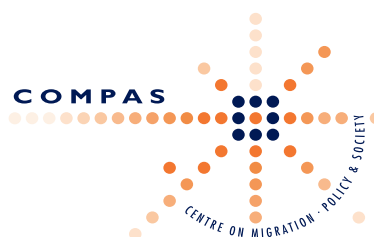




Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in the Netherlands

**Ruben Timmerman
Arjen Leerkes
Richard Staring**
September 2019





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Introduction

Background: Protecting the rights of irregular migrant victims of crime

Across Europe, irregular migrants experience considerable difficulty obtaining basic access to justice, protection, and services across a wide range of areas. The structural exclusion of irregular migrants from the integration strategies of European Union (EU) Member States serves in many situations to limit the full exercise of their basic rights, including in particular the right of an individual to safely report to the police if they have been a victim of or witness to crime.¹ In recent years, however, efforts have been made to ensure that irregular migrants within Europe are guaranteed equal access to justice and basic rights should they fall victim to crime. Perhaps most notably, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime* (hereinafter, *Victims' Directive*), which entered into force in 2015, sets out to ensure that the rights of *all* victims of crime are protected, regardless of nationality or residence status.² Among other things, the EU Victims' Directive signifies—at least on paper—the inclusion of irregular migrants within the wider purview of victims' rights.

However, there remain significant challenges and barriers to access to justice and rights for irregular migrant victims of crime within Europe, and there is much work still to be done in effectively realising the vision set out by the EU Victims' Directive. In particular, it has long been observed by human rights observers, scholars, and practitioners in the field of migration that irregular migrants are often hesitant or unwilling to contact or interact with law enforcement authorities to report crime, either as victims or as witnesses, out of fear of arrest or deportation.³ As a result, these irregular migrants are unable to exercise their basic rights to necessary services, protection, and justice, and are often more vulnerable to perpetrators who are able to exploit their reluctance to report crime. Moreover, the lack of opportunity for irregular migrants to safely report crime results in a lack of crucial intelligence about criminal activity for law enforcement, and significantly reduces authorities' insight into crime and public safety issues in their communities.

As a result of these challenges, both in the United States and across Europe innovative and diverse initiatives have been developed—particularly at the local level—to promote 'safe reporting' of crime among irregular migrants, and in turn to ensure greater access to justice for victims.⁴ In particular, many localities have developed what are commonly referred to as 'firewall policies'. These policies set out to prevent local police and service providers from

¹ European Agency for Fundamental Rights (FRA)(2014), *Victims of crime in the EU: The extent and nature of support for victims*, Vienna, Austria: FRA; Platform for International Cooperation on Undocumented Migrants (PICUM)(2015a), *Guide to the EU Victims' Directive: Advancing Access to Protection, Services and Justice for Undocumented Migrants*, Brussels, BE: PICUM.

² *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*; see in particular Article 1.

³ See, *inter alia*, Kittrie, O.F. (2006), Federalism, deportation, and crime victims afraid to call the police, *Iowa Law Review*, 91(5), 1449-1508; FRA, 2014; PICUM, 2015a.

⁴ See, *inter alia*, Delvino, N. (2017), *European Cities and Migrants with Irregular Status: Municipal Initiatives for the Inclusion of Irregular Migrants in the Provision of Services*. Oxford, UK: COMPAS, available at <https://www.compas.ox.ac.uk/2017/european-cities-and-migrants-with-irregular-status/>

sharing information regarding the immigration status of irregular migrants with immigration authorities when providing essential services. The ultimate goal of so-called ‘firewall’ practices is to ensure ‘the protection of the spheres of “social services” from interaction with, or obligations to, immigration and police authorities in respect of identifying, documenting or reporting on immigration status’.⁵ The purpose is therefore to allow individuals to pursue their basic rights without being exposed to arrest and deportation. Among these basic rights are included the rights of irregular migrants to be able to report to the police if they are a victim or witness of crime.⁶

Perhaps the most prominent examples of ‘firewall’ practices in relation to ‘safe reporting’ are reflected in US ‘Sanctuary City’ policies, in which some US cities have adopted local ordinances limiting or prohibiting municipal employees—including local police—from cooperating with the US Federal Government in its enforcement of immigration law.⁷ In this way, US lawmakers and local authorities have developed extensive firewall practices to promote crime reporting among irregular migrants. These policies typically contain one or more of the following components; namely, (1) a ‘don’t ask’ component (preventing municipal employees from inquiring about the person’s immigration status); (2) a ‘don’t tell’ component (preventing municipal employees from providing information about a person’s immigration status to immigration authorities); and (3) a ‘don’t enforce’ component (preventing municipal employees from arresting or detaining someone on account of their immigration status).⁸

While these kinds of ‘sanctuary’ policies indeed have a long-standing reputation within US public and political discourse, similar practices have likewise begun to emerge in the Netherlands.⁹ In particular, the Netherlands has for many years provided a specific framework (currently under the so-called B8/3 regulation), which provides temporary residence and access to basic services for victims of human trafficking and certain forms of domestic violence. More recently, however, Dutch authorities have also made it possible for migrants with irregular status safely to report crime through the so-called ‘free in, free out’ policy, which allows irregular migrants freely to enter into a police station to report a crime, and be guaranteed to be able to leave freely, without being arrested or detained.¹⁰

Despite these developments, however, the context of the EU and its individual Member States presents unique legal and practical challenges. In this respect, the replicability of ‘firewall’ or other ‘safe reporting’ policies across different countries, and the specific legal and

⁵ Crépeau, F. & Hastie, B. (2015), The case for ‘firewall’ protections for irregular migrants: Safeguarding fundamental rights, *European Journal of Migration and Law*, 17(1), 157-183; p. 166.

⁶ Carens, J.H. (2008), The rights of irregular migrants, *Ethics & International Affairs*, 22(2), 163-186.

⁷ Villazor, R.C. (2010), ‘Sanctuary Cities’ and local citizenship, *Fordham Urban Law Journal*, 37(2), 574-597;

Carlberg, C. (2009), Cooperative Noncooperation: A proposal for an effective uniform noncooperation immigration policy for local governments, *George Washington Law Review*, 77(3), 740-765; De Grauw, E.

(2014), Municipal ID cards for undocumented immigrants: Local bureaucratic membership in a Federal system, *Politics & Society*, 42(3), 309-330; Crépeau, F. & Hastie, B., 2015, p. 182.

⁸ Carlberg, C., 2009; Villazor, R.C., 2010, p. 585; Crépeau, F. & Hastie, B., 2015, p. 178; Kittrie, O.F., 2006, p. 1455.

⁹ Delvino, N. (2017). *European Cities and Migrants with Irregular Status: Municipal Initiatives for the Inclusion of Irregular Migrants in the Provision of Services*. Oxford: COMPAS, p. 35, available at

<https://www.compas.ox.ac.uk/2017/european-cities-and-migrants-with-irregular-status/>.

¹⁰ Both the B9 regulation and the ‘free in, free out’ policy will be further elaborated upon in Chapter 2.

practical frameworks that have made such policies possible, is an issue that has remained largely unexamined in the broader literature. Greater evidence and information-sharing across jurisdictions and localities may offer valuable insights for providing more meaningful access to justice, rights, and protection for irregular migrants who are victims of crime.

Purpose and aims of the study

This report presents the research findings of a three-month socio-legal study focusing specifically on the development and implementation of ‘safe reporting’ policies as they exist in the Netherlands. It contributes to a broader project carried out by the University of Oxford’s Centre on Migration, Policy and Society (COMPAS) assessing ‘safe reporting’ of crime for victims and witnesses with irregular status in the United States and in Europe. In particular, this broader project intends to explore the legal and political replicability of so-called ‘firewall’ practices across different national contexts.

The current report has two central aims: first, it seeks to provide an overview of the existing Dutch legislation, policies, and practices, at both the national and local levels, relevant to ‘safe reporting of crime’ by irregular migrants, and broadly to assess the effectiveness of these measures. In doing so, it will examine the implementation of various legislative instruments and policies, from the European regional level (including the EU Victims’ Directive) to various Dutch national and local ordinances. It will focus in particular on identifying the gaps and ongoing challenges of existing policies and practices in the area of ‘safe reporting’ for irregular migrant victims of crime. The second central aim of this report is to explore the applicability of so-called ‘sanctuary’ or ‘firewall’ policies in the Netherlands, while also identifying and discussing the unique features of the Dutch context that distinguish it both practically and juridically from the US context.

It should be emphasised that this report does not provide a holistic examination of access to justice for irregular migrants, but rather focuses more narrowly on the practice and implementation of Dutch policies and practices at the initial stage of crime reporting. It will therefore not address the various challenges surrounding victim involvement in trials and court proceedings. Although these latter challenges are important to broader questions of access to justice for irregular migrants, they reach beyond the scope of the present study. This report will focus largely on the ‘free in, free out’ policy mentioned above, and will draw on and discuss various provisions found within the Dutch anti-trafficking framework as a valuable point of reference for analysing the gaps and limitations of ‘safe reporting’ practices involving other non-trafficking-related forms of crime. In this way, the anti-trafficking framework will be drawn on primarily as a point of comparison for evaluating the experiences in implementation and practice of ‘free in, free out’ policies.

Methodology

The study consisted of two phases of data collection, which were combined in an integrated way to build the analysis presented in this report. First, desk research was conducted in order to gain a better understanding of the background and present context of the existing legal framework and policies surrounding ‘safe reporting’ for irregular migrants in the Netherlands. This desk research involved an analysis of the relevant regional and domestic legislative and policy instruments. It also involved a comprehensive review of the broader secondary literature, both English and Dutch, focusing in particular on existing empirical knowledge on policy outcomes of various ‘safe reporting’ practices in the Netherlands.

For the second phase of research, a limited number of interviews were conducted with a variety of stakeholders, including governmental, law enforcement, and civil society actors. These stakeholders were consulted so as to better understand and contextualise the relevant policies and practices identified in the desk research. Stakeholders were identified and contacted on the basis of the relevance of their experience and expertise in relation to 'safe reporting' policies and practices in the Netherlands. In total, eight interviews were conducted with informants from the Dutch Ministry of Justice and Security; the National Police; the Immigration Police (AVIM); the National Rapporteur on Trafficking in Human Beings (NRM); FairWork; the National Support Centre for Undocumented Migrants (Stitching LOS); Stichting STIL; and Stichting Vluchtelingen in de Knel. The majority of the interviews were conducted in person, while two of the stakeholders were consulted over telephone. All face-to-face interviews were audio recorded and transcribed. The duration of these interviews ranged from 45 minutes to over two hours.

It is important to emphasise that this study constitutes an early investigation into the topic of 'safe reporting' for migrants with irregular status in the Netherlands, and there is still a long way forward. In particular, due in large part to its limited nature and scope, no irregular migrants were interviewed for the study. As such, apart from interviews with civil society actors who were able to reflect on the experiences of their undocumented clients, this study clearly lacks the perspective of irregular migrant victims themselves. Nevertheless, the information and data presented in this report provides valuable insight into 'safe reporting' practices. This study was able to draw on both primary and secondary sources, capturing the perspectives of a variety of stakeholders with relevant expertise and experience in the area of 'safe reporting' for irregular migrant victims of crime in the Netherlands.

Structure of the report

The remaining chapters of this report will provide a comprehensive overview and analysis of the research data that was collected from desk research and stakeholder interviews. The analysis of this report is organised under three main headings: Chapter 2 will provide an overview of the legal and policy framework surrounding 'safe reporting' practices, with a particular focus on the legal and political context that made the development of such policies possible in the Netherlands. Chapter 3 will provide a critical analysis of the implementation of Dutch 'safe reporting' measures in practice, identifying in particular the various gaps and ongoing challenges that exist. Chapter 4 will explore areas of potential reform, and discuss in more detail the feasibility and challenges surrounding the applicability of 'sanctuary' policies to the Dutch context. Finally, Chapter 5 will provide a summary of the conclusions and opportunities for reform identified on the basis of the data and analysis presented in the report.

1. Legal and Policy Framework

1.1. Overview of the Dutch migration control landscape

Before examining the legal and policy framework surrounding ‘safe reporting’ practices for irregular migrant victims in the Netherlands, it is first useful to provide a basic overview of the Dutch migration control landscape. This section will begin with a brief overview of a number of unique legal features within the Netherlands that make it distinct from other jurisdictions in the area of migration control. It will then provide an overview of the organisational structure of relevant enforcement actors in the Netherlands. Understanding the nature of this structure and the basic competencies of particular law enforcement authorities will help provide better insight into how ‘safe reporting’ procedures unfold in practice when it comes to irregular migrant victims of crime. It should be noted that, in addition to drawing on various regional and domestic policy instruments, this chapter will also already begin to draw on primary data derived from stakeholder interviews.

