



## VISA RoC

### Victims with Irregular Migration Status' Safe Reporting of Crimes

Access to justice for Victims of Crime with irregular  
migration status in Italy

### Safe Reporting Paths in the City of Milan

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## Table of Contents

<b>1. Introduction</b> .....	5
<b>1.1. Purpose and objectives</b> .....	5
<b>1.2. Methodology</b> .....	6
<b>1.3. Structure</b> .....	7
<b>2. Access to justice for victims or witnesses of crime with irregular migration <i>status</i> in the Italian legal framework</b> .....	9
<b>2.1. The criminalisation of irregular migration status and the repressive approach in the Italian legal framework</b> .....	9
<b>2.2. Crime reporting for migrant victims or witnesses and the inevitable 'disclosure' of their irregular <i>status</i></b> .....	11
<b>2.3. Public officials' duty to report migrants with irregular <i>status</i></b> .....	12
<b>2.4. Access to justice for migrants with an irregular <i>status</i> seeking international protection</b> ...	14
<b>2.5. Access to justice for migrants with an irregular <i>status</i> entitled to special residence permits</b> .....	16
2.5.1. The special residence permit for social protection reasons .....	16
2.5.2. The special residence permit for victims of domestic violence.....	18
2.5.3. The special residence permit for severe labour exploitation .....	20
2.5.4. The special residence permit for investigative reasons.....	21
2.5.5. The residence permit for reasons of justice .....	21
<b>2.6. Effectiveness of special residence permits for migrant victims or witnesses</b> .....	22
<b>3. Access to justice for migrants with irregular <i>status</i>:</b> .....	25
<b>3.1. The multi-agency approach at the local level</b> .....	25
<b>3.2. Safe reporting practices through anti-trafficking agencies</b> .....	27
3.2.1. Anti-trafficking agency No.1 .....	27
3.2.2. Anti-Trafficking agency No. 2 .....	29



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

3.3. Safe reporting practices through the local police .....	32
3.4. Safe reporting practices through NGOs .....	33
3.5. Difficulty in accessing safe reporting paths and proposals to improve the local practices .....	34
4. Access to justice for migrants with irregular <i>status</i> : .....	36
4.1. Experiences of trafficking and sexual exploitation victims .....	36
4.2. Experiences of domestic violence victims .....	37
4.3. Experiences of trafficked victims exploited in illegal economies .....	38
4.4. Experiences of victims of trafficking and severe labour exploitation .....	38
4.5. Experiences of victims of other crimes .....	39
4.6. Impact factors on victims' detection and underreporting of crimes .....	40
5. Final proposals for the improvement of safe reporting in Italy .....	41
5.1. Legal reforms for effective access to justice for victims of crime with irregular migration <i>status</i> .....	41
5.2. Strengthening and implementing local practices of safe reporting for migrant victims of crime .....	42
5.3. European harmonisation to enhance victims' protection .....	44
References .....	46
Other relevant sources .....	47
Attachments .....	49



## 1. Introduction

### 1.1. Purpose and objectives

This report presents the results of the socio-legal study **on safe reporting practices in the city of Milan**.

It was conducted within the framework European project **Victims with Irregular Migration Status' Safe Reporting of Crimes (VISA RoC)**, funded by the European Commission<sup>1</sup>, and coordinated by the University of Barcelona. It is one of the outcomes of work package 2 (WP2), in which the units of Barcelona, Milan, Utrecht and Ghent participated with their local partners, as well as the European organisations Platform for International Cooperation on Undocumented Migrants (PICUM) and Victim Support Europe (VSE). The study on the city of Milan was conducted **by the University of Milan**, together with the partners: the Municipality of Milan<sup>2</sup> and the NGO "Cooperativa Lotta contro l'Emarginazione".

In line with the EU Strategies on Victims' Rights (2020-2025) and Gender Equality (2020-2025), and the EU Action Plan Against Racism (2020-2025), the **main objective of the VISA RoC project is to identify and promote safe reporting paths for migrants with irregular status who are victims or witnesses of crime**.

- Migrants with irregular *status* (or irregular migrants)<sup>3</sup> are persons present in Italy **who do not (or no longer) fulfil the conditions for entry, transit, or residence in this Member State**. They are foreign nationals who have entered Italy without obtaining a residence permit, but also - more often - they are people who have lost their residence permit during their stay (e.g., due to an expired visa or a rejected application for international protection).
- A crime victim is defined as "a person who has suffered harm, including physical, mental or emotional harm, or economic loss that has been directly caused by a crime"<sup>4</sup>, a figure that has become increasingly important in the Italian criminal justice system over time<sup>5</sup>.

