money that matters*: <https://www.myria.be/files/Trafficking-report-2011.pdf>; Myria, (2017). *Annual Report trafficking and smuggling of human beings: Beggars in the hands of traffickers*: <https://www.myria.be/files/EN-RATEH-2016-DEF.pdf>

⁸⁶ *Ibid.*

⁸⁷ Persons must give their name and aliens or national register number, companies must provide their enterprise number. In case of online communication an e-mail address is also requested.

⁸⁸ Labour inspector, interviewed by the author, January 2019 (Interview no. 1).

⁸⁹ Website consulted on 7, 15 and 28 December 2018:

<http://www.werk.belgie.be/defaultTab.aspx?id=38244#AutoAncher2>

⁹⁰ Undeclared work became punishable through Article 32, Act of 29 February 2016 with a sanction of level 1, which is an administrative fine of ten to 100 euro (in 2018, to be increased with a multiplication factor of eight).

⁹¹ EMN, (2017). *Illegal employment of third-country nationals in the European Union – Synthesis report*.

European Migration Network, Brussels: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_illegal_employment_synthesis_report_final_en_0.pdf

⁹² In accordance with the professional secrecy of the labour inspectors, the details of the employee submitting a complaint are not passed on to the Administrative Fines Department. When an infringement is found during an inspection at the workplace, the labour inspectors apply their discretion and only make a written report ("*pro justitia*") against undeclared workers who are not (potential) victims of human trafficking and/or exploitation. The Administrative Fines Department decides whether or not to impose an administrative fine on

and/or who are a (potential) victim of trafficking and/or exploitation should not be fined.⁹³ If the employee does not meet these criteria, the fine is applied but always accompanied with information about labour rights and organisations that support undeclared migrant workers and victims of human trafficking and smuggling.⁹⁴ This agreement was possible because labour inspectors have extensive discretion (Article 28b, §3, CCP) and are bound by professional secrecy (Articles 58-59, SCC in conjunction with Article 458, CC).

Making an anonymous statement with the Labour Inspectorate is not possible, because the Inspectorate's assignment is to enforce employment legislation, which includes the application of all employees' rights. Employees cannot refuse their employment rights before the labour inspector. For example, if an employer does not comply with the statutory wage scale s/he must pay the owed wages and social security contributions into the postal check account of the Deposit and Consignment Office.⁹⁵ In this regard some labour inspectors assume that the undeclared worker has been employed in the ascertained conditions for three months.⁹⁶ When, normally after a number of months, the amount due is paid by the employer into the account, the money is transferred to the employee(s) by the Labour Inspectorate. However, since migrants with irregular status cannot easily open a bank account and often receive an OLT – possibly together with an entry ban and detention order – during a visitation to the workplace, they never receive the outstanding wages.⁹⁷ To overcome these obstacles, the Labour Inspectorate has implemented a Cooperation Agreement with FAIRWORK Belgium through which outstanding wages can be transferred from the Deposit and Consignment Office via FAIRWORK Belgium to workers with irregular status.⁹⁸

Finally, in accordance with Article 6, Employers Directive 2009/52/EC (stating that all workers enjoy the same labour rights), Article 8 of the Law of 11 February 2013 allows Myria and any other organisation identified by the King to act as an intermediary to transfer evidence from exploited workers with irregular status to the Labour Inspectorate. However, the Royal Decree that implements this law has not (yet) been signed by the federal Minister of Labour.

the basis of the written report of the labour inspector: Organisatie voor Clandestiene Arbeidsmigranten (OR.C.A), (2017). *Jaarverslag 2016*, pp.50: <http://orcasite.be/userfiles/file/ORC%20jaarverslag%202016%20NL-SITE.pdf>

⁹³ The term “exploitation” is nowhere defined, and its interpretation is thus left to the discretion of the individual labour inspector (NGO, interviewed by author, January 2019 (Interview no. 4).

⁹⁴ Organisatie voor Clandestiene Arbeidsmigranten (OR.C.A), (2016). *Zwartwerk strafbaar voor de werknemer. Wat is de impact voor werknemers zonder wettig verblijf?*:

<http://www.orcasite.be/userfiles/file/20160602%20Zwartwerk%20strafbaar%20voor%20de%20werknemer%20Wat%20is%20de%20impact%20voor%20de%20werknemer%20zonder%20wettig%20verblijf.pdf>

⁹⁵ Article 5, §4/1, Law on the protection of the wages of employees.

⁹⁶ Then, it is up to the employer to prove that this is not the case (Law of 11 February 2013 establishing sanctions and measures for employers of illegally staying third-country nationals).