Key internal migration control instruments

There are three legal instruments pertaining to irregular migrants in the Netherlands that are especially relevant for the purposes of this report. First, the Aliens Act [*Vreemdelingenwet*] 2000 sets out all relevant rules pertaining to unlawful residence, asylum procedures, and administrative detention and deportation. It must be emphasised that, under this legislation, unauthorised residence in itself is not a criminal offence in the Netherlands, but rather a violation of administrative law that could result in administrative detention and deportation.¹¹ Under the Aliens Act 2000, Dutch police are authorised to stop persons in order to check their identity, nationality, and residence status if there exists a ‘reasonable suspicion’ [*redelijk vermoeden*] of irregular residence.¹² In addition to the Aliens Act 2000, the Linking Act [*Koppelingswet*], which came into force in 1998, also plays an important role within the Dutch migration control landscape. It ensures that only immigrants with valid residence permits are able to access social security benefits and public services. To achieve this aim, it allows a wide range of public registration data necessary for gaining access to social security, housing, welfare, and medical care to be cross-checked in order to verify an individual’s residence status.¹³ In this respect, it is often seen as a centrepiece of Dutch internal migration control; one that ‘recruits’ public service professionals to screen for residence status before providing services.¹⁴ Early iterations of the Linking Act proposed an additional obligation on

¹¹ However, in some situations irregular residence may result in a criminal misdemeanor sanction; for instance, if the individual is found to have violated an official ‘entry ban’. For more information on this process, see Leerkes, A. Boersma, E. & Chotkowski, M. (2014), *Het lot van het inreisverbod: Een onderzoek naar de uitvoeringspraktijk en gepercipieerde effecten van de Terugkeerrichtlijn in Nederland*, Den Haag, NL: Research & Documentation Centre (WODC), English summary available at https://www.wodc.nl/binaries/mem2014-2-summary-and-conclusion_tcm28-73421.pdf

¹² Aliens Act 2000, Article 50(1); Leerkes, A., Varsanyi, M. & Engbersen, G. (2012), Local limits to migration control: Practices of selective migration policing in a restrictive national context, *Police Quarterly* 15(4), 446-475.

¹³ Van der Leun, J. (2003), *Looking for loopholes: Processes of incorporation of illegal immigrants in the Netherlands*, Amsterdam, NL: Amsterdam University Press; Leerkes, A. (2009), *Illegal Residence and Public Safety in the Netherlands*, Amsterdam, NL: Amsterdam University Press.

¹⁴ Van der Leun, J., 2003, p. 115.

all public service workers to also report irregular migrants to Dutch immigration enforcement. However, this reporting obligation was eventually removed from the Dutch Linking Act, largely as a result of political pushback by service professionals.¹⁵ Lastly, the Identification Act [*Wet op de Identificatieplicht*] requires that all persons age 14 or older in the Netherlands are required to show a valid proof of identification to the police upon request—also known as an identification requirement [*identificatieplicht*].¹⁶

To briefly summarise, there are three unique features of the Dutch migration control system relevant to ‘safe reporting’ policy and practice that must be highlighted: (1) the Netherlands maintains a sweeping digital infrastructure—set out though the Linking Act—whereby information concerning an individual’s residence status is easily accessed by an extensive range of national, regional, and local public agencies; (2) every person in the Netherlands is required to provide valid proof of identification to the police upon request; and (3) the police are authorised to stop persons in order to check their identity, nationality, and residence status if there exists a ‘reasonable suspicion’ of irregular residence in the Netherlands.¹⁷ Each of these features will re-emerge throughout this report as playing an important role in ‘safe reporting’ policies and practices for irregular migrant victims of the crime in the Netherlands.

Police and immigration authorities: Organisational structure and competencies

In relation to the organisational structure and competencies of the police and other Dutch immigration authorities, it is in the first place worth emphasising that the Netherlands does not have a single federal immigration authority, such as the US Immigration and Customs Enforcement (ICE).¹⁸ Rather, the larger Dutch migration control system is made up of a number of institutional actors intended to cooperate in an integrated way through information-sharing and other activities as partners in an institutional ‘chain’—referred to in Dutch as the ‘*vreemdelingenketen*’.¹⁹ Within this chain, the key institutional actor responsible for supervising and enforcing compliance with Dutch immigration law and preventing unauthorised residence, and the actor most relevant to ‘safe

¹⁵ Van der Leun, J., 2003, p. 124, 151.

¹⁶ Identification Act [*Wet op de Identificatieplicht*], Article 2; Van der Leun, J. (2003), *Looking for loopholes: Processes of incorporation of illegal immigrants in the Netherlands*, Amsterdam, NL: Amsterdam University Press, p. 89; Government of the Netherlands (n.d.), *Wat is de identificatieplicht?*, available at <https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/vraag-en-antwoord/wat-is-de-identificatieplicht>; Leerkes, A., Varsanyi, M. & Engbersen, G., 2012.

¹⁷ Aliens Act 2000, Article 50(1); Leerkes, A., Varsanyi, M. & Engbersen, G., 2012.

¹⁸ Sullivan, L. (2009), Enforcing nonenforcement: Countering the threat posed to sanctuary laws by the inclusion of immigration record in the National Crime Information Center Database, *California Law Review*, 97(2), 567-600; Lasch, C.N., Chan, R.L., Eagly, I.V., Haynes, D.F. & Lai, A. (2018), Understanding ‘Sanctuary Cities’, *Boston College Law Review*, 59(5), 1705-1773.

¹⁹ This institutional ‘chain’ includes the Immigration and Naturalisation Service (IND), which is responsible for assessing all applications from foreign nationals and irregular migrants who want to live in the Netherlands, including asylum and temporary or permanent residence applications; the Repatriation and Departure Service (DT&V), which is responsible for facilitating and arranging both voluntary and forced removal of irregular migrants not permitted to remain in the Netherlands; the Immigration Police [*vreemdelingenpolitie*](AVIM); and the Royal Netherlands Marechaussee or ‘military police’ (KMar), which are responsible for supervising and enforcing external border control. See Ministry of the Interior and Kingdom Relations (2013), *Basis start architectuur van de vreemdelingenketen: Kennis delen, informatieve gebruiken, samen doen*, available at <https://www.digitaleoverheid.nl/wp-content/uploads/sites/8/2017/01/architectuur-van-de-vreemdelingenketen.pdf>

reporting' practices in the Netherlands, is the AVIM [*Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel*], or Immigration Police, which is a distinct unit of the Dutch National Police.

The Netherlands has had a National Police service since January 2013, which consists of ten regional units.²⁰ The main organisational structure of the Police has three distinct levels: national, regional, and local. However, each of these levels are integrated and coordinate closely with one another.²¹ The AVIM is the police unit specifically responsible for supervising and enforcing compliance with immigration law and preventing unauthorised residence. It is a distinct division within the larger organisation of the National Police, and operates at the regional level. As part of their role in supervising and enforcing Dutch immigration law, AVIM officers are able to conduct arrests of irregular migrants and carry out identity investigations. Additionally, assistant public prosecutors [*hulpofficiers van Justitie*] of the AVIM are responsible for determining whether or not an unauthorised migrant who is arrested should be held in immigration detention.²² The AVIM also plays a central role in combating a handful of specific criminal activities, such as human trafficking and human smuggling, and have specific teams with expertise in Dutch anti-trafficking regulations.²³

Every regional unit of the police is further divided into 'districts', which are intended to bridge the gap between the regional and local levels. While the AVIM operates at the regional level, it coordinates with the local districts.²⁴ The local level of the police consists of 'Basisteams' that are made up of regular duty officers [*wijkagenten*] who are responsible for carrying out ordinary policing competences. Although regular duty police officers are not primarily responsible for supervising and enforcing Dutch immigration law, they are able to stop a person if there exists a 'reasonable suspicion' of irregular status and, if necessary, make an arrest to examine the person's residence status.²⁵ When an individual is held or arrested by a regular duty police officer and it is discovered that they are not authorised to reside in the Netherlands, the officer will then in most cases make contact with the AVIM and transfer the individual over to their custody.²⁶ However, regular duty officers maintain a degree of discretionary competence in deciding whether or not it is necessary or appropriate to contact immigration police.²⁷ As such, there are important exceptions and nuances in relation to how this reporting process unfolds in practice, which will be explored in more detail in the next chapter.

²⁰ Politie (2015), *De locale positieve van de nationale politie: Een eerste verkenning*. Apeldoorn, NL: Politieacademie; Politie (n.d.), *Organisatie: één politie, elf eenheden*. Available at <https://www.politie.nl/over-de-politie/een-politie-elf-eenheden.html>

²¹ Politie, 2015; Politie. (n.d.), *Organisatie*, available at <https://www.politie.nl/over-de-politie/organisatie---organisatie.html>

²² See Amnesty International (2018), *Het recht op vrijheid: Vreemdelingendetentie, het Ultimum Remedium-beginsel*. Amsterdam, Amnesty International, p. 11, available at https://www.amnesty.nl/content/uploads/2018/02/AMN_18_08_Rapport-het-recht-op-vrijheid_DEF_web.pdf?x73404

²³ In fact, there exist two distinct teams within the AVIM: (1) an Identification Team [*Team Identiteit*] and (2) a Human Trafficking Team [*Team Mensenhandel*]; stakeholder interview, AVIM, Feb 2019.

²⁴ Dutch National Police, (n.d.), *Organisatie regional en lokaal*, available at <https://www.politie.nl/over-de-politie/organisatie-regionaal-en-lokaal.html>; stakeholder interview, AVIM, Feb 2019.

²⁵ Leerkes, A., Varsanyi, M. & Engbersen, G., 2012.

²⁶ Stakeholder interviews, Police (Amsterdam) and AVIM, Feb 2019.

²⁷ Stakeholder interviews, Police (Amsterdam) and AVIM, Feb 2019.

Lastly, it should be emphasised that in the Netherlands local and municipal authorities are not able to prevent the cooperation of regular duty officers (which operate at the local level) with immigration police (which operate at the regional level), both of which are part of the same national police organisation, under the ultimate authority of the Minister of Justice and Security.²⁸ While local mayors play an important role in helping to shape local policing priorities as part of the ‘local triangle’ [*driehoek*],²⁹ they cannot formally block police or immigration authorities from carrying out their activities. However, local authorities may exercise their influence in other ways, for instance by requesting the cooperation of police or immigration authorities to not carry out certain actions in line with public order or local safety.

1.2. European regional framework relating to irregular migrant victims of crime

The remainder of this chapter will now focus on the existing legal and policy framework surrounding ‘safe reporting’ practices in the Netherlands. This section provides a brief overview of the key European regional instruments that have contributed to or reinforced the formation of practice and policy surrounding safe reporting for migrants with irregular status in the Netherlands. These instruments in many ways serve as the broader regional framework for the current Dutch national legislation, policies and practices that are the subject of this report. Although, as previously mentioned, the Victims’ Directive is now widely recognised as the key legal instrument at the regional level pertaining to victims of crime, beginning in the early 2000s there emerged a number of additional European legal instruments that have served as important legislative precursors. It is therefore relevant to first examine these more closely.

Specific EU victim protection instruments and the role of residence permits

Within the EU, various legal instruments have attempted to ensure greater reporting among irregular migrant victims of crime, particularly in relation to victims of human trafficking, domestic violence, and labour exploitation. The first binding European regional efforts to address the issue of safe reporting of crime for migrants with irregular status emerged as a (subsidiary) component of the EU’s broader effort to combat human trafficking. In particular, Council Directive 2004/81 was drafted specifically for victims of human trafficking,³⁰ with the purpose of defining the conditions for granting temporary residence permits to irregular migrants without requisite documentation who cooperate with the investigation or prosecution of perpetrators of human trafficking.³¹ This is a particularly notable development in relation to the issue of safe reporting, as it formally identifies the challenge of irregular

²⁸ Government of the Netherlands (n.d.), Organisatie Politie, available at <https://www.rijksoverheid.nl/onderwerpen/politie/organisatie-politie>

²⁹ Briefly, every municipality has a ‘local triangle’ [*lokale driehoek*], which is made up of the mayor, police chief, and public prosecutor, and works to make agreements regarding local policing priorities; Centrum voor Criminaliteitspreventie en Veiligheid (CVV), (n.d.), *Lokale Driehoek*, available at <https://www.raadsledenveiligheid.nl/veiligheid-en-politiek/sturen-op-politie>

³⁰ Council Directive 2004/81 of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities [2004] OJ L261/19.

³¹ Council Directive 2004/81, Art. 1; Raffaelli, R. (2009). The European Approach to the Protection of Trafficking Victims: The Council of Europe Convention, the EU Directive, and the Italian Experience. *German Law Journal*, 10(3), 205-222.

migrants' unwillingness to report crime to state authorities and cooperate with subsequent criminal procedures out of fear of arrest and deportation. In responding to this challenge, then, the Directive sought to offer the prospect of temporary residence and assistance to irregular migrants in return for their cooperation.³² In addition to granting temporary residence, Council Directive 2004/81 also required that Member States grant a 'reflection period' to irregular migrant victims of human trafficking, allowing them to recover and to 'take an informed decision as to whether to cooperate with the competent authorities'.³³ While this particular Directive focuses specifically on victims of trafficking, it serves as the first binding European regional effort to provide a range of support and assistance for irregular migrant victims of crime, recognising explicitly the challenges surrounding the fear of arrest and deportation that serve as a key barrier to both enforcement and victim protection. In addition to Council Directive 2004/81, a number of other regional instruments likewise provide a range of assistance and support for irregular migrant victims of trafficking, including Directive 2011/36/EU (Trafficking Directive)³⁴ and the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings (2005 Trafficking Convention).³⁵ However, in relation to each of these instruments, the possibility of residence for irregular migrant victims of crime is ultimately connected to cooperation in criminal proceedings. Indeed, Article 14(d) of Council Directive 2004/81 explicitly states that the residence permit may be withdrawn if a victim ceases to cooperate.