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<sup>1</sup> VISA RoC is funded by the European Commission's Directorate-General for Justice through the 'Call for Proposals for Action Grants to Support Transnational Projects Strengthening the Rights of Persons Suspected or Accused of Crime and the Rights of Victims of Crime' (JUST-2021-JACC).

<sup>2</sup> Social welfare services of the Municipality of Milan (Rights and Inclusion Area).

<sup>3</sup> In this report, the terms 'irregular migrant' or 'migrant with an irregular status' are preferred to 'illegal migrant', as the latter terminology carries unwanted negative connotations by stigmatising people as opposed to their misconduct. Moreover, the term 'irregular migrant' is commonly used (and preferred) by international organisations including the UN, the Council of Europe, and some EU institutions. See N. DELVINO, (2017) *The challenge of responding to irregular immigration: European, national and local policies addressing the arrival and stay of irregular migrants in the European Union*, Autumn Academy 2017, Global Exchange on Migration and Diversity.

<sup>4</sup> Article 2 of Directive 2012/29/EU of the European Parliament and the Council of the Union adopted on 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, transposed into Italian law in Article 90-bis of the Code of Criminal Procedure in 2015 (Legislative Decree No. 212 of 15 December 2015). The term 'crime victim' struggles to establish itself in the Italian framework; in fact, in the Italian Criminal Code and the Italian Code of Criminal Procedure, we find it only in Article 498, c. 4-ter, of the Code of Criminal Procedure and in Article 90-bis of the Code of Criminal Procedure, the latter introduced by the "Cartabia reform" (Legislative Decree No. 150 of 10 October 2022). Both the Criminal Code and the Code of Criminal Procedure mainly use the expression "person offended by the offence", "person harmed by the offence", while criminal doctrine mainly refers to the concept of the person subject to the offence, as the owner of the right offended.

<sup>5</sup> Title VI of Book I of the Code of Criminal Procedure is dedicated to the victim. It is a set of rules introduced mainly by Legislative Decree No. 212 of 15 December 2015, which transposed Directive 2012/29/EU of the European Parliament and the Council of the Union adopted on 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime.



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

- Crime reporting is the process by which a person (usually the victim or a witness) **brings information about a crime to the attention of the public authorities. This usually leads to criminal proceedings against the offender.**
- Safe reporting, in this context, refers to the creation of a channel of reporting **that prevents adverse consequences for irregular migrants, as a result of disclosing information on their irregular status.**

The project pays special attention to victims of **human trafficking** and **gender-based violence** but concerns all irregular migrants who are victims of crime, as well as municipal authorities, police officers and other relevant social actors such as lawyers and NGO workers.

This report follows the outcomes of the research on the Italian system conducted by Dr. Sara Bianca Taverriti within the project "Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in the USA and Europe (2018-2019)"<sup>6</sup>, coordinated by the University of Oxford (COMPAS). The study concerned **the identification of national and local "firewall" measures to enable safe reporting for victims or witnesses of crime with irregular migration status**<sup>7</sup> in the Netherlands, Belgium, Italy, and Spain.

Building on the outcomes of the research conducted in 2019 at the national level, this report verified the functioning of safe reporting practices for irregular migrants at the local level, through **fieldwork in the Municipality of Milan, focusing on the multi-agency approach adopted in the fight against human trafficking**<sup>8</sup>. We tried to identify the **obstacles to effective access to justice in practice, pointing out** the implementation of procedures based on legal frameworks and protocols, and **suggesting improvements in safe reporting practices for migrants who are victims of crime.**

Thus, the main goals of this report are : 1) starting from the 2019 research, to identify **safe reporting strategies for migrants with an irregular status provided by law**; 2) **to identify and evaluate** existing **safe reporting practices** in the city of Milan developed by both the City Council units, anti-trafficking agencies, NGOs and the police according to a **multi-agency approach**; 3) to suggest ways **to improve existing practices** through the proper elaboration and implementation of local protocols among the actors involved.

### 1.2. Methodology

To verify the existence of safe reporting practices and the factors that can be barriers to access to justice in the city of Milan, we interviewed social operators and relevant local authorities in the field, as well as migrants with irregular status<sup>9</sup>. The interviewees were identified by the partners of the

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<sup>6</sup> S. B. Taverriti, (2019), *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Italy-country-report.pdf>.

<sup>7</sup> Measures that prevent for irregular migrants of being deported or charged if they interact with authorities to report a crime, thus encouraging their effective access to justice. As we will see, Italian legal system could not prevent the exchange of data between social service providers (e.g., victim assistance and restorative justice organisations) and the competent authorities (in receiving crime reports such as labour inspectors, local police, the Public Prosecutor's Office) and, on the other hand, the Immigration Law Enforcement Officers of the Italian Immigration Office under the State Police. See *below*, sect. 2.3.