⁹⁷ Myria, (2016). *Vreemdeling zijn in België in 2016*: https://www.myria.be/files/Vreemdeling_zijn_in_2016-final.pdf

⁹⁸ FOD Werkgelegenheid, Arbeid en Sociaal overleg, (2017). *Algemene Directie Toezicht op de Sociale Wetten: activiteitenverslag 2015*: <http://www.werk.belgie.be/publicationDefault.aspx?id=46322>

3. Application of safe reporting of crime at the Belgian municipal level

3.1. Division of powers between the municipal and federal levels on law enforcement

The division of powers between the different authorities with regard to the implementation and enforcement of legislation often leaves room for interpretation by lower tiers of government and individual officials. In accordance with the Belgian Constitution (Article 162.2°), municipalities are responsible for the “*municipal interest*”. This assignment of self-management can include anything as long as it is not forbidden by a superior authority. They are also charged with the execution of tasks imposed by higher tiers of government. For example, the local police fall under the jurisdiction of the mayor(s) and operate in 187 police zones, which often coincide with the boundaries of a city. However, as from 1 January 2019 Belgium includes 582 municipalities,⁹⁹ smaller municipalities together form one police zone under the joint authority of the respective mayors. For example, the 19 Brussels municipalities are grouped in six police zones.¹⁰⁰

Like the federal police, the local police are responsible for immigration as well as administrative and criminal law enforcement. The local police have seven basic functions: local investigations, local interventions (judicial tasks), reception, neighbourhood policing, traffic safety, maintaining public order, and support to victims through ensuring adequate reception, information and assistance¹⁰¹ (administrative tasks).¹⁰² Next to these seven basic functions, the local police carry out specific assignments in relation to the priority crime phenomena included in their six-year “Zonal Safety Plan”. This Plan is drawn up by the Zonal Security Council, which consists at least of the mayor(s), the prosecutor of the King¹⁰³, the chief of the local police and the administrative director-coordinator of the federal police (Article 35, IPA). The local police’s priorities and objectives are determined by the mayor(s) and the prosecutor of the King (Article 36 IPA), and the whole Plan is submitted for approval to the ministers of Justice and Home Affairs (Article 37, IPA). For example, the Zonal Safety Plans of both Ghent¹⁰⁴ and Antwerp¹⁰⁵ prioritise human trafficking and prostitution, and both topics are also included in their local policy agreement 2019-2024. However, police services in these cities carry out these local assignments differently. While the Ghent police focus on fighting human trafficking for sexual exploitation,¹⁰⁶ the Antwerp police concentrate on phenomena of human trafficking

⁹⁹ 301 in the Flemish Region, 262 in the Walloon Region and 19 in the Brussels-Capital Region.

¹⁰⁰ Brussel-Capital and Elsene together form one police zone; the police zone Brussels-West comprises the municipalities Molenbeek-Saint-Jean, Koekelberg, Jette, and Ganshoren; the police zone Brussels-South consists of Anderlecht, Saint-Gilles, and Vorst; Uccle, Watermael-Boitsfort, and Auderghem are together one police zone; the police zone Brussels-North bundles the municipalities Schaerbeek, Saint-Josse ten Noode, and Evere; the police zone Montgomery units Etterbeek, Woluwe-Saint-Pierre, and Woluwe-Saint-Lambert: <http://www.lokalepolitie.be/sct/nl/politiezones-met-lijst.html>

¹⁰¹ Article 46, PAA; Circular Letter of 4 May 2007.

¹⁰² Article 1, Royal Decree of 17 September 2001.

¹⁰³ This public prosecutor operates at the level of the 12 judicial districts. Each judicial district contains a Court of First Instance and is competent for civil, criminal, police and family and youth affairs.

¹⁰⁴ Politie zone Gent, (2014). *Zonaal Veiligheidsplan 2014-2017*:

<https://www.politie.be/5415/sites/default/files/downloads/Documentatie/Zonaal%20Veiligheidsplan%20PZ%20Gent%202014-2017.pdf>

¹⁰⁵ Politie zone Antwerpen, (2014). *Zonaal Veiligheidsplan 2014-2017*:

https://www.politieantwerpen.be/sites/default/files/Zonaalveiligheidsplan2013_2017.pdf

¹⁰⁶ Open VLD, Groen, sp.a, CD&V, (2018). *Ambitie en durf voor Gent: Bestuursakkoord 2019-2024*, pp. 48:

<https://stad.gent/sites/default/files/article/documents/bestuursakkoord%202019-2024.pdf>

for begging and malicious shops, and on prostitution and, in particular, “lover-boys” (young male pimps who seduce girls into prostitution).¹⁰⁷ In contrast, the Zonal Safety Plans of the largest cities in the Walloon Region, Namur and Liège, do not prioritise human trafficking and prostitution. In Namur a number of specific law offenses, including environmental offenses, marriages of convenience, trafficking in human beings, drugs offenses, etc. are brought together under one priority.¹⁰⁸ The Zonal Safety Plan of Liège¹⁰⁹ only refers to the application of the legal avenue introduced in 2011 for the mayor to temporarily close businesses suspected of human trafficking.¹¹⁰