In addition to this anti-trafficking framework, efforts to promote greater reporting of crime among irregular migrant victims have also emerged within European (EU and Council of Europe) legal instruments in relation to other crimes, including domestic violence and labour exploitation. The *Council of Europe Convention on preventing and combating violence against women and domestic violence* (hereafter the *Istanbul Convention*) entered into force in 2014, and applies to all victims of domestic violence, regardless of nationality or residence status.³⁶ One of the notable features of the Istanbul Convention with respect to 'safe reporting' is the provision of autonomous residence permits to victims of domestic violence whose residence status depends on their spouse or partner.³⁷ Additionally, the EU Employers Sanctions

³² Middelburg, A. & Rijken, C. (2011). The EU Legal Framework on Combating Trafficking Human Beings for Labour Exploitation. In Rijken, C. (ed.), *Combating Trafficking in Human Beings for Labour Exploitation*. Nijmegen, NL: Wolf Legal Publishers; p. 378.

³³ Council Directive 2004/81, Art. 6.

³⁴ The Trafficking Directive replaced the earlier *Council Framework Decision on Combating Trafficking in Human Beings*, 2002/629/JHA (19 July 2002), [2002] OJ L203 following the entering into force of the Lisbon Treaty on 1 December 2009; Middelburg, A. & Rijken, C., 2011, p. 358.

³⁵ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197.

³⁶ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014, ISBN 978-92-871-7990-6, available at <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>; Article 4; Delvino, N. (2017), *The Challenge of Responding to Irregular Migration: European, national, and local policies addressing the arrival and stay of irregular migrants in the European Union*, University of Oxford: COMPAS, available at <https://www.compas.ox.ac.uk/2017/autumn-academy-2017-report-the-challenge-of-responding-to-irregular-immigration/>

³⁷ Istanbul Convention, Article 59.

Directive³⁸ provides a number of specific provisions aimed at protecting irregular migrant workers. In particular, the Employer Sanctions Directive sets out to ensure the accessibility of a complaint mechanism for victims of abuse or exploitation at the hands of their employers, as well as the possibility for Member States to provide temporary residence, on a case by case basis, to irregular migrant victims who cooperate with criminal proceedings.³⁹ In relation to both the Istanbul Convention and the Employer Sanctions Directive, the cited provisions highlight the recognition by the EU, the Council of Europe and Member States of the need to facilitate greater reporting of crime among migrants with irregular status.

The EU Victims' Directive

Perhaps the most central European legislative instrument in relation to the protection of irregular migrant victims of crime is the EU Victims Directive, which entered into force on 16 November 2015. The Directive is legally binding upon Member States, and sets out to guarantee that *all* victims of crime be entitled to respect, dignity, and basic rights and services, including, *inter alia*, the right to understand and be understood; the right to information; the right to support services; the right to participate in criminal proceedings; the rights of victims' family members; and the right to protection and individual assessment.⁴⁰ The Directive has as one of its core features the principle of non-discrimination, requiring that all support services, access to protection, and opportunity to participate in criminal proceedings be guaranteed to migrants with irregular status.⁴¹ This universal recognition of the rights of victims of crime, regardless of nationality or residence status, is a key feature of the Victims' Directive, and one that was not included in its predecessor, the Council Framework Decision 2001/220/JHA.⁴² Indeed, the preamble of the Victims' Directive explicitly calls on Member States to 'ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality'.⁴³ As human rights observers have therefore rightly recognised, the Victims' Directive serves as a particularly notable legislative development for irregular migrants who are victims of crime, and recognises that non-compliance with migration regulations cannot deprive migrants in an irregular situation of certain basic victim protection rights to which they are entitled.⁴⁴

³⁸ European Union, *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*, 18 June 2009, 2009/52/EC (Employer Sanctions Directive)

³⁹ Employer Sanctions Directive, Article 13; PICUM (2015b), *Employers' Sanctions: Impacts on Undocumented Migrant Workers' Rights in Four EU Countries*, Brussels, Belgium: PICUM, available at <https://picum.org/Documents/Publi/2015/EmployerSanctions.pdf>

⁴⁰ PICUM, 2015a; European Commission (2017), *The Victims' Rights Directive: What does it bring?*, available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en

⁴¹ Platform for International Cooperation on Undocumented Migrants (PICUM). (2015a). *Guide the EU Victims' Directive: Advancing Access to Protection, Services and Justice for Undocumented Migrants*. Brussels, BE: PICUM.

⁴² Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, OJ L 82/1.

⁴³ Victims' Directive, 2012, Preamble, para. 10.

⁴⁴ European Union Agency for Fundamental Rights (FRA)(2014), *Victims of crime in the EU: the extent and nature of support for victims*, available at <https://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims>, p. 80; PICUM, 2015a, p. 6.

Although the Victims' Directive makes no explicit mention of policy instruments such as a reflection period or the provision of a residence permit, it recalls the earlier mentioned regional legislative instruments, including the EU Trafficking Directive. In this respect, the Victims' Directive may be seen to reinforce the provisions found within these earlier mentioned European legislative instruments, which are intended to promote the safe reporting of crime among migrants with irregular status, and to do so in a non-discriminatory manner.

Arguably, the Victims' Directive also reflects a symbolic development in relation to the protection of migrant victims of crime. Whereas earlier efforts within the context of state anti-trafficking measures have been the subject of considerable criticism from scholars and human rights observers, which have argued that these efforts represented a primarily criminal justice and law enforcement focus, the Victims' Directive presents a policy opportunity that calls for a shift in focus to a more victim-centred approach. While this report will later explore more closely how the Victims' Directive is implemented in practice in the Netherlands, the existence of the Directive reflects a central legislative development in the realisation of victims' rights for migrants with irregular status.

1.3. Dutch national policy framework

Moving on from the European legal framework, this section provides a more detailed overview of national legal and policy frameworks surrounding safe reporting of crime for irregular migrants in the Netherlands. Similar to legislative developments at the European level, the first domestic efforts to promote safe reporting of crime for irregular migrants in the Netherlands emerged largely as part of Dutch anti-trafficking efforts. Already in 1988, the Netherlands became the first country to introduce the practice of providing temporary residence and a 'reflection period' for irregular migrant victims of human trafficking under the so-called 'B22 Regulation'—again in an effort to respond to the unwillingness of irregular migrants to report crime out of fear of arrest or deportation.⁴⁵ Specifically, these policies are set out within the Dutch Aliens Act Implementation Guidelines [*Vreemdelingencirculaire*] (VC), which over time have undergone numerous revisions, emerging under various different headings: B22, B17, B9, and finally, in its current form, under regulation B8/3 of the VC 2000.⁴⁶

More recently, however, Dutch policy on safe reporting for irregular migrant victims of crime has expanded beyond the context of state anti-trafficking efforts. For instance, a range of provisions now also provide opportunities for safe reporting for victims of certain forms of gender-based violence, including domestic and honour-based violence. Furthermore, there exist a number of possibilities for safe reporting for victims of crime more generally through the so-called 'free in, free out' policy, which will be discussed in detail later in this chapter.

⁴⁵ International Organization for Migration (IOM). (1995). *Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe*, p. 24. Available at <https://ec.europa.eu/justice/grants/results/daphne-toolkit/en/file/221/download?token=iHYFI1Ej>; Wijvers, M. (1996). *Vrouwenhandel en de overheid: De oplossingsstrategieën kritisch bezien*. In *Justitiële verkenningen, Mensenhandel en-smokkel* (pp. 8-25). Wetenschappelijk Onderzoek- en Documentatie Centrum. Available at https://www.wodc.nl/binaries/jv9601-volledige-tekst_tcm28-76436.pdf; Wijers, M., Haveman, R. & Altink, S. (1991). *Vrouwenhandel: een integrale aanpak*. *Nederlands Jurisitenblad*, 9(1), 360-365.

⁴⁶ IOM, 1995, p. 24; Wijvers, 1996, p. 20; Wijers, Haveman & Altink, 1991.

Aliens Act Implementation Guidelines: The ‘Reflection Period’ & Temporary and Non-Temporary Residence

One of the most relevant policy instruments for irregular migrant victims of crime in the Netherlands is the Aliens Act Implementation Guidelines 2000 [*Vreemdelingencirculaire*](VC 2000),⁴⁷ which is fully legally binding upon relevant immigration authorities.⁴⁸ The VC 2000 sets out two key policy measures under the B8 and B9 Regulations that are intended to promote safe reporting of irregular migrant victims of crime, namely (1) the reflection period, and (2) the residence scheme.⁴⁹ However, both of these measures are surrounded by a rather complicated regulatory framework, which is explained in more detail below:

(1) The ‘Reflection Period’

In the first place, under regulation B8/3 victims of human trafficking may be granted a ‘reflection period’, of a maximum of three months, during which the victim may decide whether or not to participate in criminal proceedings. It should be emphasised that the ‘reflection period’ is only available to victims of human trafficking; no such provision is available to victims of other forms of violence, or to witnesses of human trafficking. During the reflection period, deportation procedures are suspended. Upon first interacting with a prospective irregular migrant victim of trafficking, the police are required to inform the victim of his or her right to make use of the reflection period.⁵⁰ They are to do so at the ‘slightest indication’ of human trafficking.⁵¹ As such, this is often the first step in the legal process surrounding protection for irregular migrant victims of human trafficking.⁵² The IND grants the request for a ‘reflection period’ on the advice of the Public Prosecution Service or police. During the ‘reflection period’, irregular migrants who are victims of human trafficking have the right to access various additional forms of assistance and support, including accommodation, medical and psychological assistance, and legal assistance.⁵³ Additionally, under the B8/3 regulation, irregular migrants are required to report themselves to the police

⁴⁷ Additional relevant legislation includes the Aliens Act 2000 [*Vreemdelingenwet 2000*] and the Aliens Decree 2000 [*Vreemdelingenbesluit 2000*]; the VC 2000 serves as the implementation guidelines for relevant provisions in each of these two statutes.

⁴⁸ However, unlike the Aliens Act 2000, the guidelines are more easily and frequently amended (often on the basis of the particular policy objectives of whichever government is in office) because such amendments do not require parliamentary approval; see Kampstra, E.M. (2017), *Hoofdzaken vreemdelingenrecht (2^e druk)*, Deventer: Wolters Kluwer, p. 5, available at <https://www.jongbloed.nl/code/inkijkexemplaar/9789013137699/hoofdzaken-vreemdelingenrecht-lianne-kampstra.pdf>

⁴⁹ Nationaal Raapporteur Mensenhandel en Seksueel Geweld tegen Kinderen (NRM). (2018). *Slachtoffermonitor mensenhandel 2013-2017*. Den Haag: Nationaal Rapporteur, available at <https://www.nationaalrapporteur.nl/Publicaties/Slachtoffermonitor-mensenhandel-2013-2017/slachtoffermonitor-mensenhandel-2013-2017.aspx>

⁵⁰ NRM. (2017). *Slachtoffermonitor mensenhandel 2012-2016*. Den Haag: Nationaal Rapporteur, p. 65. Available at [https://www.nationaalrapporteur.nl/binaries/Slachtoffermonitor%20mensenhandel%202012-2016_Nationaal%20Rapporteur%20\(i\)_tcm23-285357.pdf](https://www.nationaalrapporteur.nl/binaries/Slachtoffermonitor%20mensenhandel%202012-2016_Nationaal%20Rapporteur%20(i)_tcm23-285357.pdf)

⁵¹ This is also referred to as the ‘slightest indication’ criterion; see NRM (2017), *Trafficking in Human Beings: Tenth Report of the National Rapporteur (Summary)*, available at <https://www.dutchrapporteur.nl/Publicaties/TenthreportHumantrafficking/doctors-need-to-identify-human-trafficking.aspx>, p. 5.

⁵² NRM, 2018, p. 96.

⁵³ NRM, 2018, p. 96.

on a monthly basis. The reflection period is ended the moment that the irregular migrant loses contact with or fails to report to the police.

(2) Residence Scheme: Temporary and Non-Temporary Residence Permit

Following the reflection period, irregular migrant victims of crime who decide to cooperate with authorities and participate in criminal proceedings may make use of the residence scheme under the VC 2000. Receiving a residence permit is possible for two categories of irregular migrants, namely (1) victims of domestic or honour-related violence⁵⁴ (under regulation B8/2), and (2) victims or witnesses of human trafficking (under regulation B8/3). It is worth noting that victims of or witnesses to human trafficking under regulation B8/3 include victims of human trafficking in the form of labour exploitation. However, there exists no separate or additional residency scheme for other situations of exploitative working conditions or abuse apart from human trafficking.⁵⁵ The VC 2000 also distinguishes between the so-called ‘temporary humanitarian residence permit’ (under regulation B8/2 and B8/3) and ‘non-temporary humanitarian residence permit’ (under regulations B9/10-12).⁵⁶ In general, each case begins as a ‘temporary residence permit’, valid for one year, with the possibility of continued residence for an indefinite period in certain eligible cases (further elaborated upon in a moment).