<sup>8</sup> This is an operational strategy whereby NGOs and anti-trafficking bodies have a privileged channel of communication with the Territorial Commission for Asylum and with institutional actors (police, judicial authorities, prefectures) in order to effectively cooperate in identifying victims of violence and serious exploitation by criminal organisations, reporting the crimes they have suffered, and placing them in protection programmes for regularisation. See *below*, sect. 2 and 3.

<sup>9</sup> The interviews were conducted by Dr. Francesca Vitarelli, Postdoctoral Research Fellow at the State University of Milan.



University of Milan: the socio-welfare services of the Municipality of Milan and the NGO “Cooperativa Lotta contro l'emarginazione”, both playing a key role in anti-trafficking and severe exploitation projects involving other NGOs and local authorities.

First, testimonies were collected **from NGOs supporting migrants who are victims of crime** (anti-trafficking and serious exploitation, exploitation of prostitution, severe labour exploitation, exploitation in illegal economies<sup>10</sup> and other related crimes), as well as **police forces specialised in the protection of victims of gender-based violence in the domestic sphere**.

There were a total of 11 interviews with operators: 1 interview with an operator of an anti-trafficking and serious exploitation organisation in which religious and lay people collaborate; 5 interviews with operators of an anti-trafficking and serious exploitation organisation composed of lay people; 2 interviews with operators of Milan's local police unit specialised in woman and child protection; 3 interviews with the volunteers of a migrant support NGO not included in the local anti-trafficking network.

In addition, direct indirect testimonies were collected from irregular migrant victims of crime, people of different gender and geographical origins: 2 direct testimonies and 17 indirect testimonies through anti-trafficking agencies and migrant support NGOs operating at the local level.

It was not easy to obtain interviews directly with migrants. Some organisations that could put us in connection with them preferred to **avoid the direct interview** mode because of the risk of **secondary victimisation**<sup>11</sup> : they therefore preferred to provide us with **indirect testimony on their cases**.

Therefore, **two methods were used to collect migrants' testimonies**:

On the one hand, we collected some direct testimonies from irregular migrants who were victims of crime through the **interview mode** (assisted by the social operators), on the other hand, we heard **indirect testimonies from the social operators**.

In some of these cases, the interviewer also **met some crime victims whose stories were filtered to us by the operators**, by participating in the “street unit” activities of anti-trafficking agencies. It was important to get to know them personally to **better understand the context and their vulnerable situation**.

The testimonies cover trafficking for sexual exploitation, exploitation in illegal economies, severe labour exploitation, gender-based violence and other violent crimes, and property crimes.

The interviews conducted with operators and migrants were based on the common template approved by the VisaRoc project partners and were recorded with the consent of the interviewed, according to the data protection document that each participant signed.

### 1.3. Structure

This report is divided into a total of **5 sections**, presenting the results of the research conducted.

**Section 1** covers the objectives, methodology and structure of the research.

**Section 2** deals with the repressive policies towards migrants with an irregular *status*, and then focuses on the core issue of the research, *i.e.*, access to justice for migrants who report offences, **exposing them to the adverse consequences linked to their irregular status**, given the obligation to report placed on public servants. However, there are some cases where **the law provides for the possibility of obtaining a special permit for the migrant victim (or witness) of certain crimes, which**

<sup>10</sup> These are cases where the victim is forced by traffickers/exploiters to commit crimes, e.g., theft or drug dealing.

<sup>11</sup> Secondary victimisation refers to the phenomenon whereby the victims of a crime relive the conditions of suffering to which they were subjected when reconstructing what happened.



**Victims with Irregular migration Status' Safe Reporting of Crimes**  
Project: 101056675 — VISA RoC — JUST-2021-JACC

**allows for the activation of safe reporting practices through a multi-agency approach.** Sometimes these practices are formalised through guidelines and protocols implementing legislation, as in the case of trafficking in human beings.

**Section 3** then looks at **local practices and the functioning of the multi-agency approach adopted in the municipality of Milan**, focusing on feedback from interviews with some of the key actors involved at the local level in the implementation of safe reporting practices for victims and witnesses of crime with irregular migration *status*.

**Section 4** presents the findings of direct and indirect testimonies from victims of crime with irregular migration *status*, focusing on the factors that **prevent safe reporting in the context studied**.