3.2. Interpretation of the obligation to enforce immigration law at the municipal level

The local police are involved in the enforcement of immigration offenses (Article 21, §1, PAA). Due to their duty to report crimes to the public prosecutor (Article 29aI, CCP), and because “illegal entry and stay” is an administrative offense (Article 4bis, Aliens Act) and having received an entry ban or having overstayed an OLT are criminal offenses (Article 75, Aliens Act), local police officers must report irregular migrants. Like the federal police, the local police can pursue immigration offenses if they are asked to inquire after a persons’ identity and residence status on the basis of a mayor(s) request or in execution of the Aliens Act when the police doubt the lawful residence of a foreigner.¹¹¹ Mayor(s) may prescribe identity checks to maintain public safety and/or to comply with the Aliens Act (Article 34, §3, PAA). For instance, some mayors regularly ask their police to verify drivers’ identity during traffic controls. When these controls are on roads to industrial areas, mayors may request the Labour Inspectorate to participate in order to combat illegal employment.¹¹² If one cannot prove his/her identity or if the police doubt its authenticity and/or the person’s legal residence status, it may be further investigated (Article 34, §4, PAA).

In the framework of enforcing the Aliens Act, the police may – when they doubt the identity and residence status of any foreigner with whom they interact – request assistance from the IO (Article 44/11/9, PAA) by filling in an administrative report (see paragraph 3.2). Unlike most police in the Brussels-Capital and Walloon Region, who often wield a “don’t ask” policy, most local police in the Flemish Region check the identity of migrants suspected of being in an irregular condition with the IO.¹¹³ Then, the local police in the Flemish Region usually detain

¹⁰⁷ N-VA, sp.a., Open VLD, (2018). *De Grote Verbinding: Akkoord voor de bestuursperiode van 2019 tot 2024*, pp. 25 (para. 136), pp. 26 (para. 139 and 146): <https://www.antwerpen.be/nl/info/5c0f8bd7ca69bcec700bac37/voorstelling-ontwerp-bestuursakkoord-2019-2024>.

¹⁰⁸ Police de Zone Namur, (2014). *Plan Zonal de Sécurité 2014-2017*: <http://www.policelocale.be/files/5303/attachments/07c9a9160ed34de2fa19cd32d4430c07.pdf>.

¹⁰⁹ Police de zone Liège, (2014). *Plan Zonal de Sécurité 2014-2017*: <http://www.policeliège.be/pdf/pzs14-17-zpliege.pdf>.

¹¹⁰ Article 134 quinquies, New Municipal Law allows the mayor to close a business in the municipality that is suspected of human trafficking or smuggling for a maximum period of six months, after prior consultation with the judicial authorities, and after having heard the defence of those responsible.

¹¹¹ Article 21, Law of 07/12/1998 and Article 17, Law of 21/03/2018.

¹¹² Labour Inspector, interview by author, January 2019 (Interview no. 1); IO, interview by author, February 2019 (Interview no. 2).

¹¹³ IO, interview by the author, February 2019 (Interview no. 2); Local police, interviewed by the author, January 2019 (Interview no. 6); Local police, interviewed by the author, January 2019 (Interview no. 7); Mayor, interviewed by the author, February 2019 (Interview no. 8); Mayor, input via e-mail (Expert no. 3).

the foreigner¹¹⁴ while awaiting the decision of the IO. The local police must carry out the decision of the IO,¹¹⁵ which always issues at least (a confirmation of) an OLT when the person is a migrant with irregular status.¹¹⁶ In such case, the local police must check after the OLT's expiration date whether the migrant with irregular status has left his/her residency address.¹¹⁷ When the IO decide on a detention order, the police must transfer the person to the nearest closed centre or to a centre near the international airport in Zaventem.

The combination of these complex procedures, operational obstacles and the different importance that local authorities attach to possible execution orders lead to varying local policies.¹¹⁸ For example, several local police services and mayors in the province West-Flanders give little priority to irregular residence, partly because there is almost no place in the nearest closed centre, in Bruges.¹¹⁹ The local police and many mayors in the provinces of Liège, Namur and Luxembourg do not regard irregular migration as a priority relative to combating other crime phenomena such drugs and gun trafficking.¹²⁰

3.3. Cooperation between the municipal and federal level regarding immigration law enforcement

The cooperation between the federal and municipal authorities regarding immigration enforcement is laid down in the Aliens Act and PAA, and is further detailed in Circular Letters. Article 21, §1, PAA and Article 74/7, Aliens Act involve the local police in the enforcement of immigration legislation. While Circular Letter of 4 May 2007 and Circular Letter of 23 December 2016 focus on dealing with crime victims by the federal and local police,¹²¹ and Circular Letter of 23 November 2009¹²² specifies the procedure for identifying irregularly

¹¹⁴ IO, interview by the author, February 2019 (Interview no. 2); Local police, interviewed by the author, January 2019 (Interview no. 6).