The residence permit is issued by the Dutch Immigration and Naturalisation Service (IND) on the advice of the Dutch Public Prosecution Service or the police’s National Expertise Centre for Honour-related Violence (in the case of domestic or honour-related violence) or on the basis of an application from the police or Royal Dutch Marechaussee (KMar) (in the case of human trafficking).⁵⁷ It is worth noting that victims are not able to submit an application to independently receive a B8/9 permit directly from the IND without the support and recommendation of the relevant Dutch authorities. In the case of honour-related violence, in order to receive a temporary residence permit it must first be demonstrated that there is a real and long-term threat of violence both in the Netherlands and in the migrant’s country of

⁵⁴ Although there is no official legal definition of ‘honour-related violence’, the working definition used by Dutch practitioners, including law enforcement and service professionals, is ‘any form of mental or physical violence committed in response to a (threat of) violation of the honour of a man or woman, and of his or her family, of which the outside public is aware or may become aware’ [translated]; see National Expertise Centre on Honour-Based Violence (2019), *Terugblik op 2018: Jaarverslag van het Landelijke Expertise Centrum Eergerelateerd Geweld*, Den Haag, NL: Police, available at <https://www.politie.nl/binaries/content/assets/politie/algemeen/onderwerpteksten/eergerelateerd-geweld/terublik-op-2018-jaarverslag-van-het-lec-egg.pdf>; Police (n.d.), *Eergerelateerd geweld*, available at <https://www.politie.nl/themas/eergerelateerd-geweld.html>

⁵⁵ Indeed, Dutch implementation of the earlier-mentioned Employer Sanctions Directive did not include a separate provision providing residence permits, on a case-by-case basis, to irregular migrant workers who are victims of labour exploitation (as set out in Article 13 of the Directive); rather, the existing B8/3 regulation was determined to be sufficient. See Explanatory Memorandum [*Memorie van Toelichting*], *Implementatie van richtlijn 2012/29/EU van het Europees parlement en de Raad van 25 oktober 2012 tot vaststelling van minimumnormen voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten, en ter vervanging van Kaderbesluit 2001/220/JBZ* (PbEU 2012, L 315), available at <https://zoek.officielebekendmakingen.nl/kst-34236-3.html>; see also PICUM, 2015b, p. 10.

⁵⁶ It should also be emphasised that under regulation B8/3 (temporary residence) and B9/13 (non-temporary residence) in the case of human trafficking, it is also possible for witnesses to receive residence permits.

⁵⁷ Immigration and Naturalisation Service (2018). *Domestic violence, honour-related violence, human trafficking, abandonment and your residence permit*. De Haag: Ministry of Justice and Security; NRM, 2018.

origin. If there is no threat of violence in the migrant's country of origin, they are expected to depart the Netherlands.⁵⁸ In the case of domestic violence, a temporary residence permit is only issued if there exists a serious threat of violence that has led to (marital) separation threatening the victims' right to continue to reside in the Netherlands, and if it can be demonstrated that the victim cannot escape the risk of violence by returning to their country of origin.⁵⁹

In relation to victims of human trafficking, temporary residence can be granted to victims or witnesses of human trafficking who agree to report or otherwise cooperate with criminal proceedings. Temporary residence permits on the basis of regulation B8/3 are valid for one year, and can be extended for a further year. During the period of residence, victims receive access to accommodation, as well as medical and legal assistance. They are also permitted to work, without the need for an additional work permit.⁶⁰ If the criminal proceedings have ended and there is no further possibility for sentencing, the IND revokes the residence permit. In rare cases, it is also possible for irregular migrant victims of human trafficking who are unwilling or unable to cooperate with criminal proceedings to receive temporary residence under certain prescribed conditions.⁶¹ In these cases, the victim must demonstrate that he or she is prevented from cooperating due to exceptional circumstances, such as severe threat of violence from traffickers; the presence of a medical or psychological condition or disorder; or the fact that they are a minor.⁶² In such cases, temporary residence is granted for a maximum of one year.

In addition to the temporary residence permit, under the VC 2000 a 'non-temporary' [*niet-tijdelijk*] residence permit may under certain circumstances also be granted to irregular migrant victims of human trafficking for a maximum of five years.⁶³ These circumstances include: the case having led to sentencing of the offenders; ongoing criminal proceedings where the victim has lived for three years in the Netherlands on the basis of temporary residence; or other exceptional reasons (such as fear of reprisal) that mean the victim must remain in the Netherlands.⁶⁴ Although officially referred to as a 'non-temporary' residence permit, this does not mean 'permanent'. Rather, this permit is conditional on the presence of these particular exceptional circumstances, and will be withdrawn once these circumstances are no longer relevant—for instance, once the criminal proceedings have ended, or once the

⁵⁸ VC 2000, regulation B8/2.

⁵⁹ To grant temporary residence, the IND requires proof of domestic violence, such as a recent police report, medical declaration, and a declaration from an NGO indicating that domestic violence has in fact taken place; VC 2000, Regulation B8/2.

⁶⁰ Ministry of Social Affairs & Employment [*Ministerie van Social Zaken en Werkgelegenheid*] (2012), *Arbeid en uitbuiting*, available at <https://www.inspectieszw.nl/publicaties/brochures/2012/05/15/arbeid-en-uitbuiting>; IND (n.d.), *Slachtoffer of getuige-aangever van mensenhandel*, available at <https://ind.nl/overig/Paginas/Mensenhandel.aspx>; FairWork (2016), *Zien en gezien worden: Proactief herkennen, erkennen en ondersteunen van slachtoffers van arbeidsuitbuiting*, Stichting FairWork, available at https://www.fairwork.nu/wp-content/uploads/2018/12/Zien_en_Gezien_Worden.pdf, p. 18.

⁶¹ Noteboom, F. & Dettmeijer-Vermeulen, C. (2015). Verkenning van het schrijnend pad: Dossieronderzoek naar verblijfsrecht mensenhandel voor kwetsbaarste slachtoffers, *Asiel & Migrantenrecht*, 6(4), 155-160.

⁶² VC 2000, regulation B8/3 and B9/10; NRM, 2018, p. 97;

⁶³ Although referred in official translations of the policy as a 'non-temporary' permit, this does not mean 'permanent'—and could perhaps be more appropriately defined as 'indefinite'.

⁶⁴ Under regulation B9/10 or B9/12; see also IND, 2018, p. 4; NRM, 2018, p. 98.

victim no longer has reason to fear reprisal.⁶⁵ In this respect, this ‘non-temporary’ permit could perhaps be more appropriately defined as ‘indefinite’. Notably, this non-temporary (indefinite) permit may also be used if criminal proceedings do not result in a prosecution (for instance, due to procedural problems or lack of evidence), but the threat to the victim is still ongoing. In this case, the provision functions largely as a ‘safety valve’ to ensure that irregular migrant victims who are still at risk of harm are not simply withdrawn from protection or deported once criminal proceedings have ended.⁶⁶

It should at this point be emphasised that, within the residency scheme provided under the B8/9 framework, there exists no formal procedure for granting long-term or permanent residence to irregular migrants who are victims of crime. In this respect, it may be argued that the residency scheme serves merely to delay the prospect of removal or deportation. However, in the Netherlands it is possible for migrants to apply for long-term permanent residence after an uninterrupted period of five years’ legal residence under a non-temporary residence permit.⁶⁷ This may therefore in principle also include those victims who have been granted a ‘non-temporary’ residence permit for a period of five years under the B8/9 regulation, as described above. However, this process is not formally provided under the B8/9 framework for safe reporting. Rather, it is part of the generic residence scheme that applies to all categories of migrants with residence status in the Netherlands on non-temporary grounds who have legally resided in the Netherlands for an uninterrupted period of five years or more.⁶⁸

In short, under the B8/9 framework, a victim may first receive a ‘temporary residence permit’ valid for one year. This temporary permit may then be extended under certain exceptional circumstances in the form of a ‘non-temporary’ (indefinite) permit for a maximum period of five years, which is conditional on these exceptional circumstances continuing to be present for the duration of the period of residence. If, under this non-temporary permit, the victim finally resides in the Netherlands for a period amounting to five years, they may then become eligible for the long-term permanent residence scheme that is available to all categories of migrants who have legally resided in the Netherlands on non-temporary grounds for an uninterrupted period of five years or more. In all other cases not involving a non-temporary residence permit, it may indeed be said that the residency scheme serves to remove only the immediate fear of detention and deportation for irregular migrant victims of crime, and not deportation or removal in the long term.

The Dutch ‘Free In, Free Out’ policy: From local practice to national implementation

Outside of the Dutch framework set out under the B8/9 regulations of the VC 2000, one of the most important features of the Dutch national policy framework relating to the issue of safe reporting of crime for migrant victims with irregular status is the so-called ‘free in, free

⁶⁵ A English-language summary of the distinction between temporary and non-temporary permits is available at <https://ind.nl/en/Pages/temporary-and-non-temporary-purposes-of-stay.aspx>

⁶⁶ Stakeholder interview, National Rapporteur, Feb 2019.

⁶⁷ See IND (n.d.), *Permanent residence after a 5-year stay in the Netherlands*, available at <https://ind.nl/en/permanent-residence/Pages/permanent-residence-after-5-years.aspx>

⁶⁸ This may include several other categories of residence that do not relate to victims of crime; for more information, see See IND (n.d.), *Permanent residence after a 5-year stay in the Netherlands*, available at <https://ind.nl/en/permanent-residence/Pages/permanent-residence-after-5-years.aspx>

out' policy. This policy allows migrants with irregular status freely to enter into a police station to report a crime, whether as a victim or witness, and be guaranteed to be allowed to freely leave without being arrested or held in custody.⁶⁹ This policy first began as part of a local pilot project initiated by the police of Amsterdam Zuid-Oost, in collaboration with local migrant support organisations, and with the support of the Dutch Ministry of Justice and Security.⁷⁰ In this respect, it is important to recognise that support for this kind of 'safe reporting' policy in the Netherlands stemmed from both pragmatic as well as rights-based arguments. Indeed, from stakeholder interviews with government and law enforcement actors, it was clear that the 'free in, free out' policy was borne in large part out of a sense among local police that a significant part of their community was 'invisible' to them. As one of the police stakeholders who was involved in the development of the 'free in, free out' pilot project explained:

'At that time we realised in Amsterdam that there was a really large group of people that we just didn't have any sight of. For instance, in the area around Bijlmer.⁷¹ We had no connection with them, we didn't know who they were, they weren't registered, and every now and then, when an incident happened, or a crime was committed somewhere, we all of a sudden came in contact with them. Often with the victim. [...] So we decided that we wanted to get to know these neighborhoods and these people better. But when we talked to NGOs, they told us 'yeah, but they are undocumented, and are scared that they will be picked up'. [...] That's how it started'.⁷²

In the years following the initial implementation of the pilot project in Amsterdam, the 'free in, free out' policy was extended to additional municipalities, including in the cities of Utrecht and Eindhoven.⁷³ Finally, the practice was formally recognised as part of the official implementation of the EU Victims' Directive in the Netherlands, and was introduced as national policy in 2015.⁷⁴

Despite its national implementation, however, from a juridical perspective the 'free in, free out' policy remains a decidedly amorphous legal conception. It is not formally codified in national legislation, but was mentioned in an official 'explanatory memorandum' [*Memorie van toelichting*] released by the Dutch Parliament alongside the official implementation of the EU Victims' Directive.⁷⁵ In practice, however, it is often referred to merely as a

⁶⁹ Jacobs & van Kalmthout, 2014; Stichting LOS (2016), p. 14.

⁷⁰ Jacobs, M. & van Kalmthout, A. (2014), *Aangifte te doen: Mogelijkheden om mensen zonder geldige legitimatie op een voor hen veilige manier aangifte te kunnen laten doen van strafbare feiten waarvan zij slachtoffer of getuige zijn geweest*, p. 7; Stichting LOS (2016), *Een geode zaak: Onderzoek naar veilige aangifte voor ongedocumenteerden*, p. 14.

⁷¹ Bijlmer refers to the Bijlmermeer, a prominent neighborhood in Amsterdam that is known for its large immigrant population; see also Van der Leun, 2003, p. 62.

⁷² Interview with Police (Amsterdam), Feb. 2019.

⁷³ Stichting LOS, 2016, p. 12.

⁷⁴ See in particular Parliamentary Papers [*Kamerstukken*] I, 2014/2015, 34 236, nr. 3., *Implementatie van richtlijn 2012/29/EU van het Europees parlement en de Raad van 25 oktober 2012 tot vaststelling van minimumnormen voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten, en ter vervanging van Kaderbesluit 2001/220/JBZ (PbEU 2012, L 315)*, p. 4; see also PICUM, 2015a, p. 20.