**Section 5** focuses on the possible solutions **to improve the safe reporting of crimes by victims and witnesses with irregular migration status** through the implementation and proper enforcement of protocols at the local level between the actors involved, while emphasising the need for system-wide legislative reform.





## 2. Access to justice for victims or witnesses of crime with irregular migration status in the Italian legal framework

### 2.1. The criminalisation of irregular migration status and the repressive approach in the Italian legal framework

In recent years, immigration policies have responded to an ever-expanding migratory phenomenon with an increasingly repressive approach, as seen in the progressive intertwining of immigration law and criminal law (the phenomenon of “*Crimmigration*”)<sup>12</sup>.

In addition to an administrative sanction<sup>13</sup>, the Consolidated Law on Immigration “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero Testo Unico sull’Immigrazione”, (Legislative Decree No. 286/1998 of 25 July 1998, also known as CLI)<sup>14</sup> allows for the criminalisation<sup>15</sup> of four different types of behaviour related to the *status* of irregular migrants, of which the most relevant for our research is Article 10-*bis* CLI, which punishes a foreigner who enters or remains in the territory of the State in a condition of irregularity.

Although Article 10-*bis* CLI provides for less severe sanctions (compared to other articles of the CLI)<sup>16</sup>, it is an offence that potentially involves the largest number of migrants without a permit, insofar as it **coincides with the condition of irregularity itself**. It is precisely for this reason that the provision **has been** fiercely criticised by Italian legal scholars and the judiciary, who have raised several doubts about **compliance with the constitutional principles of “harm” (*nullum crimen sine iniuria*) and “culpability”**<sup>17</sup>.

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<sup>12</sup> Term coined by J. Stumpf, (2006), *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, American University Law Review, Vol. 56, p. 367; C. C. García Hernández, *Crimmigration Law*, (2017), ABA.

<sup>13</sup> The CLI also provides for administrative deportation, ordered by the Prefect, against foreigners who are in an irregular position of residence, (Article 13, para.2 CLI).

<sup>14</sup> The other offences that serve to criminalise irregular immigrants are: irregular entry and stay in the territory of the State (Art. 10-*bis* CLI); violation of an order to leave the territory of the State (Art. 14 para. 5-ter and para. 5-ter and 5-*quater* CLI); the re-entry into the territory of the State after an administrative expulsion (art. 13, para. 13 and 13-*bis* CLI); and the re-entry into the territory of the State after a rejection at the border (art. 10, para. 2-*ter* and 2-*quater* CLI).

<sup>15</sup> *Crimmigration* is also extending to other collateral political strategies, such as the provision of deprivation or restriction of personal liberty in immigration law enforcement and the criminalisation of rescue operations by NGOs. See A. di Martino, F. Biondi Dal Monte, I. Boiano, R. Raffaelli, (2013), *The criminalization of irregular migration: law and practice in Italy*, Pisa; G. L. Gatta, (2018), *La pena nell'era della 'Crimmigration' tra Europa e Stati Uniti*, Riv. It. Dir. Proc. Pen., 2, p. 675-724 and more recently by G.L. Gatta, V. Mitsilegas, S. Zirulia, (2021), *Controlling Immigration Through Criminal Law - European and Comparative Perspectives on 'Crimmigration'*, Oxford, pp. 267-280; G. Mentasti, (2022), *The criminalisation of migration in Italy: current tendencies in the light of EU law*, *New Journal of European Criminal Law*, 13(4), pp. 502-525.

<sup>16</sup> Article 10-*bis* CLI punishes with a fine of 5,000 to 10,000 euros a foreigner who enters or remains in the territory of the State in violation of the provisions of the CLI.

<sup>17</sup> According to the critics, Article 10-*bis* would violate the principle of “harm” (*nullum crimen sine iniuria*) insofar as it criminalises a human condition (rather than human behaviour) that does not produce any harm. The lack of a 'justified reason' clause to exclude criminal liability and other circumstances beyond the migrant's control would violate the principle of culpability. Most of these criticisms were summarised in the constitutional reviews analysed by the Constitutional Court in its judgment No. 250 of 5 July 2010, see M. Caputo, (2010), *La contravvenzione di ingresso e soggiorno illegale davanti alla Corte Costituzionale*, DPP, p. 1187 ff; L. Masera, (2010), *Corte Costituzionale e immigrazione: le ragioni di una scelta compromissoria*, RIDPP, p. 1373 ff; F. Viganò, (2010), *Diritto penale e immigrazione: qualche riflessione sui limiti alla discrezionalità del legislatore*, QG, 3, p. 13 ff; A. Cavaliere, (2013), *Il Diritto penale e politica dell'immigrazione*, Critica del diritto, 1, p. 32-33; L. Ferrajoli, (2009), *La criminalizzazione degli immigrati (Nota a margine della l. n. 94/2009)*, QG, 5, 9; G. L. Gatta, (2009), *Il "reato di clandestinità" e la riformata disciplina penale dell'immigrazione*, DPP, p. 1323 ss.