¹¹⁵ Respectively Article 21, §1, PAA and Article 74/7, Aliens Act; Circular Letter of 9 July 2001.

¹¹⁶ IO, interview by the author, February 2019 (Interview no. 2).

¹¹⁷ Article 62, §1, Aliens Act; Circular Letter of 10 June 2011.

¹¹⁸ Belgische Senaat, (1998). *Wetgevingsstuk nr. 1-768/2. Evaluatie van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen. Bijlagen:*

<https://www.senate.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=1&NR=768&VOLGNR=2&LANG=nl>; Belgische Kamer, (2013). *Schriftelijke vraag en antwoord nr. 0890: Het vervoer van illegale vreemdelingen door de politiediensten naar de gesloten centra:*

<https://www.dekamer.be/kvcr/showpage.cfm?section=qrv&language=nl&cfm=qrvXml.cfm?legislat=53&dosierID=53-b115-665-0890-2012201312530.xml>

¹¹⁹ Vast Comité van Toezicht op de politiediensten (Comité P), (2002). *Jaarverslag 2001:*

<http://www.comitep.be/2001/Nl/2001Inhoud.htm>; Belgische Kamer, (2013). *Schriftelijke vraag en antwoord nr. 0890: Het vervoer van illegale vreemdelingen door de politiediensten naar de gesloten centra:*

<https://www.dekamer.be/kvcr/showpage.cfm?section=qrv&language=nl&cfm=qrvXml.cfm?legislat=53&dosierID=53-b115-665-0890-2012201312530.xml>

¹²⁰ IO, interview by the author, February 2019 (Interview no. 2).

¹²¹ Circular Letter of 4 May 2007 specifies Article 46, PAA and zooms in on the standards of victim support offered by the federal and local police. Circular Letter of 23 December 2016 introduces multidisciplinary cooperation regarding victims of human trafficking and/or certain heavier forms of human smuggling (see also paragraph 4.2).

¹²² Federale Overheidsdienst Binnenlandse Zaken, (2009). *Omzendbrief betreffende de identificatie van onregelmatig verblijvende vreemdelingen:* https://dofi.ibz.be/sites/dvzoe/NL/Documents/20090529_n.pdf. This is a Circular Letter from the Ministers of Migration and Asylum policy and of Interior Affairs.

staying foreigners (see paragraph 3.2), Circular Letters of 29 April 2003¹²³ and of 10 June 2011 zoom in on the removal of migrants with irregular status by the local police. In particular, Circular Letter of 10 June 2011 from the State Secretary of Asylum and Migration details the powers of the mayor in the context of removing non-EU migrants.¹²⁴ In accordance with Article 62, §1, the mayor must summon every non-EU migrant on the territory on whom the IO takes a decision, to come and collect that decision. If the person turns up, an identification form must be completed and – together with the signed decision – sent to the IO. If the person does not turn up, the municipality is asked to hand over the decision and fill in the identification form at the person’s residency address. In case the decision is an OLT, the municipality is asked to follow up the person’s actions regarding their voluntary return in the period given in the OLT. Mayors are asked to instruct the local police to check whether the migrant has left her/his residency address after the OLT has expired. But when the IO issues a detention order, the local police are obliged to carry out this check.¹²⁵

As mayors are “asked” in the Circular Letter of 10 June 2011 to systematically have all OLTs followed up by the local police, they have extensive room to manoeuvre. Consequently, local police enforcement of the Aliens Act varies widely. For example, in Mons and Charleroi, the local police do not enter residences in the framework of forced expulsion, even if instructed to do so by the IO.¹²⁶ Mayor Magnette of Charleroi refers in this context to the “inhuman” federal policy and also complains of the “inefficiency” of federal policy implementation in response to repeated local police action against drug dealers with irregular status, which rarely leads to detention.¹²⁷ Likewise Ghent’s Mayor, Daniel Termont, publicly stated that the Ghent local police would “not enforce the federal legislation”.¹²⁸ Some mayors openly apply the “don’t enforce” principle in a wider context. For instance, The mayors of Jabbeke, Wetteren, Oudenburg, and Kruibeke refused, during spring and summer 2018 (when migrants unlawfully transiting through Belgium was a particularly “hot issue” in the media) to let the local police carry out additional controls on the highway car parks on their territory.¹²⁹ After a shooting incident in two highway car parks, both places and the highway car park Westkerke in Oudenburg were closed for three months via a decision of the respective mayors.¹³⁰ Mayor