⁷⁵ An 'explanatory memorandum' [*Memorie van toelichting*] is intended to provide further explanation and clarification as to the purpose and content of a particular statute or policy proposal; see *Memorie van Toelichting [Explanatory Memorandum] 2014/2015, 34 236 nr. 3, Implementatie van richtlijn 2012/29/EU van*

‘gentlemen’s agreement’.⁷⁶ The policy has since been detailed in various ‘factsheets’, as well as an internal police ‘work instruction’, which is intended to guide regular duty officers on ‘safe reporting’ policies for victims of crime with irregular status. This work instruction states that its primary purpose is to set out a ‘national uniform procedure for the recording of a report or witness testimony of a victim without residence status’.⁷⁷

It was revealed during stakeholder interviews that the largely informal legal nature of the current ‘free in, free out’ policy was not incidental, but rather a deliberate policy choice made at the time of national implementation for both political and practical reasons. In the first place, policy and decision-makers involved in the national implementation of a ‘free in, free out’ policy adopted a pragmatic approach, treating the issue of ‘safe reporting’ primarily as a policing and crime prevention related matter, rather than a migration issue. As one of the stakeholders from the Ministry of Justice and Security described:

‘We had the idea that it should remain low-key. So we asked ourselves, is it actually a migration problem, or is it actually more just to do with the police? You know, it is not something with which the State Secretary wanted to say ‘I am doing this’. It was more like, ‘okay, if it doesn’t bother me, than go ahead. Do what you think is best’. [...]. We thought, let the police deal with it, it should come from the point of crime prevention, it is actually not really even a migration issue.’⁷⁸

Likewise, both the Ministry of Justice and Security and Public Prosecution Service (OM) explored the possibility of providing a more comprehensive regulation similar to a B8/9 regulation for situations of ‘safe reporting’, which includes specific procedures for residence, accommodation, and other support. This was eventually decided against, in favour of a much more simple regulation that prioritised a pragmatic policing and crime prevention agenda.⁷⁹ Furthermore, from stakeholder interviews it was apparent that the national implementation of the EU Victims’ Directive also played some role in offering a political opportunity to decouple the question of ‘safe reporting’ from more politicised issues surrounding migration control: police would simply align their practice with the EU minimum standard to treat irregular migrants in the same manner as all other victims of crime, leaving out questions of migration policy altogether.⁸⁰

het Europees parlement en de Raad van 25 oktober 2012 tot vaststelling van minimumnormen voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten, en ter vervanging van Kaderbesluit 2001/220/JBZ (PbEU 2012, L 315), available at <https://zoek.officielebekendmakingen.nl/kst-34236-3.html>

⁷⁶ Stakeholder interview, immigration police (AVIM), Feb 2019; see also Delvino, N. (2017). *European Cities and Migrants with Irregular Status: Municipal Initiatives for the Inclusion of Irregular Migrants in the Provision of Services*. Oxford: COMPAS, p. 35, available at <https://www.compas.ox.ac.uk/2017/european-cities-and-migrants-with-irregular-status/>

⁷⁷ Translated; Werkinstructie ‘Veilige aangifte slachtoffers zonder verblijfstatus in Nederland’, available at <http://www.stichtinglos.nl/sites/default/files/los/20160307%20Werkinstructie%20Veilige%20aangifte%20slachtoffers%20zonder%20verblijfsstatus.pdf>. Additionally, there is an official Police ‘factsheet’ available online at http://www.stichtinglos.nl/sites/default/files/los/Factsheet_veilige%20aangifte%20slachtoffers%20zonder%20verblijfsstatus_25022016%20%282%29.pdf.

⁷⁸ Stakeholder interview, Ministry of Justice and Security, Feb 2019.

⁷⁹ Stakeholder interview, Ministry of Justice and Security, Feb 2019.

⁸⁰ Stakeholder interviews, Police (Amsterdam) and Ministry of Justice and Security, Feb 2019.

As it stands, the ‘free in, free out’ policy exists as a largely informal arrangement that allows migrants with irregular status freely to enter into a police station to report a crime, as a victim or as a witness, and be permitted freely to leave without being arrested or held in custody. Further details concerning the operation of this policy in practice, and the precise nature of the ‘safe reporting’ process as it is carried out by law enforcement, will be provided in section 3.2.1 of the following chapter. For now, it is worth emphasising that the ‘free in, free out’ policy offers no additional benefits in terms of obtaining residence status. Furthermore, there also exist no formal procedures for follow-up or investigation, and after reporting a crime the irregular migrant remains at risk of being arrested and detained by immigration authorities at any time on grounds of their irregular status.⁸¹

Despite these existing limitations, however, the ‘free in, free out’ policy has been recognised by various migrant and human rights observers as a European ‘best practice’ in the area of safe reporting for irregular migrant victims of crime.⁸² Arguably, it is also among the practices most comparable to the local ‘sanctuary’ or ‘firewall’ policies of cities across the United States described earlier.⁸³ In this respect, the implementation of the ‘free in, free out’ policy—and the various challenges and limitations it presents—will be among the central issues addressed in subsequent chapters of this report, and will be used as a key point of departure for examining the applicability of US-like ‘sanctuary’ and ‘firewall’ practices to the Dutch context.

⁸¹ In practice, however, informal arrangements may be made to ensure that the individual is not deported during the process of investigation and criminal proceedings; this will be discussed in more detail in the following chapter on implementation.

⁸² United Nations Human Rights Council (2017), *Report on the compendium of principles, good practices and policies on safe, orderly and regular migration in line with international human rights law*, available at <https://reliefweb.int/report/world/report-compendium-principles-good-practices-and-policies-safe-orderly-and-regular>, p. 36; PICUM (2012), *Strategies to End Double Violence Against Undocumented Women Protecting Rights and Ensuring Justice*, PICUM: Brussels, p. 114; PICUM, 2015a, p. 20.

⁸³ Delvino, N. (2017). *European Cities and Migrants with Irregular Status: Municipal Initiatives for the Inclusion of Irregular Migrants in the Provision of Services*. Oxford: COMPAS, p. 35, available at <https://www.compas.ox.ac.uk/2017/european-cities-and-migrants-with-irregular-status/>

2. Practice and implementation of safe reporting measures

'It is important to understand that this is a real, living issue. It is not something theoretical or abstract. It is an everyday thing. This is so important. I need to be able to know for sure that, if I say to my client, "please, if anything happens to you, go to the police", that they will actually be safe and receive the help that they need. I can say that to them, but I can't make that a reality. The police must make that a reality.'
(Stakeholder Interview, NGO, February 2019)

This chapter examines how the legal and policy framework detailed above is carried out in practice. While Dutch policies have indeed been recognised by some human rights observers as a European 'best practice'—including most notably the 'free in, free out' policy⁸⁴—when it comes to safe reporting of crime for migrants with irregular status, it is important to emphasise that there remain significant gaps and challenges. This chapter provides a critical analysis of some of these challenges, and will serve as an essential point of departure for framing and understanding potential areas of improvement that are later identified in this report. It will first provide some discussion about existing empirical knowledge on the prevalence of 'safe reporting' practices, and then move on to examine in detail the reporting process.

2.1 Existing empirical knowledge on Safe Reporting practices in the Netherlands

A considerable body of empirical research has already evaluated the implementation of the Dutch anti-trafficking framework with respect to non-Dutch victims of trafficking, including in particular the various challenges surrounding implementation of the Reflection Period and the Human Trafficking Residence Scheme for irregular migrants.⁸⁵ Indeed, the Dutch anti-trafficking framework under the B8/9 regulations of the Aliens Act Implementation Guidelines are subject to rather rigorous monitoring and evaluation. Data is collected on all victims of human trafficking registered by the Coordination Centre against Human Trafficking (CoMensha), including all residence permits and reflection periods issued by the IND to irregular migrants.⁸⁶ Additionally, every year the National Rapporteur on Trafficking in Human Beings (NRM), gathers an overview of all residence permits and reflection periods issued, and actively monitors and evaluates Dutch anti-trafficking policies.⁸⁷ Between 2013-2017, the Residence Scheme for irregular migrant victims of human trafficking (detailed in Chapter 2) was used a total of 1,832 times.⁸⁸ However, this figure includes the number of times a reflection period was applied, as well as requests that did not ultimately result in a residence

⁸⁴ UN Human Rights Council, 2017; PICUM, 2012; PICUM 2015a.

⁸⁵ See in particular the comprehensive evaluative study conducted by the National Rapporteur on Trafficking in Human Beings (NRM) (2018), *Mensenhandel: Tiende rapportage van de Nationaal Rapporteur*, Den Haag: Nationaal Rapporteur. An English summary of this report is available at https://www.dutchrapporteur.nl/binaries/20190204_Tenth%20report_Summary_tcm24-374923.pdf.

⁸⁶ CoMensha (2018), *Mensenhandel in Nederland: Het beeld van 2017*, Amersfoort, NL: Coördinatiecentrum tegen Mensenhandel, available at https://www.comensha.nl/files/CoMensha-jaaroverzicht2017_v9-1.pdf_definitief.pdf

⁸⁷ NRM (2018), *Slachtoffermonitor Mensenhandel 2013-2017*. Den Haag: Nationaal Rapporteur, p. 94, available at <https://www.nationaalrapporteur.nl/Publicaties/Slachtoffermonitor-mensenhandel-2013-2017/slachtoffermonitor-mensenhandel-2013-2017.aspx>

⁸⁸ NRM, 2018, p. 104.

permit. In total, 1,003 temporary residence permits and 366 non-temporary (indefinite) residence permits were issued to irregular migrant victims of human trafficking between 2013-2017.⁸⁹

The application of safe reporting practices in relation to other crimes included under the B8/9 regulations—namely, domestic and honour-related violence—are less actively monitored and evaluated. Although the Police’s National Expertise Centre on Honour-Based Violence keeps public record of incidences involving honour-related violence each year,⁹⁰ this does not include specific details concerning the application of the residency scheme provided under the B8/9 regulations. Similarly, there is no active monitoring for victims of domestic violence who fall under the B8/9 regulations. However, in 2017 a study on access to accommodation for irregular migrant victims of domestic violence was able to obtain data from the IND on the number of times residence status was granted under the B8/9 regulations.⁹¹ It was reported that, of 40-50 applications submitted annually, approximately 10 temporary residence permits are granted to victims of domestic violence, while fewer than 10 are granted to victims of honour-based violence.⁹²

In contrast to the B8/9 regulations, the ‘free in, free out’ policy is not actively monitored or evaluated at all.⁹³ Existing empirical research that has attempted to examine the nature and outcomes of the policy is limited to only a handful of studies.⁹⁴ Beyond these studies, there has been no systematic empirical examination, and to date little is known about the prevalence of reporting among irregular migrant victims of crime, or the nature of the crimes being reported. In this respect, research has drawn primarily on the experiences and estimations of stakeholders involved in ‘free in, free out’ practices, such as the police and civil society actors.

From the experiences from NGOs interviewed for this study, situations of ‘safe reporting’ among clients with irregular status involve a strikingly diverse range of criminal activity. Specific examples and cases were identified during interviews with civil society actors, drawing on the experiences of their undocumented clients. The kinds of crimes that were

⁸⁹ NRM, 2018, p. 104

⁹⁰ National Expertise Centre on Honour-Based Violence (2019), *Terugblik op 2018: Jaarverslag van het Landelijke Expertise Centrum Eergerelateerd Geweld*, Den Haag, NL: National Expertise Centre on Honour-Based Violence, National Police. Available at <https://www.politie.nl/binaries/content/assets/politie/algemeen/onderwerpteksten/eergerelateerd-geweld/terugblik-op-2018-jaarverslag-van-het-lec-egg.pdf>

⁹¹ Jongebreur, W., Raaijmakers, E., Reitsma, J. & Vander Velpen, M. (2017), *Toegang tot de opvang van slachtoffers zonder eerdere verblijfsstatus*, Den Haag: Ministeries van Justitie en Veiligheid & Volksgezondheid, Welzijn en Sport, available at <https://www.rijksoverheid.nl/documenten/rapporten/2018/02/07/ek-bijlage-rapport-toegang-tot-de-opvang-van-slachtoffers-zonder-eerdere-verblijfsstatus>

⁹² These figures are rounded to tens, so more precise figures are not available; Jongebreur, et al., 2017, p. 12-13.

⁹³ Stakeholder interview, Ministry of Justice and Security, interviewed by Ruben Timmerman, February 2019.

⁹⁴ See Jacobs, M. & van Kalmthout, A. (2014), *Aangifte te doen: Mogelijkheden om mensen zonder geldige legitimatie op een voor hen veilige manier aangifte te kunnen laten doen van strabare feiten waarvan zij slachtoffer of getuige zijn geweest*; Stichting LOS (2016), *Een geode zaak: Onderzoek naar veilige aangifte voor ongedocumenteerden*, Rotterdam, NL: Stichting LOS; Leermakers, S.D.E., Simons, E.I. & Noteboom, F. (2018), *‘Aangifte doe je niet’: Een studie naar factoren die een negatieve invloed hebben op de aangiftbereidheid van Nederlandse, minderjarige slachtoffers van seksueel uitbuiting*, Den Haag, NL: Centrum tegen Kinderhandel en Mensenhandel.

identified included various forms of labour exploitation, from unpaid wages to forced labour; theft, including mugging; various forms of sexual violence, including rape; human trafficking; forced prostitution; forced drug trafficking; domestic violence; blackmail; and stalking.⁹⁵ It was generally identified among both civil society and law enforcement participants that irregular migrants will rarely go to the police to report ‘minor crimes’, such as a stolen bicycle or wallet. The reason for this cited among stakeholders is that irregular migrants are often reluctant to run the risk of exposing themselves to law enforcement authorities unless there is a clear legal interest. However, there are notable exceptions when lost or stolen items include important identification documents, such as passports.⁹⁶

2.2 Understanding the reporting process

In exploring the challenges and barriers that persist in the practice and implementation of ‘safe reporting’ policies in the Netherlands, it is valuable to examine more closely the process by which an irregular migrant is able to report a crime to the police, and the trajectory that they follow once this process has begun. This section therefore attempts to break down the irregular migrant’s trajectory through the reporting process. In particular, this section distinguishes between two broad stages; namely, (1) identification and referral; and (2) victim support and follow-up procedures.

Initial report, identification and referral

The first stage of identification and referral refers to the process that unfolds after an irregular migrant first indicates to the police that they wish to report a crime. This stage is relevant to understanding the practice and implementation of both the B8/9 framework of the Aliens Act Implementation Guidelines, as well as the ‘free in, free out’ policy. Both of these will therefore be discussed in turn.

In relation to the initial reporting process of the B8/9 regulation, a comprehensive evaluative study was published by the Dutch NRM in 2017.⁹⁷ In terms of examining the findings of this study, it should first be emphasised that individual law enforcement officers in the Netherlands maintain a considerable degree of individual discretion when deciding whether or not to apply relevant legal provisions, which plays an important role in ‘safe reporting’ outcomes.⁹⁸ In this respect, the NRM report found that individual discretion likewise plays a particularly important role in relation to the identification of non-Dutch trafficking victims. In the first place, the NRM report highlights that the ‘slightest indication’ criterion serves as the principal standard for identifying victims for the purpose of granting a reflection period. However, as the researchers identify, this criterion is not clearly defined in legislation, and therefore relies heavily on the interpretation of individual law enforcement decision-makers.