The repressive approach to the migration phenomenon also emerges from recent reforms of the **residence permit system, which have made it increasingly difficult to regularise migrants on Italian territory.**

Focusing on the latest reforms, the first security decree promoted by the Minister of Interior Matteo Salvini (Decree-Law No. 113 of 4 October 2018) **abolished the residence permit for humanitarian reasons, introducing instead a special protection permit** only in certain specific cases. This decision **significantly limited the reception system for asylum seekers.** The next government (the so-called Conte II) reformed the rules on residence permits with an important change of course in immigration policy (Decree-Law No. 130 of 21 October 2020). In fact, this new decree expanded the potential number of beneficiaries of the residence permit **with the introduction of the special permit for the protection of the foreigner's private and family life.**

After the last general elections, a **new restrictive change of direction was expressed by the current government,** especially after a tragic event known in the chronicles as the “la strage di Cutro”. On 26 February 2023, a boat leaving Turkey with around 200 people on board broke in two a few metres off the coast of Calabria, leaving more than 100 people dead. The Italian authorities were alerted but did not launch a rescue operation. The Public Prosecutor's Office is investigating in order to reconstruct the facts and determine possible responsibilities<sup>18</sup>.

**To discourage migration,** the “Cutro decree”<sup>19</sup> adopted by the government in March 2023, abolished **the special permit for the protection of the foreigner's private and family life,** introduced in 2020, marking a return to the Salvini decree. In addition, the law converting the Cutro decree of May 2023<sup>20</sup> sanctioned a further restriction on residence permits and asylum applications.

Although these reforms do not directly affect the regulation of special permits for crime victims<sup>21</sup>, which will be discussed later, they do lead to a potential increase in the number of irregular migrants.

In conclusion, *Crimmigration* and restrictive policies on residence permits are two issues closely related and functional to the present research, as they highlight a fact: being a **migrant with irregular status in Italy is itself a source of vulnerability**<sup>22</sup>. This brings us to the subject of this research: as the number of migrants with irregular *status* increases<sup>23</sup>, so does the number of potential victims of crime who do **not have effective access to justice when they want to report a crime.**

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<sup>18</sup> [https://www.ansa.it/ansamed/it/notizie/rubriche/cronaca/2023/02/27/strage-di-migranti-in-calabria-almeno-62-morti-decine-dispersi\\_23678097-7712-4901-9183-40aa4db5fa1d.html](https://www.ansa.it/ansamed/it/notizie/rubriche/cronaca/2023/02/27/strage-di-migranti-in-calabria-almeno-62-morti-decine-dispersi_23678097-7712-4901-9183-40aa4db5fa1d.html)

[https://www.ansa.it/calabria/notizie/2023/10/04/naufraggio-cutro-entro-lanno-fine-indagini-sui-soccorsi\\_01f38798-9c73-4c59-9ffd-c2fa051ef30a.html](https://www.ansa.it/calabria/notizie/2023/10/04/naufraggio-cutro-entro-lanno-fine-indagini-sui-soccorsi_01f38798-9c73-4c59-9ffd-c2fa051ef30a.html)

<sup>19</sup> Decree-Law No. 20 of 10 March 2023.

<sup>20</sup> Conversion Law No. 50 of 5 May 2023.

<sup>21</sup> See *infra*, sect. 2.

<sup>22</sup> See on this point S. B. Taverriti, (2023), “Gimme Shelter”: *The Right to Silence for Silenced Migrant Victims*, Dir. pen. cont., Riv. Trim., 1, p. 227-245.

<sup>23</sup> It is increasingly difficult for a migrant who enters our country to obtain a residence permit and not to lose it once obtained: interviews revealed that many people who turn to assistance services have been irregular in our country for years and many of them became irregular after a period of regularity. See *below*, sect. 4.



## 2.2. Crime reporting for migrant victims or witnesses and the inevitable 'disclosure' of their irregular status

Like any other person, an irregular migrant could file a complaint with the authorities if he or she is the victim of a crime. Some offences (e.g., sexual assault or stalking) require a **specific complaint from** the victim to prosecute the offender<sup>24</sup>. Conversely, other offences can be reported by anyone aware of the offence<sup>25</sup>.