¹²³ This Circular Letter defines the principles for removing families with minor(s) at school. Minister van Binnenlandse Zaken (2003). *Omzendbrief betreffende de verwijdering van gezinnen met schoolgaand(e) kind(eren) van minder dan 18 jaar. – Optreden van politiediensten in scholen:*

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2003042932

¹²⁴ Staatssecretaris voor Migratie en Asiel, (2011). *Omzendbrief betreffende de bevoegdheden van de burgemeester in het kader van de verwijdering van een onderdaan van een derde land:*

http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl

¹²⁵ Article 62, §1, Aliens Act; Circular Letter of 10 June 2011.

¹²⁶ IO, interviewed by the author, February 2019 (Interview no. 2).

¹²⁷ Pauwels, F., (01/10/2018). Francken tweete mais, dans les faits, sa politique est inefficace, *L’Echo*: <https://www.lecho.be/dossier/electionscommunales2018/francken-tweete-mais-dans-les-faits-sa-politique-est-inefficace/10053990.html>

¹²⁸ Van der Mensbrugge, T.F. (12/12/2012). Maggie De Block viseert liever gezinnen dan gangsters, *De Morgen*: <https://www.demorgen.be/binnenland/-maggie-de-block-viseert-liever-gezinnen-dan-gangsters-b2deded8/>

¹²⁹ Lescrauwaet, T., Klifman, M., (03/04/2018). Politie heeft te veel werk met transmigranten, *De Standaard*: http://www.standaard.be/cnt/dmf20180402_03442327; Santens, T., (22/08/2018). Migratiekaas met gaten: waar loopt de aanpak van transmigranten mank?: <https://www.vrt.be/vrtnws/nl/2018/08/22/migratiekaas-met-gaten-waarom-loopt-de-aanpak-van-transmigrante/>

¹³⁰ Vanhessche, D., (30/08/2018). *Besluit van de burgemeester 446601:*

Close of Brussels, in turn, refused to let his police control the documents of the migrants who were camping in the Maximilian Park in Brussels. Instead of focusing on apprehending migrants with irregular status, Close guaranteed police presence in the Maximilian Park and surveillance at the “La Porte d'Ulysse” reception centre, in support of the civil society platform “Support the Refugees” that is committed to supporting migrants with irregular status in the Park.¹³¹ In addition, the local police of Brussels/Elsene apply a maximum quota for arresting migrants with irregular status due to their limited detention capacity and logistical means. In briefings the local police chief indicates that intervention is prohibited at times when medical care and food distribution is offered.¹³² In addition to these mediated examples of “don’t enforce”, most mayors in Belgium do not instruct their local police to systematically follow up on all OLTs delivered in the municipality, and in many cities in the Walloon Region – such as Charleroi, Liège, Namur, La Louvière and Arlon – the instructions of the IO to remove a migrant with irregular status are not always executed.¹³³ Although the above examples relate to irregular migrants in general, the room to manoeuvre is used by mayors when they assume that it concerns people in a vulnerable situation (e.g. school-going children) or victims (e.g. of human smuggling).

3.4. Transferring data of victims with irregular status from the municipal to the federal level

In accordance with Articles 44/11/9, §1 and 44/11/3ter, §1, PAA personal data available to the police may be passed on to the IO if the public prosecutor gives permission for it. This is mandatory in connection with terrorism and extremism (Article 44/2, §2). However, since 2018, the police must always pass on to the IO the personal data of a migrant with irregular status who is arrested for (presumably) committing an offense punishable with an administrative or criminal sanction.¹³⁴ Although the IO receive daily about 150 administrative reports from the police, countless migrants with irregular status with whom the local police interact may remain out of the IO’s picture. This is partly due to the fact that many local police services in the Brussels-Capital Region, Walloon Region, and the cities around Brussels “don’t ask” the identity and residence status of foreign victims and witnesses and do not check this information with the IO.¹³⁵ Officially – according to the legislation – this is because the local police do not doubt the identity and legal residence of the victims and witnesses, but unofficially, it is possible that the individual agent, the police chief and/or the relevant mayor(s), do not consider unlawful residence as a priority relative to the enforcement of other crimes.¹³⁶ In practice, these Brussels and Walloon local police include the name and address of the complainant in their reports without either controlling its validity nor checking the

<http://www.jabbeke.be/bestanden/27831.pdf>; Pardaen, A., (12/09/2018). *Besluit van de burgemeester van Wetteren*: <https://www.wetteren.be/besluit-burgemeester-snelwegparking-12-september-2018pdf>

¹³¹ Van den Panhuizen, K., (28/08/2018). Close belooft politiesteen aan burgerplatform Maximiliaanpark, *Bruzz*: <https://www.bruzz.be/samenleving/close-belooft-politiesteen-aan-burgerplatform-maximiliaanpark-2018-08-28>

¹³² Vast Comité van Toezicht op de politiediensten (Comité P), (2019). *De controle en opsluiting van transmigranten door de politie naar aanleiding van grootschalige bestuurlijke aanhoudingen*: <https://comitep.be/document/onderzoeksrapporten/2019-02-06%20transmigranten.pdf>

¹³³ IO, interviewed by the author, February 2019 (Interview no. 2).