⁹⁵ Stakeholder interviews, civil society actors, Feb 2019.

⁹⁶ Stakeholder interviews, civil society and law enforcement, Feb 2019.

⁹⁷ See National Rapporteur on Trafficking in Human Beings (NRM)(2017), *Mensenhandel: Tiende rapportage van de Nationaal Rapporteur*, Den Haag: Nationaal Rapporteur. An English summary of this report is available at https://www.dutchrapporteur.nl/binaries/20190204_Tenth%20report_Summary_tcm24-374923.pdf

⁹⁸ Indeed, the role of discretionary authority of law enforcement actors in the Netherlands has in general attracted a considerable amount of scholarly interest among migration researchers in the Netherlands; see, *inter alia*, Brouwer, J., van der Woude, M. & van der Leun, J. (2017), (Cr)immigrant framing in border areas: decision-making processes of Dutch border police officers, *Policing & Society*, 28(4), 448-463; Van der Woude, M. & van der Leun, J. (2017), Crimmigration check in the internal border areas of the EU: Finding the discretion that matters, *European Journal of Criminology*, 14(1), 27-45; Van der Leun, 2003.

They identify in particular that there exists considerable discrepancy between different enforcement bodies responsible for applying the B8/9 regulation—namely, the police and Royal Netherlands Marachaussee. Additionally, the study reveals that, before granting a ‘reflection period’, the initial identification and referral process under the B8/9 regulation is filtered through various persons within relevant agencies, including the police and public prosecution service.⁹⁹ In this respect, it was shown that law enforcement decision-making around the application of the ‘reflection period’ is often driven by the interests of effective investigation and prosecution, rather than the protection of the victim under the ‘slightest indication’ criterion. The personal considerations of individual officials may therefore be seen to play an important role in decision-making around whether or not to identify a particular victim of human trafficking and apply the appropriate provisions under the B8/9 regulation.

In relation to these findings, it was also indicated among both law enforcement and NGO stakeholders interviewed in this study that many law enforcement officers believe that the B8/9 regulation is frequently abused by irregular migrants merely as an attempt to avoid deportation or obtain residence, and not out of genuine victimisation. Although no in-depth evaluation has been conducted to further assess the prevalence of scepticism or disbelief among law enforcement actors, these accounts nevertheless raise concerns that this kind of bias may likewise play an important role in shaping how irregular migrant victims of trafficking are treated at the initial stage of reporting. Indeed, a number of the NGO informants interviewed for this study indicated that, while trying to help their clients report as a victim of human trafficking, they had been told by law enforcement authorities that many women who claim that they are victims of human trafficking are doing so because ‘they just want residence status’.¹⁰⁰ In relation to non-trafficking-related crimes that fall under the B8/9 regulations, no empirical evaluation has been conducted on domestic or honour-related violence. However, based on these accounts, it may be assumed that similar dynamics relating to the role of discretion of individual officers come into play. Likewise, one of the NGO stakeholders interviewed in this study alluded to a broader ‘culture’ of scepticism or disbelief among law enforcement authorities around irregular migrant women who claim to be victims of sexual or domestic violence.¹⁰¹

Outside of the B8/9 regulations, the stage of initial reporting and identification is also particularly relevant to the practice and implementation of the ‘free in, free out’ policy. It should first be emphasised that under the policy irregular migrants are in principle able to go to *any* police office/police officer to safely report *any* crime.¹⁰² Furthermore, the ‘free in, free out’ policy applies to all interactions with law enforcement, whether spontaneously on the street, or at the police station. However, similar to the B8/9 regulations, individual law enforcement officers maintain a considerable degree of individual discretion in determining when and how to apply the ‘free in, free out’ policy.¹⁰³ In particular, there are two instances

⁹⁹ See NRM (2018), *Trafficking in Human Beings: Tenth Report of the National Rapporteur (English Summary)*, available at <https://www.dutchrapporteur.nl/Publications/TenthreportHumantrafficking/doctors-need-to-identify-human-trafficking.aspx>, pp. 6-8.

¹⁰⁰ Stakeholder interviews, civil society actors, Feb 2019.

¹⁰¹ Stakeholder interview, NGO, Feb 2019.

¹⁰² Stakeholder interview, Police (Amsterdam), Feb 2019.

¹⁰³ Indeed, the role of discretionary authority of law enforcement actors in the Netherlands has in general attracted a considerable amount of scholarly interest among migration researchers in the Netherlands; see, *inter alia*, Brouwer, J., van der Woude, M. & van der Leun, J. (2017), (Cr)immigrant framing in border areas:

in this early process of identification and referral in which individual discretion of the officer plays an important role in implementation and practice of the 'free in, free out' policy; namely, (1) in deciding whether or not the individual is in fact a victim of crime and should be permitted to 'safely' make a report, and (2) in deciding whether or not to contact the immigration police.

In relation to the first point, there may exist a 'grey area' in determining under what kinds of situations irregular migrants should be considered 'victims' for the purposes of 'safe reporting'.¹⁰⁴ One of the stakeholders from the AVIM described the situation as follows:

*'Who decides when someone is a victim? Look, we might have someone that walks into the police bureau and says "hey, I want to make a report for my passport". Well, according to me a "safe report" is not necessary for that. In that case, I would say, "let's first go to the immigration office, and then we will see why you need that, what do you want to do with it", and so on. But there are also times when we as immigration police come across domestic violence, for instance, and then we say right away, "we don't have anything to do with that".'*¹⁰⁵

In this respect, irregular migrants who come to the police to report an incident are not automatically considered 'victims' for the purposes of the 'free in, free out' policy. Again there remains a degree of discretion on the part of the individual officer in determining which situations are appropriate for application of a 'free in, free out' approach. Although it was recognised among both law enforcement and civil society actors that, in general, the 'free in, free out' policy is primarily utilised in situations involving 'more serious' crimes, this nevertheless raises the degree of uncertainty for irregular migrants, particularly since victims may have differing attitudes as to what situations are 'serious' enough to involve the police.

In relation to the second point, the discretionary authority of individual officers also plays an important role in decision-making around whether or not to contact immigration police. A number of points are worth highlighting here. First, when a regular duty police officer comes into contact with an irregular migrant, they have mobile access—via individual cellular devices—to a database by which they can access information on the individual being stopped or arrested.¹⁰⁶ This information also includes details concerning the person's residence status, and is available to both regular duty officers as well as immigration police.¹⁰⁷ If it is indicated in the database that the individual in question is not authorised to reside in the Netherlands, the arresting officer will contact the immigration police (AVIM). One of the interviewees from the immigration police explained this process as follows:

'We have a police app, and if I arrest someone I can just check their information, and I know right away where they live, what they have done, and so on. I pull that

decision-making processes of Dutch border police officers, *Policing & Society*, 28(4), 448-463; Van der Woude, M. & van der Leun, J. (2017), Crimmigration check in the internal border areas of the EU: Finding the discretion that matters, *European Journal of Criminology*, 14(1), 27-45; Van der Leun, 2003.

¹⁰⁴ This has likewise been identified in previous studies on 'safe reporting' practices in the Netherlands; see Stichting LOS, 2016, p. 28.

¹⁰⁵ Stakeholder interview, AVIM, Feb 2019.

¹⁰⁶ Stakeholder interview, AVIM, Feb 2019.

¹⁰⁷ Additionally, if no information is available, it is assumed that the individual is undocumented; stakeholder interview, AVIM, Feb 2019.

*out of the system. So if it is an illegal alien, a short message comes up that says: "Resides illegally in the Netherlands", so I contact the immigration police. We just have a little message that appears alongside the rest of their data. And everyone that gets checked on the street must appear in the system. If they don't appear, then they are probably illegal anyway. This is how it works in all of the Netherlands.'*¹⁰⁸

It is worth emphasising that, although regular duty officers who come into contact with an irregular migrant generally speaking are expected to report this person to the immigration police, they are *not obligated* to do so. The decision again falls to the discretion of the individual officer.¹⁰⁹ Conversely, while the internal work instruction intended to guide regular duty officers on the 'safe reporting' policy explicitly states that the individual should not be handed over to immigration authorities, it does not prohibit the officer from contacting the immigration police and informing them of the incident, or providing them with other information.¹¹⁰ It therefore remains common practice for regular duty officers to report irregular migrants to the immigration police, *including* when the individual in question has indicated that they wish to exercise their right to safely report as a victim or witness of crime.¹¹¹ In particular, they might consult with the immigration police if they feel that they require additional advice or information, or if they are uncertain about the relevant immigration law or other legal particularities.¹¹² It was further identified that the practice of contacting immigration police often stems from a lack of knowledge and awareness among many regular duty officers about 'safe reporting' policies.¹¹³

Once contacted, the AVIM will make a determination as to whether or not to take over the case. If the individual in question is determined to be a victim of crime, no further enforcement action is taken by the immigration police.¹¹⁴ However, as one of the stakeholder from the AVIM explained, the immigration police often still register the information in their system and keep a record of the incident:

'Last month, somebody reported that they were a victim of a mugging on the street. The officer involved contacted us because the person was as illegal as can be, but we didn't take over the case. We said right away that we don't do anything with that, because he was a victim and he was going to report. So we didn't take

¹⁰⁸ Stakeholder interview, AVIM, Feb 2019.

¹⁰⁹ Stakeholder interview, AVIM, Feb 2019.

¹¹⁰ Translated; Werkinstructie 'Veilige aangifte slachtoffers zonder verblijfstatus in Nederland', available at <http://www.stichtinglos.nl/sites/default/files/los/20160307%20Werkinstructie%20Veilige%20aangifte%20slachtoffers%20zonder%20verblijfsstatus.pdf>

¹¹¹ Stakeholder interviews, AVIM, Feb 2019.

¹¹² Stakeholder interviews, Police (Amsterdam) and AVIM, Feb 2019.

¹¹³ Stakeholder interview, Police (Amsterdam), Feb 2019.

¹¹⁴ This is formal practice in line with the 'free in, free out' work instruction given to both regular duty officers and the AVIM, which explicitly prohibits the enforcement of immigration law if the individual in question is determined to be a victim or a witness of crime; see Werkinstructie 'Veilige aangifte slachtoffers zonder verblijfstatus in Nederland', available at <http://www.stichtinglos.nl/sites/default/files/los/20160307%20Werkinstructie%20Veilige%20aangifte%20slachtoffers%20zonder%20verblijfsstatus.pdf>

*him, but I do know about it now. So I put it in my system that he was a victim, but for the rest I don't do anything with it.*¹¹⁵

We see then that the discretion exercised by police officers (whether from the immigration police or regular duty) plays an important role in 'safe reporting' outcomes, and may contribute to a lack of uniformity in practice. Furthermore, we see that in practice it is often the case that immigration police are the ones to inform regular duty officers whether or not the individual in question should be permitted to safely report a crime. This process reflects a stark departure from the 'firewall' practices detailed in the previous chapters, which are intended to set out a clear separation between the provision of essential services—such as reporting a crime—and immigration enforcement activities.¹¹⁶ In principle, a firewall policy would therefore explicitly prevent regular duty police officers from contacting immigration officials when responding to an irregular migrant victim of crime. Furthermore, this practice of reporting victims to immigration police may undermine the notion of 'free in, free out'. In these cases, the 'safe reporting' process might begin with the irregular migrant entering the police station 'freely', but it ends with the immigration police not only learning about the incident, but also about the name, residence status, and presence at a particular locality of the individual in question. In other words, the irregular migrant who reports a crime invariably leaves behind a (digital) footprint with the immigration police that can be accessed in future confrontations. Potentially, this practice also raises the perceived risk of detection and arrest among irregular migrants, and may discourage victims from coming forward, regardless of whether or not the information provided to the immigration police is used.

An additional concern that is raised here is whether or not migrant support organisations are aware that information is shared with the immigration police, and if they inform their clients about this when explaining to them the 'free in, free out' policy. From interviews with NGO stakeholders, it was clear that there was a significant degree of uncertainty surrounding the reporting process. It therefore raises important concerns if irregular migrants are informed by NGOs that their information is not shared, when in practice it might be. This point highlights the need for greater transparency of the 'free in, free out' process, so that civil society actors and irregular migrants are adequately informed about the precise information that is being shared with immigration authorities, as this may have an important bearing on a victims' decision to report a crime.

In view of the processes detailed above, the 'free in, free out' policy in practice appears not to reflect the 'don't ask' component of a 'firewall' approach, given that arresting officers will generally learn about the residence status of the individual in question.¹¹⁷ Nor does it reflect the 'don't tell' component, as regular duty officers in practice often contact immigration police and inform them about the individual in question, and the internal work instruction intended to guide regular duty officers on the 'free in, free out' policy does not explicitly prohibit the officer from contacting the immigration police and informing them of the incident. In practice, therefore, the 'free in, free out' policy perhaps most closely reflects the 'don't

¹¹⁵ Stakeholder interview, AVIM, Feb 2019.

¹¹⁶ Crépeau, F. & Hastie, B. (2015), The case for 'firewall' protections for irregular migrants: Safeguarding fundamental rights, *European Journal of Migration and Law*, 17(1), 157-183; Van Durme, C. 2017.

¹¹⁷ However, as earlier explained, this is mostly incidental to the fact that officers have mobile access to information databases that provide this information about everyone they come in contact with.

enforce' component of a 'firewall' approach. However, it is not a situation of local authorities refusing to enforce federal immigration law (as is the case in the US), but rather of relevant immigration authorities not enforcing the immigration laws that apply to their own everyday practice.