One of the first steps a person (citizen or foreigner) takes when reporting a crime is to confirm their **identity. In the case of foreign nationals, police officers will most often ask for both an identity document and a valid residence permit.** When the person is **undocumented or is suspected of having an irregular migration status will be fingerprinted and subjected to other identification tests**<sup>26</sup>.

It is also possible to file a report through an intermediary: in these cases, the private party is usually assisted by an attorney, who also provides an address for official communications with public authorities.

**Given the reluctance of migrants with irregular status to interact with** the authorities for fear of deportation or other adverse consequences for them, this “indirect” way of crime reporting **may be relevant for this research as the attorney plays the role of “filter”.**

However, while the victim with irregular status may avoid direct contact with **the public authorities** when reporting the crime, the fact remains that **the identification of the victim is almost always necessary to proceed with the investigation and the trial.** Moreover, it cannot be excluded that this reporting method may reveal (or provide evidence of) **irregular migrant status, as the victim's signature is still required.**

Besides, following the transposition of Directive 29/2012/EU<sup>27</sup> (the so-called “Victims Directive”) into the Italian criminal system<sup>28</sup>, the public authorities receiving complaints **are obliged to inform the victims of all the rights they are entitled to exercise during criminal proceedings**<sup>29</sup>. Therefore, it seems impossible to avoid the **identification of the victim during the investigation or the criminal**

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<sup>24</sup> The function of the complaint in this case is to express the victim's willingness to prosecute the offender (Article 336 of the Code of Criminal Procedure) and its absence prevents criminal proceedings against the offender.

<sup>25</sup> The complaint must be submitted orally or in writing, in person or by means of an attorney, to the Public Prosecutor or to a judicial police officer. If submitted in writing, the complaint must be signed by the author or his delegate (Article 333 of the Code of Criminal Procedure). The complaint must be filed in the same way as a complaint by private individuals (orally or in writing, in person or by means of an attorney). In addition, if it has an authenticated signature, the complaint may also be delivered by an appointed person or sent by post in a registered envelope (Article 337 of the Code of Criminal Procedure). This modality is relevant to our research because it does not imply direct contact with the police.

<sup>26</sup> Art.6 para. 4 CLI.

<sup>27</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, transposed into Italian law in Article 90-bis of the Code of Criminal Procedure in 2015 (Legislative Decree No. 212 of 2015).

<sup>28</sup> See S. B. Taverriti, (2017), *La tutela della vittima tra procedibilità a querela e procedibilità d'ufficio*, in VV. AA., *Victims of crime and the penal system. La ricerca di nuovi equilibri*, M. Bargis - H. Belluta (ed.), Giappichelli, Turin, p. 503-526; L. Luparia, *Victims and criminal justice. European standards and national good practices*, Wolters Kluwer, 2015, available at <http://www.protectingvictims.eu/upload/pages/85/English-volume.it.en.pdf>.

<sup>29</sup> These include the right to understand and be understood, the right to a translator, the right to be informed about all stages of the criminal proceedings, the right to be assisted by a lawyer and all information regarding reimbursement, social assistance and compensation, see for their application in practice S. B. Taverriti, (2019) *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, cit.



proceedings, with the consequent “disclosure” of the irregular *status*, which brings us to the fundamental point addressed in the next paragraph.

### 2.3. Public officials' duty to report migrants with irregular *status*

In Italy, the competence on Immigration Law lies on the Minister of Interior and its enforcement is entrusted to all police forces (even those that are not part of the Ministry of the Interior). Besides, Prefectures and Police Headquarters **are specifically responsible for assessing applications for residence permits, managing expulsion procedures and dealing with immigration issues in general.**

All local police forces have the obligation to **report to the State Police and the Public Prosecutor's Office** any irregular migrant they come into contact with, not only to initiate the expulsion procedure but also to report the existence of the criminal offence<sup>30</sup>. In Italy, the law imposes an obligation for **public servants**<sup>31</sup> to report crimes of which they are aware, and which can be prosecuted *ex officio*<sup>32</sup>.

Therefore, there is often a substantial **overlap** between the actors who have to assist irregular migrant victims and the actors in charge of immigration law enforcement. Indeed, police officers, to whom reports of crimes by migrant victims should be addressed, are **obliged to report their irregular *status***, with the resulting adverse consequences such as deportation and criminal proceedings for violation of Article 10-*bis* CLI.

Moreover, it is not possible to **prevent the exchange of data between social operators assisting victims and the authorities responsible for receiving crime reports on the one hand and immigration officials on the other hand**, as this matter falls within the competence of the State Police<sup>33</sup>. The overlapping competences of law enforcement agencies in relation to immigration enforcement and the prevention and prosecution of common crimes implies that it is impossible to replicate in Italy the *firewall* mechanisms aimed at ensuring safe reporting channels that are based on the separation of anti-immigration enforcement and criminal law enforcement<sup>34</sup>.