¹³⁴ Article 17, Law of 21/03/2018.

¹³⁵ IO, interview by the author, February 2019 (Interview no. 2); Local police, interviewed by the author, January 2019 (Interview no. 7). Mayor, interviewed by the author, February 2019 (Interview no. 8); Mayor, input via e-mail (Expert no. 3).

¹³⁶ *Ibid.*

identity with the IO.¹³⁷ The complainants' required details serve to record who is present in the police station on the one hand, and to keep contact with the victim or witness of a crime on the other.¹³⁸

Regarding victims with irregular status, many local police in the Flemish Region mostly rely on anonymous reporting or complaints lodged as a witness by intermediaries (third parties).¹³⁹ This can be seen as measures of a "don't ask" policy allowed for by national legislation about the victim's residence status. Although there is no data available about anonymous reports and statements, a substantial number of police investigations would start on the basis of an anonymous declaration.¹⁴⁰ Anonymous statements can be recognised in police reports from phrases such as "we bring to the notice that it came to our attention that (...)" or "we bring to the notice that we were informed by telephone that (...) the caller wished to remain anonymous".¹⁴¹ To inform migrants about anonymous reporting and declaring, in 2009 the Belgian government ran a temporary campaign addressing Brazilian migrant workers. This campaign was adopted in response to the bilateral agreement governing the application of Belgian and Brazilian social security legislation on the one hand, and, on the other, in response to the finding that many fraudulent companies, as well as exploited migrants in the construction and industrial cleaning sector, had links with Brazil (either as the country of origin of the people involved or as the country to which money was sent).¹⁴²

¹³⁷ Local police, interviewed by author, January 2019 (Interview no. 7); Mayor, interviewed by the author, February 2019 (Interview no. 8).

¹³⁸ Local police, interviewed by the author, January 2019 (Interview no. 7).

¹³⁹ Local police, interviewed by the author, January 2019 (Interview no. 6); Public prosecutor, interviewed by the author, January 2019 (Interview no. 3); NGO, input via e-mail (Expert no. 2).

¹⁴⁰ De Roy, C., (2004). Anonieme getuigen. *Commentaar Strafrecht en strafvordering*, 47(80).

¹⁴¹ In Dutch: "brengen ter kennis dat ons ter ore kwam dat" of "brengen ter kennis dat wij telefonisch ervan op de hoogte werden gebracht dat (...) de beller wenste evenwel anoniem te blijven"; In French: "nous avons été informés que" ou "nous annonçons que nous avons été informés par téléphone que (...) l'appelant souhaitait cependant rester anonyme".

¹⁴² Belgian Financial Intelligence Processing Unit (CFI/CTIF):

http://www.ctif-cfi.be/website/index.php?option=com_content&view=article&id=21&Itemid=34&lang=en

4. Improving safe reporting of crime for migrants with irregular status in Belgium

4.1. Actions towards victims with irregular status

Sanctions attached to irregular migration by law are often not pursued by enforcement authorities when victims step forward. These practices lower the threshold for crime victims or witnesses with irregular status wishing to interact with law enforcement officers.¹⁴³ Besides, the Belgian legislator foresees several possibilities for migrants with irregular status to safely report a crime. However, on the basis of an anonymous report and statement victims are not entitled to any victim compensation. Furthermore, a crime victim or witness almost always has to indicate that s/he wants to report anonymously.¹⁴⁴ It is therefore important that persons who are at increased risk of becoming a crime victim or witness, such as migrants with irregular status, are well informed about the legislation and possibilities of safe reporting. Building on the model of the 2009 campaign informing Brazilian workers about their labour rights, the Federal Public Service Employment, Labour and Social Dialogue together with the Directorate-General for Resource Management and Information of the federal police¹⁴⁵ could engage in similar campaigns to inform all migrants about the Belgian legislation and the possibilities safely to report crime. To distribute the information, the federal level could cooperate with the federal agency for the reception of asylum seekers (Fedasil), Regional and local enforcement entities such as the decentralised Directorates of the Labour Inspectorate and Justice Houses.¹⁴⁶ Furthermore, they could engage with the mayors, e.g. via the umbrella organisations of municipalities, VVSG (Flemish Region), VSGB (Brussels-Capital region) and UVCW (Walloon Region).