Follow-up procedures and victim support

In view of the procedures detailed above, this section now attempts to detail the process that unfolds *after* the irregular has safely and successfully reported a crime to the police. First, when an irregular migrants reports a crime, either as a witness or a victim, there are generally speaking two possible outcomes.¹¹⁸ One possibility—which is common to all reports of crime, regardless of whether or not the individual is undocumented—is that the police determine that there is not enough evidence to support taking the case any further. The incident is recorded, but there is no further follow-up investigation or prosecution. The second possibility is that there does exist enough credible evidence for the police to advance with the case and move on to further investigation. One of the police informants interviewed described the process as follows:

'If the person comes with really concrete information concerning a crime, so for instance they can call up another witness, or there was a camera in the area, or other kinds of credible evidence, then the police get to work. If the person is required for the investigation—and that is usually the case if they are the informant—then contact is taken up with the public prosecutor, and it is normally the case that the relevant investigation team will explain to the public prosecutor that "hey, the witness is not just a witness, but is also an undocumented person". Then in practice what happens is that some custom arrangements are made [...] to ensure that the person is not picked up and deported during that time'.¹¹⁹

The 'free in, free out' policy therefore does not set out any formal framework for following-up with victims who are irregular migrants once they have reported a crime. Instead, informal and *ad hoc* arrangements are made to ensure that a victim with irregular status, to the extent that they are valuable for criminal proceedings, is not detained or deported. During the investigation and proceedings, the irregular migrant is also expected to be available to authorities if necessary.

The process described here is notably different from the procedure that unfolds for irregular migrant victims of human trafficking. Indeed, as described in the previous chapter, under the B8/9 Regulations there exists a detailed and robust process involving a reflection period and specific residence scheme. During both the 'reflection period' and period of residence, trafficking victims are provided with various forms of assistance and support, including accommodation, medical and psychological assistance, and legal assistance.¹²⁰ It is important

¹¹⁸ Stakeholder interview, Police (Amsterdam), Feb 2019.

¹¹⁹ Stakeholder interview, Police (Amsterdam), Feb 2019; unfortunately, it was not possible to conduct an interview with an informant from the Public Prosecution Service [*Openbaar Ministerie*] to gain more precise information regarding this process.

¹²⁰ NRM, 2018, p. 96.

to recognise these forms of assistance as key features that contribute in and of themselves to the promotion of greater reporting of crime among irregular migrants.¹²¹

In accordance with the EU Victims' Directive, all irregular migrants who are victims of crime should in principle have equal access to a number of ordinary support services for victims, including access to Victim Support Netherlands [*Slachtofferhulp Nederland*]—a victim support agency that helps victims obtain access to counselling services, compensation for damages, and legal support¹²²—, the Sexual Assault Centre [*Centrum Seksueel Geweld*], as well as basic medical services.¹²³ However, there remain challenges in practice and implementation with respect to these services, particularly in relation to accommodation provision. For instance, while the Dutch B8/9 framework provides for a specific accommodation scheme for irregular migrant victims of trafficking or honour-based violence,¹²⁴ no such accommodation scheme is provided for irregular migrants who are victims of other forms of crime, such as domestic or sexual violence. As an NGO stakeholder identified, the organisation Veilig Thuis—which is a national contact point for connecting domestic violence victims with essential services, including accommodation—does not extend access to accommodation for victims who are undocumented.¹²⁵ It was indicated that support organisations are therefore often responsible for making informal or *ad hoc* arrangements to gain access to essential services for their undocumented clients, such as crisis shelters in situations of sexual or domestic violence. One of the NGO informants described an urgent situation in which a client who was victim of domestic abuse required accommodation. The participant described the attempts made to gain access to a crisis shelter for the client:

*'There was nothing available, so eventually I called someone from the city and said, "listen, this is the situation, can we figure something out?". So they contacted another official from a different municipality like, "hey, do me a favour". [...]. Eventually it was okay, and she received accommodation, great. [...] But it was completely dependent on the personal relationship that I had or that my organisation had with the person from the city, who then also happened to have a personal relationship with someone from another city, who did them a favour, and so on, you know? That's how it goes.'*¹²⁶

In other cases, irregular migrant women with children who are victims of abuse are referred to asylum centres, instead of designated accommodation for domestic violence victims.¹²⁷ These accounts illustrate the fact that, in the absence of formal arrangements for the

¹²¹ Van Londen, M. & Hagen, L. (2013). *Evaluatie van de pilot 'Categorale Opvang voor Slachtoffers van Mensenhandel'*. Den Haag: WODC. Available at <https://www.wodc.nl/onderzoeksdatabase/evaluatie-pilot-categorale-opvang-slachtoffers-mensenhandel.aspx>

¹²² For more information, see <https://www.slachtofferhulp.nl/>.

¹²³ Parliamentary Papers [*Kamerstukken*] I, 2014/2015, 34 236, nr. 3., *Implementatie van richtlijn 2012/29/EU van het Europees parlement en de Raad van 25 oktober 2012 tot vaststelling van minimumnormen voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten, en ter vervanging van Kaderbesluit 2001/220/JBZ (PbEU 2012, L 315)*, p. 4; stakeholder interview, Police (Amsterdam), Feb 2019.

¹²⁴ CoMensha, 2018; see also *Categorale Opvang voor Slachtoffer van Mensenhandel (COSM)*(n.d.), <https://www.wegwijzermensenhandel.nl/organisatieprofielen/CategoraleOpvangvoorSlachtoffersvanMensenhandelCOSM.aspx>

¹²⁵ Stakeholder interview, NGO, Feb 2019; for more information, see <https://veiligthuis.nl/>.

¹²⁶ Stakeholder interview, NGO, Feb 2019.

¹²⁷ Stakeholder interview, NGO Feb 2019.

provision of follow-up support and essential services to irregular migrant victims of crimes, these victims are largely dependent on the resourcefulness or goodwill of the persons they happen to approach for help.

In light of these findings with respect to both the initial reporting process and follow-up proceedings (including victim assistance and support), one of the central challenges that emerges in Dutch 'safe reporting' practices is the lack of consistency in implementation. This particular challenge will be discussed in more detail in the following section.

2.3 Inconsistency and lack of trust at the local level

It is important to emphasise at this point that the 'free in, free out' policy was viewed by all civil society actors interviewed as a positive and essential practice. Additionally, some NGO informants indicated that they had experienced some improvements in the area of 'safe reporting' policies, and encountered positive examples of irregular migrants who were able to successfully and safely report being a victim of or witness to a crime. As one participant explained:

'What I also want to say is that sometimes it also goes really well, with a lot of attention and sensitivity for the victim. [...]. But so often it requires convincing someone, chasing after them, repeating everything again. So much of the responsibility is pushed to us, or to the victim, to inform them [the police]. [...]. And even then it is often from the position of "we are doing you a favour", instead of, "hey, this is a normal thing that we do, this is just our job, because we are the police".'¹²⁸

Other NGO informants likewise identified that the current policy demands a considerable degree of effort on the part of civil society organisations to guarantee that their clients will be able to safely report without the involvement of immigration authorities.¹²⁹ One of the NGO informants indicated that, among an estimated 15 situations of 'safe reporting' involving their clients per year, approximately half of these cases will result in a negative response from the police: for instance, that the initial officer of contact will be unfamiliar with the possibility of irregular migrants safely reporting, and will be difficult or unfriendly, or will refuse to guarantee safety. Additionally, it was identified that there is significantly less awareness of safe reporting policies among law enforcement authorities outside the large cities.¹³⁰ Generally speaking, rural localities where authorities have fewer interactions with irregular migrants were less likely to be aware of the 'free in, free out' policy.

In light of these inconsistencies, it is common practice among NGOs that, if a client indicates their desire to report a crime, the organisation will first contact the police ahead of time in an attempt to ensure that their client will not be arrested. In doing so, they are often required to inform the police that there even exists a possibility to safely report.¹³¹ Describing this process, one of the NGO informants poignantly explained: 'I would still never encourage my clients to go to the police station on their own. It's just not safe enough'. This raises significant concerns as many irregular migrants in the Netherlands do not have access to support and

¹²⁸ Stakeholder interview, NGO, Feb 2019.

¹²⁹ Stakeholder interviews, NGOs, Feb 2019.

¹³⁰ Stakeholder interview, Police (Amsterdam), Feb 2019; Stakeholder interview, NGO, Feb 2019.

¹³¹ Stakeholder interviews, NGOs, Feb 2019.

assistance from NGOs and other civil society actors (particularly outside the large cities), and may instead rely on informal support from family members, friends, or other personal contacts. These accounts therefore raise important questions regarding what happens when irregular migrants who are victims of crime do not have the benefit of a well-informed NGO able to support them in the reporting process. It also raises significant concerns in terms of the effectiveness and legitimacy of the ‘free in, free out’ policy in providing meaningful safe access to police for all irregular migrant victims of crime.

In sum, despite its nation-wide implementation, the ‘free in, free out’ policy continues to be plagued by inconsistency in practice at the local level. In general, it was apparent from interviews that, in practice, there remains a lack of confidence and trust from civil society actors and their clients in the ability of these policies to ensure the possibility for irregular migrants to safely report crime, without risk of arrest or detention. In light of these accounts, it must be emphasised that a lack of consistency in practice and implementation should not be regarded as a minor or secondary issue. Rather, establishing uniformity should be regarded as fundamental to a robust and meaningful ‘safe reporting’ framework. As one NGO stakeholder explained:

‘For many migrants it is already quite a big surprise when you tell them that they have the right to safely report crime and not to be deported. But then if you also have to add the footnote “but in practice it doesn’t always go well”, then you completely cripple the message. So I think it is an important message, but if it is not properly implemented, then it is impossible to convince people to make use of it.’¹³²

In this respect, it is apparent that the lack of uniformity in implementation can indeed threaten to undermine the effectiveness and legitimacy of ‘safe reporting’ policies, including in particular the ‘free in, free out’ policy.

¹³² Stakeholder interview, NGO, Feb 2019.

3. Towards safe cities: Challenges and opportunities

3.1. Exploring the applicability of ‘Sanctuary City’ policies in the Netherlands

In light of the findings presented so far, this section provides a discussion of the applicability of so-called ‘sanctuary’ or ‘firewall’ policies in the Netherlands, while also identifying and discussing the unique aspects of the Dutch context that distinguish it—both in a practical and a juridical sense—from other jurisdictions. This may provide valuable lessons and insights for understanding how sanctuary policies can be applied in other European countries.

It should in the first place again be recognised that the notion of ‘sanctuary cities’ encompasses a wide range of practices and experiences.¹³³ In a narrow sense, it refers to basic ‘firewall’ practices, including one or a combination of ‘don’t ask’, ‘don’t tell’ and ‘don’t enforce’ policies that limit or prohibit the active cooperation of municipal employees—including local police—with immigration enforcement. In their widest sense, however, ‘sanctuary city’ policies intend to provide a broader (urban) context that includes as part of its aim the desire to promote ‘inclusive’ or ‘shared urban citizenship’ within migrant communities. In this respect, Hintjens and Pouri (2014) argue that sanctuary cities are ‘not mainly about policing, but about social attitudes toward those who seek refuge in our cities’.¹³⁴ In this respect, some have argued that the very notion of ‘sanctuary’ is a misnomer,¹³⁵ favouring the title of ‘inclusive city’ or ‘cities of safety’ as a more appropriate conceptualisation.¹³⁶

However, the vision reflected in this wider perspective of the ‘sanctuary (or safe) city’ is in any case a far cry from the situation as it currently exists in the Netherlands. As already mentioned, despite the presence of a ‘free in, free out’ policy, irregular migrants who report crime in principle remain fully subject to arrest and deportation. However, more recently, in the city of Amsterdam there have been growing calls among some political parties for a *stadspaspoort*, or ‘city passport’, which would serve as a municipal ID card providing irregular migrants living in the city with access to all basic municipal public services.¹³⁷ Arguably, this kind of initiative much more closely resembles both the functional and symbolic aims of the wider ‘sanctuary city’ approach than does the ‘free in, free out’ policy or other Dutch ‘safe reporting’ practices.

However, there remain important challenges to this proposal. First, the Netherlands does not have a division of law enforcement bodies reporting to different levels of government. Rather, both criminal and immigration enforcement units are part of the same nationalised police service. As such, apart from specific cases in which an irregular migrant reports a crime, regular duty police officers are expected to report irregular migrants they encounter to the

¹³³ Bauder, H. (2016). Sanctuary cities: Policies and practices in international perspective. *International Migration*, 55(2), 1-14. doi: 10.1111/imig.12308.

¹³⁴ Hintjens, H. & Pouri, A. (2014). Towards cities of safety and sanctuary. *Peace Review*, 26(2), 218-224. doi:10.1080/10402659.2014.906889, p. 219.

¹³⁵ Bauder, H., 2016.

¹³⁶ For more on this discussion, see Hintjens, H. & Pouri, A., 2014.