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<sup>30</sup> Art. 10-*bis* CLI.

<sup>31</sup> About the obligation incumbent on public officials and persons in charge of a public service, the Italian Criminal Code incriminates public officials or persons in charge of a public service who omit or delay reporting an offence of which they have become aware during or because of their professional duties (Articles 361 and 362 of the Criminal Code).

<sup>32</sup> According to N. Delvino and S. Spencer, (2014), *Irregular Migrants in Italy: Law and Policy on Entitlements to Services*, ESRC Centre on Migration, Policy and Society (COMPAS), University of Oxford, p. 16, footnote 74, “the sole fact that a foreign national does not exhibit a residence permit to a public service provider does not immediately imply the duty to report the migrant, as the public official or the person in charge of a public service must denounce only when he or she is certain of the crime. The mere fact that a foreign national did not show a valid residence permit may indeed be due to reasons other than an irregular condition”, but this is still a situation of uncertainty that may lead to different results depending on the individual officers interacting with the migrant victims. In practice, the decision whether to report the victim to the immigration authorities may often be at the discretion of the individual agent.

<sup>33</sup> See <https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza/direzione-centrale-dellimmigrazione-e-polizia-frontiere>.

<sup>34</sup> The experience of *firewall* mechanisms in Sanctuary cities does not seem replicable in Italy cf. S. B. Taverriti, (2019), *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, cit., see *infra*, footnote 141; For the experience of Sanctuary cities in the US experience see N. Delvino (2019) *Safe reporting of crime for victims and witnesses with irregular migration status in the United States*, [www.compas.ox.ac.uk/2019/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-united-states](http://www.compas.ox.ac.uk/2019/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-united-states).



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

The Italian law also provides for a reporting obligation for doctors and health workers who become aware of a crime while on duty<sup>35</sup>, but **there is an express exception *ex lege* for the effective protection** of the right to health since they are not obliged to report the **irregular status of the person under medical treatment**<sup>36</sup>. Hospitals are therefore conceived as **safe spaces for irregular migrants, whereas the same cannot be said for police stations and - in general - for other public facilities**, given that every time migrants are required to present a **valid residence permit**, they can be reported for the irregular *status*, **even when the interaction with a public authority constitutes the exercise of a right** (such as the right of defence of a victim)<sup>37</sup> or **the fulfilment of a public obligation** (such as testifying in a trial). An **exception seems to be found in some courts**, where any identification document is accepted and, in some cases, they do not even require one: a practice that protects irregular migrants who are called to testify<sup>38</sup>. However, there are also cases in which the migrant, called to testify in the trial, did not appear for fear of being denounced for his irregular *status*<sup>39</sup>.

The fact remains that the **reporting of a crime by victims with irregular *status*** inevitably entails the **"disclosure" of their situation to the authorities that received the report**, who are consequently obliged to report irregular migrants, obviously preventing effective access to justice for these individuals. A situation that jeopardises the effective exercise of the right of defence guaranteed by the Italian Constitution to every person, irrespective of their administrative *status* (Art. 24 of the Constitution), as well as of the right not to incriminate oneself (or the right to silence) according to the principle of *nemo tenetur se detegere*<sup>40</sup>.

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<sup>35</sup> Article 365 of the Criminal Code extends the provisions of Articles 361 and 362 of the criminal code to health professionals.

<sup>36</sup> Art.35, para. 5 CLI: 'Access to health facilities by a foreigner who is not in compliance with the rules on residence cannot lead to any kind of report to the authorities, except in cases where a report is compulsory, on an equal footing with an Italian citizen', but also more generally art. 365, para. 2: 'This provision does not apply when the report would expose the assisted person to criminal proceedings'.

<sup>37</sup> The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on the protection of victims guarantees access to the courts and recognises the rights of victims without discrimination (Art. 1) but does not provide any mechanism to protect against sanctions arising from administrative *status*. In fact, Directive 2012/29/EU itself states that denunciation and participation in criminal proceedings do not give rise to any rights regarding the victim's residence *status* (recital 10).

<sup>38</sup> This practice was referred by an NGO (Interview 1).