4.2. Actions towards enforcement officers

To bring anonymous reporting or declaring into practice, enforcement officers first of all should possess the correct knowledge and attitudes. Due to the complexity of the legislation, enforcement officers might be uncertain about the application of safe reporting policies. Therefore, it would be crucial to raise awareness about tailored approaches towards victims and perpetrators with irregular status through training and information activities. For example, in 2012 the General Directorate of Administrative Police developed a “Human Rights” action plan, a tool for maximising respect for the human rights of migrants with irregular status during actions in the field.¹⁴⁷ In 2019, the IO has planned to organise information sessions on the issue for local police.¹⁴⁸ Furthermore, enforcement officers could

¹⁴³ Labour inspector, interviewed by the author, January 2019 (Interview no. 1); Public prosecutor, interviewed by the author, January 2019 (Interview no. 3); Local police, interviewed by the author, January 2019 (Interview no. 6).

¹⁴⁴ Labour inspector, interviewed by the author, January 2019 (Interview no. 1); Local police, interviewed by the author, January 2019 (Interview no. 6); Local police, interviewed by the author, January 2019 (Interview no. 7).

¹⁴⁵ This Directorate-General of the federal police published in 2016 a brochure for victims, but this did not make reference to the possibilities for anonymous reporting of a crime:

https://justice.belgium.be/fr/publications/u_bent_slachtoffer

¹⁴⁶ Free, first-line legal information service operating in each of the 27 former Belgian judicial districts with two justice houses (one Dutch and one French) in Brussels.

¹⁴⁷ Vast Comité van Toezicht op de politiediensten (Comité P), (2016). *Jaarverslag 2015*:

<https://comitep.be/document/jaarverslagen/2015NL.pdf>

¹⁴⁸ IO, interviewed by the author, February 2019 (Interview no. 2).

explain the possibilities for reporting or declaring a criminal offense anonymously prior to an interview, so that both tools become real measures of “don’t ask” policy. By providing victims with clarity and creating trust, the threshold to effectively make a statement (possibly at a later time) can be lowered. For example, the police of Saint-Josse ten Noode often refers victims to the municipality’s Social Prevention Centre, which offers aid free of charge and can support the victim while he or she makes a statement at the police station.¹⁴⁹

To prevent victims with irregular status being detained by mistake, Myria advocates that the administrative report from the police to the IO include a section indicating whether the victim with irregular status voluntarily reported a crime to the police. This would allow the IO to take systematic decisions and to prioritise the condition of a crime victim over that of an irregular migrant. Consequently, the IO could decide not to detain a victim with irregular status and to deliver an OLT that expires only after the criminal investigation has ended.¹⁵⁰

4.3. Actions towards intermediaries

In accordance with their mission, organisations such as Payoke, Sürya, Pag-Asa and Myria regularly intervene as third parties acting on behalf of a victim and/or as civil parties to report a crime.¹⁵¹ However, as Article 8 of the Law of 11 February 2013 on sanctions for employers of illegally staying third-country nationals is not (yet) implemented through a Royal Decree, organisations such as FAIRWORK Belgium cannot act as a civil party. Furthermore, many NGOs lack the knowledge and expertise to act as a third party. To overcome this bottleneck, intermediaries such as migrant organisations, welfare and victim support organisations, and outreach workers should be better informed, e.g. via an information campaign. To realise this, the federal Ministry of Justice, in cooperation with the abovementioned expert organisations, could take the initiative, for example via the federal interdepartmental coordination unit in the fight against human trafficking and smuggling of human beings. Furthermore, regional support contact points could be created for intermediaries who want to act as third parties regarding crime victims (for example, of human trafficking and smuggling), analogous to the hotline established in early 2019 regarding the phenomenon of lover-boys.¹⁵²

¹⁴⁹ Fédération des CPAS Bruxellois, (2018). *Rapport annuel 2017*: <https://www.avcb-vsgb.be/.../rapport-annuel-cpas-2017.pdf>

¹⁵⁰ Myria, (2016). *Vreemdeling zijn in België in 2016*: https://www.myria.be/files/Vreemdeling_zijn_in_2016-final.pdf

¹⁵¹ NGO, interviewed by the author, January 2019 (Interview no. 4); NGO, interviewed by the author, January 2019 (Interview no. 5).

¹⁵² Following the Dutch approach, Payoke acts as a Flemish regional hotline for lover-boys (so far there is no such hotline in the other Belgian Regions). This decision of the Flemish government was taken after controversy about the song “Amigo” by the Antwerp rapper Soufiane Eddyani, in which he defended a friend who was convicted for being the pimp of a minor girl.