¹³⁷ Het Parool (2019, January 23). *Gemeenteraad wil lokaal paspoort voor illegalen*. Available at <https://www.parool.nl/amsterdam/gemeenteraad-wil-lokaal-paspoort-voor-illegalen~a4622044/>

immigration police.¹³⁸ Furthermore, as detailed in *Section 2.1.2*, local and municipal authorities in the Netherlands are not strictly-speaking able to prevent the cooperation of regular duty officers (which operate at the local level) and immigration police (which operate at the regional level), both of which are part of the same national police organisation, under the ultimate authority of the Minister of Justice and Security.¹³⁹ Therefore, guaranteeing that regular duty officers comply with this kind of local sanctuary policy would invariably require the support of national authorities such as the Ministry of Security and Justice.¹⁴⁰

The suggestion of applying ‘sanctuary city’ policies in the Dutch context was met with mixed responses from stakeholders involved in this study, including civil society stakeholders. In general, ‘safe reporting’ policies such as the ‘free in, free out’ policy were viewed in the more narrow sense of being a logical and pragmatic extension of the EU Victims’ Directive, which simply requires that all victims are treated equally and without discrimination on the basis of irregular status. However, the equal application of the EU Victims’ Directive and a ‘safe city’ approach to a fully inclusive urban context are not mutually exclusive. Indeed, given the lack of uniformity and the various concerns surrounding confidence and trust in current ‘safe reporting’ practices in the Netherlands, focusing on trying to develop a broader (urban) context of inclusion and trust may be the key to overcoming these challenges and meaningfully opening up access to law enforcement protection and other basic forms of victim support for irregular migrants in the Netherlands. Certainly, it is a prospect worth investigating further. For now, the ‘free in, free out’ policy is an essential step toward improving crime reporting among irregular migrants, both in the interest of public and community safety, as well as greater access to justice for victims.

3.2. Developing a ‘Safe Reporting’ policy: Unique features of the Dutch context

The findings presented in Chapters 2 and 3 identified a number of unique legal and practical aspects relevant to the Dutch experience that made it possible for the ‘free in, free out’ policy to develop as a safe reporting measure for irregular migrants in the Netherlands. These unique aspects may offer some valuable insights and lessons for other countries within Europe hoping to adopt similar ‘safe reporting’ policies. As such, they have been summarised below:

- Since 2013, the Netherlands has had a National Police service. Police units responsible for criminal law enforcement and those responsible for immigration law enforcement are both part of the same police organisation. The AVIM (or immigration police), responsible for supervising and enforcing Dutch immigration law, is a distinct but fully integrated division of the national police that operates at the regional level, but coordinates closely with local districts.
- While the ‘free in, free out’ policy initially emerged from local police and civil society organisations, it was finally implemented with support and approval from the State Secretary and the Dutch Ministry of Justice and Security—largely as part of a

¹³⁸ Stakeholder interview, Police (Amsterdam), Feb 2019.

¹³⁹ Government of the Netherlands (n.d.), *Organisatie Politie*, available at <https://www.rijksoverheid.nl/onderwerpen/politie/organisatie-politie>

¹⁴⁰ Which has full ministerial accountability over the police; see Government of the Netherlands (n.d.). Organisation of the Dutch Police. Available at <https://www.government.nl/topics/police/organisation-of-the-dutch-police>

pragmatic crime prevention and policing agenda, and detached from questions of immigration law.¹⁴¹

- Related to the above point, the ‘free in, free out’ policy is not a ‘local ordinance’, but rather a national policy that most closely resembles the ‘don’t enforce’ component of a ‘firewall’ approach. However, this ‘don’t enforce’ policy is equally applicable to both regular duty officers and immigration police, who are likewise prohibited from enforcing immigration law if the individual is a victim of crime. Therefore in principle there exists no strain between regular police and immigration authorities.
- Regular duty police officers in the Netherlands are able to exercise a considerable degree of discretionary power, and do not have a strict legal obligation to report irregular migrants to the immigration police.
- Regular duty police officers do not have a strict legal obligation to inquire about the immigration status of the people they interact with. This again falls within the discretionary authority of the officer. However, officers at all times maintain mobile access to databases that are able to provide information concerning everyone they come in contact with, including residence status.

¹⁴¹ Jacobs, M. & van Kalmthout, A., 2014, p. 7; stakeholder interview, Ministry of Justice and Security, Feb 2019; additionally, the ‘free in, free out’ policy also did not draw significant backlash from Dutch immigration authorities; stakeholder interview, Police (Amsterdam), Feb 2019.

Conclusion

Summary of key findings

This report has been guided by two central aims, namely: (1) to provide an overview of the existing legislation, policies, and practices, at both the national and local level, relevant to ‘safe reporting of crime’ for irregular migrants in the Netherlands, and broadly to assess the effectiveness of these measures; and (2) to explore the applicability of so-called ‘sanctuary’ or ‘firewall’ policies in the Netherlands, while also identifying and discussing the unique practical and juridical features of the Dutch context that distinguish it from other jurisdictions.

In responding to these two aims, this report first sought to provide a detailed overview of the legal and policy framework surrounding ‘safe reporting’ practices in the Netherlands, focusing in particular on the legal and political context that made the development of such policies possible. By far the most robust victim protection mechanism for irregular migrant victims of crime is found within the B8/9 Regulations of the Aliens Act Implementation Guidelines, which provide both a ‘reflection period’ and residency scheme for victims. In addition to the B8/9 regulations, the ‘free in, free out’ policy was also introduced, tracing its development from a local pilot project to national policy in 2015 as part of the official implementation of the EU Victims’ Directive in the Netherlands. It was found that, despite its national implementation, from a juridical perspective, the ‘free in, free out’ policy remains a decidedly amorphous legal conception, not codified in national law but rather through various factsheets and internal work instructions. It was found that the implementation of the ‘free in, free out’ policy was deliberately decoupled from politicised questions surrounding migration control, and instead emerged primarily as a policing and crime prevention initiative. As it stands, the ‘free in, free out’ policy exists as a largely informal arrangement that allows migrants with irregular status freely to enter a police station to report a crime, and be permitted freely to leave without being arrested or held in custody. It offers no additional formal residence or victim support scheme.

The report went on to provide a critical analysis of the implementation of Dutch ‘safe reporting’ measures in practice, identifying in particular the various gaps and ongoing challenges that exist. In particular, it was found that, while Dutch anti-trafficking measures are subject to proactive monitoring and evaluation, there is relatively little empirical knowledge regarding the prevalence of ‘safe reporting’ practices in relation to other, non-trafficking-related crimes, or the nature of crimes reported. Nevertheless, by drawing on secondary reports and stakeholder interviews with various actors, this chapter examined the reporting process, from initial identification and referral to follow-up proceedings and victims support. It was found that individual discretion of law enforcement officers plays a central role in the practice and implementation of the ‘free in, free out’ policy, both in relation to deciding (1) who is or is not a victim, and (2) when to report to immigration authorities. Furthermore, the ‘free in, free out’ policy does not set out any formal framework for following-up with irregular migrant victims once they have reported a crime. Instead, informal and *ad hoc* arrangements are made to ensure that an irregular migrant victim, to the extent that they are valuable for criminal proceedings, is not detained or deported.

Ultimately, it was identified that, despite its nation-wide implementation, the ‘free in, free out’ policy continues to be plagued by inconsistency in practice at the local level. In general,

it was apparent from interviews that, in practice, there remains a lack of confidence and trust from civil society actors (and, reportedly, their clients) in the ability of these policies to ensure the possibility for irregular migrants safely to report crime. There also appears to exist a considerable degree of disparity in awareness among police of the possibility for irregular migrants safely to report crime, particularly between urban and rural localities. While the ‘free in, free out’ policy was widely recognised as a positive and essential practice for the protection of irregular migrant victims of crime, this lack of consistency and uniformity in practice and implementation threatens to undermine its legitimacy and effectiveness.

The final chapter of analysis provided a discussion of the applicability of ‘sanctuary city’ policies, and attempted to delineate the main features of the Dutch context that allowed its existing ‘safe reporting’ policies (particularly the ‘free in, free out’ policy) to develop, hopefully offering some lessons or insight to other jurisdictions. Despite the various gaps and challenges identified, the ‘free in, free out’ policy remains an essential step in the process of ensuring greater reporting of crime among irregular migrants, in the interest of both greater safety and security for local communities, and equal access to justice and protection for all victims of crime in the Netherlands.

Opportunities for improvement and reform

On the basis of these findings, a number of opportunities for improvement and reform in relation to existing ‘safe reporting’ practices for irregular migrant victims of crime in the Netherlands may be identified. First, the findings of this report highlight that establishing greater uniformity in practice and implementation of ‘safe reporting’ policies is crucial for ensuring meaningful safe access to the police for irregular migrant victims of crime. In relation to the B8/9 framework, uniformity could be improved by providing for a precise definition of the ‘slightest indication’ criterion that can be uniformly relied on by all agencies at the initial stage of identification and the application of the ‘reflection period’. In relation to the ‘free in, free out’ policy, it was clear from the findings of this study that there remains a considerable lack of knowledge and awareness among law enforcement actors. In this respect, uniformity can be improved by providing for greater training and awareness among relevant law enforcement actors, in particular at front-line points of contact and among regular duty officers who may have less familiarity with immigration laws and practices, including in particular in rural areas.

Second, the ‘free in, free out’ policy could establish a stricter ‘firewall’ between regular duty officers and the immigration police to ensure that, once an individual has been determined to be a victim of crime, immigration police are not contacted. In the absence of a stricter firewall approach, there should be greater transparency surrounding the reporting process, which would allow civil society actors and irregular migrants to be more adequately informed about the nature of information exchange between regular duty and immigration police.

Third, there could be a greater emphasis among law enforcement actors to adopt a proactive, rather than a reactive or passive approach to ‘safe reporting’ policy, particularly in relation to the ‘free in, free out’ policy. This proactive approach could include a local coordination centre that is able to provide information and advice concerning the ‘free in, free out’ policy, as well as register potential complaints. This would avoid the need for NGOs to inform police authorities of the possibility for irregular migrants to safely report crime. Additionally, information-sharing and awareness surrounding the ‘free in, free out’ policy could involve a

wider range of societal actors. Currently, knowledge about the possibility of ‘free in, free out’ is disseminated primarily through NGOs. However, many irregular migrants do not have contact with these organisations. As such, effort could be made to ensure greater knowledge and awareness among other relevant actors that come into contact with irregular migrants, such as healthcare professionals, social workers, and religious leaders.

Fourth, the provision of protective and emergency accommodation could be extended to all irregular migrant victims of sexual or domestic violence who are at risk of harm or unable, as a result of victimisation, to return to their ordinary place of residence. Currently, only documented victims and victims falling under the B8/9 regulation are able to obtain access to this kind of accommodation.

Lastly, more active monitoring and evaluation of the ‘free in, free out’ policy may play a particularly important role in improving the effectiveness of the policy. In particular, active monitoring and evaluation could focus on two main areas; namely, (1) the prevalence of use among irregular migrants, and (2) the nature of crimes being reported.

Suggestions for future research

In light of the information and data presented in this report, it is clear that there remain significant gaps in knowledge on the topic of ‘safe reporting’ practices for irregular migrant victims of crime in the Netherlands, particularly in relation to the ‘free in, free out’ policy. In this respect, there are a number of areas for further research that may be recommended:

First, additional research should investigate more closely the role of enforcement officers’ individual discretion in determining ‘safe reporting’ outcomes among irregular migrant victims of crime. To date, there has been no systematic empirical investigation of the kinds of factors that contribute to decision-making practices with respect to the ‘free in, free out’ policy. In particular, this kind of study would potentially raise important questions concerning the differential application of victims’ rights with respect to irregular migrants, and who is considered ‘deserving’ or ‘legitimate’ victim and who is not.¹⁴² Related to this point, the findings of this research demands a more systematic analysis of cases of ‘failed attempts’ to make use of ‘safe reporting’ policies; that is, cases of intended ‘safe reporting’ that resulted in arrest, administrative detention, or eventual deportation. Although the current study was able to identify a number cases on the basis of accounts from civil society actors, it is important to examine these cases more closely and in a more systematic manner. On the basis of this kind of investigation, it would be possible to offer a more concrete typology for understanding what kinds of situations/victims/crimes result in what kinds of ‘safe reporting’ outcomes.

Additionally, future research should involve a closer investigation and analysis of specific cases of ‘safe reporting’ practices, and track the trajectory of these cases from initial report, identification and referral, through to follow-up investigation, court proceedings and victim support. The current study focused primarily on the initial stage of crime reporting, and future research should help to provide a broader perspective on access to justice for irregular

¹⁴² This may also raise important issues in relation to so-called ‘civic stratification’ between different categories of irregular migrants; see Leerkes, A. Engbersen, G. & Snel, E., 2017. For further discussion on ‘deservingness frames’ surrounding irregular migrants, see Chauvin, S. & Garcés-Mascareña, B. (2014), Becoming less illegal: Deservingness frames and undocumented migrant incorporation, *Sociology Compass*, 8(4), 422-432.

migrant victims. In particular, this should include further study of the informal or *ad hoc* arrangements that are made during the follow-up proceedings between the prosecutorial bodies and Dutch immigration enforcement, and opportunities and challenges for migrants to access courts throughout trials. It should also include a closer examination of opportunities for victim assistance and support, and whether or not irregular migrant victims are in practice able to make meaningful and effective use of essential services.

Lastly, additional research that includes the experiences and perspectives of irregular migrant victims themselves with respect to the 'free in, free out' policy is desperately needed. Indeed, to meaningfully improve existing policies and practice, it is essential to gain a better understanding of the unique challenges and needs of irregular migrants themselves who may be affected by 'safe reporting' policies, and who wish safely to report crime that takes place in their communities, as well as exercise their basic rights as victims.

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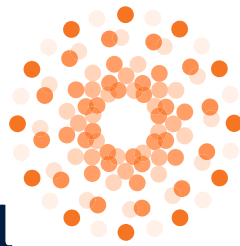
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