5. Conclusion

This report has scrutinised the legal possibilities and practices in Belgium safely to report a crime as a victim or witness with irregular status.

Although only the federal government is responsible for immigration legislation, several entities are involved in its enforcement. Within the scope of this report, the IO's verification of migrants' identity documents and residence permits, and their decisions regarding issuing an OLT, detention order and/or entry ban, were amply discussed. Remarkably, the IO's decisions are taken on a case-by-case basis (through which the deadline of an OLT can differ according to the specific situation) in accordance with the Aliens Act and internal instructions from the State Secretary for Asylum and Migration, but depend also on practical concerns (such as insufficient space in the detention centres or limited prospects to repatriate a migrant with irregular status within the statutory period). The Belgian integrated police comprises the federal and local police, both of whom carry out administrative and judicial tasks, such as checking foreigners' identities. When a police officer doubts the identity and/or residence status of the foreigner, s/he must send an administrative report to the IO, who decide on the foreigner's legal stay. However, because this report is not always filled in clearly and/or completely, the IO sometimes detain a crime victim despite its internal instruction not to do so. Labour inspectors can also ask for support from the IO, but call them in less frequently than the police due to their discretion, their priority of correcting unlawful situations, and the fact that it is the police who identify and interrogate migrant workers during inspection of workspaces. Furthermore, labour inspectors' extensive discretion and professional secrecy allow them to refrain from punishing migrant victims with irregular status. For example, migrant workers who file a complaint and/or who are a (potential) victim of trafficking and/or exploitation are not fined, and via a Cooperation Agreement with FAIRWORK Belgium outstanding wages can be transferred to workers with irregular status.

This report described several avenues for safe crime reporting. These include the legal provisions on anonymous reporting, anonymous declaring, declaring by a third party or as a disadvantaged party ("partie civile"), (partial and complete) anonymous testifying, and the "victim procedure" for victims of human trafficking or smuggling with aggravating circumstances. However, all of these different options have limitations. For example, the different instruments to make an anonymous statement can only be used as supporting evidence and do not grant access to claiming rights (such as compensation). Moreover, in practice it appears that a victim always must ask to make an anonymous statement. Also the "victims procedure" cannot be requested by a victim, which may be a threshold for reporting human trafficking and smuggling with aggravating circumstances. Victims of these crimes also depend on the decisions of the relevant authorities, and only receive step-by-step guarantees about their legal residence. Finally, the "victim procedure" is only accessible for victims of human trafficking and smuggling with aggravating circumstances. Not all crime victims with irregular status are eligible to acquire a (temporary) legal residency for cooperating with authorities in the fight against crime.

A substantial part of this report delved into the application of safe reporting of crime at the Belgian municipal level. It is clear that, despite the many joint plans and collaborations between different tiers of government, the division of powers between the many authorities leaves much room for interpretation, which in turn leads to varying practices. Moreover, due

to the involvement of municipal, Regional and federal administrative and judicial authorities – and thus several individual civil servants – it is often impossible to get a clear picture of who exactly decided what, unless public statements are made about it. The Belgian case study demonstrated that the number, type and purpose of police actions can differ greatly, depending on the Region and/or municipality and the availability of resources. For example, as the police must carry out the IO's decisions, but sometimes lack the capacity to do so, no assistance may be requested from the IO, and thus no administrative report is drawn up. Unlike most police in the Brussels-Capital and Walloon Region, who often implement a “don't ask” policy, most local police in the Flemish Region ask to confirm the identities of migrants suspected to be in an irregular condition and check it with the IO. Nevertheless, many local police in the Flemish Region also apply measures of “don't ask”, for example by relying on anonymous statements by intermediaries (third parties). Some mayors also openly apply the “don't enforce” principle, for example in relation to migrants transiting through Belgium, or in relation to following up on OLTs delivered in the municipality. In general, this room to manoeuvre is used when it is assumed that migrants with irregular status are in a vulnerable or victim situation, and the resulting actions are justified by referring to the Belgian policy which aims to assist victims and to punish (co-)perpetrators.

Since the lack of knowledge by victims, intermediaries and enforcement entities came up several times throughout this study, safe reporting of crime for migrants with irregular status in Belgium can be improved in the first instance by increasing knowledge among all parties involved. Furthermore, obstacles to migrants with irregular status reporting crime, such as fines, could be omitted by enforcement authorities when victims step forward (as the Labour Inspectorate does). In addition, well-developed cooperation with regard to assistance to victims (as with the police of Saint-Josse ten Noode) can lower the threshold to report a crime while at the same time guaranteeing the police's basic legal function of victim support.



The Global Exchange on Migration and Diversity is an ambitious initiative at the Centre on Migration, Policy and Society (COMPAS) opening up opportunities for knowledge exchange and longer term collaboration between those working in the migration field.