<sup>39</sup> In a case of ill-treatment, the woman victim of the crime, who was called to testify in the trial, refused to appear in court because she feared that the judge would denounce her for her irregular condition (Art. 10-bis) on the basis of the obligation to report (Art. 331 of the Criminal Code). Her lawyer represented the situation at the hearing before the Juvenile Court, which in turn raised a constitutional review. The referring judge appealed to the Constitutional Court, arguing that the risk of being subjected to a complaint or an administrative sanctioning measure hindered the migrant's right to justice and a fair trial, as provided for in Article 24 (right to defence) and Article 47 of the Charter of Fundamental Rights, and requesting a derogation from the obligation to report the migrant's situation in order to avoid the initiation of criminal proceedings or expulsion proceedings against him. However, the Constitutional Court found the constitutionality review inadmissible due to gaps in the description of the facts and irrelevance of the question. According to the Constitutional Court, the judge should have verified whether the woman's condition was still irregular at the time of the hearing. The Court emphasised that, at the time of the trial, the woman had already turned to the public authorities (denouncing her husband's abuse) and had been housed and helped by social services. Nevertheless, the public authorities did not initiate criminal proceedings against her, nor an administrative deportation. See *amplius* S. B. Taverri, (2019), *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, cit. p. 26 ff.

<sup>40</sup> The right to silence is linked to the right of defence, provided for in Article 24 of the Italian Constitution, but also to Article 27(2) which affirms the presumption of innocence, Article 111 of the Constitution which sets the standards for





However, there are some cases where **Italian law, also in transposition of EU directives<sup>41</sup>, provides for the protection of migrant victims of crime with special permits, allowing them access to justice without the risk of suffering the adverse consequences deriving from to their irregular status.** Over time, the legislative provisions have been supplemented by protocols at the national level<sup>42</sup> and by **local practices**, sometimes formalised<sup>43</sup> in protocols as well, in order to strengthen the safe reporting system **provided by the legislative framework**, limited, however, to victims of certain crimes.

#### 2.4. Access to justice for migrants with an irregular status seeking international protection

The institution of international protection was established by Directive 2004/83/EC<sup>44</sup> and transposed in Italy by Legislative Decree No. 251 of 19 November 2007.

**International protection includes refugee status and subsidiary protection<sup>45</sup>. Refugee status** is granted under the 1951 Geneva Convention on the *status* of refugees<sup>46</sup>, to individuals who “owing to a well-founded **fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion**, are outside their country and unable or, owing to such fear, unwilling to avail themselves of the protection of that country; or that, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear, unwilling to return to it”<sup>47</sup>. **Subsidiary protection** is granted to third-country national or stateless individuals who do not qualify as a **refugee but there are reasonable grounds for believing that, returning to their country of origin, or, in the case of a stateless person, returning to the country** of former habitual residence, they would face a real risk of suffering serious harm and they are unable or unwilling, owing to such risk, to avail themselves of the protection of that country.

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due process in the Italian legal system and Article 13 of the Constitution which enshrines personal freedom as inviolable See S. B. Taverriti, (2023), "*Gimme Shelter*": *The Right to Silence for Silenced Migrant Victims*, cit. p. 234 f.

<sup>41</sup> Directive 2004/83/EC of 29 April 2004 introduced into European legislation by Council on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, subsequently amended in 2011 by Directive 2011/95/EU; Directive 2004/83/EC of the European Parliament and of the Council 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; Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and subjected to particularly exploitative working conditions providing, see *below*, sect. 2.

<sup>42</sup> See the Ministry of the Interior's *vademecum*, published in 2023, for the detection, *referral* and taking charge of vulnerable persons arriving on the territory and included in the protection and reception system: <https://www.interno.gov.it/sites/default/files/2023-06/vademecum.pdf>.

<sup>43</sup> See *infra*, sect. 3.

<sup>44</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, transposed in Italy by Legislative Decree No. 251 of 19 November 2007 ("Qualification Decree"), and subsequently amended in 2011 by Directive 2011/95/EU, transposed in Italy by Legislative Decree No. 18 of 21 February 2014.

<sup>45</sup> Legislative Decree No. 251 of 19 November 2007 "Minimum standards on the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and minimum standards on the content of the protection granted".

<sup>46</sup> Ratified by Law No. 722 of 24 July 1954.

<sup>47</sup> Art. 1, Definition of the term 'refugee'.



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

It is possible to apply for international protection at the border police station when entering the country or at the police station responsible for the place of residence. The police send the application to the Territorial Commission for the Recognition of International Protection, which is the only body competent to decide on the application<sup>48</sup>.

The migrant is granted a **six-month residence permit for asylum applicants**, valid on the territory of the State and renewable until the Territorial Commission decides on the application for international protection.

A foreign national who is granted international protection **is entitled to a residence permit for political asylum or subsidiary protection, both of which last for five years**. International protection cannot be converted into a work permit.

**Sometimes those seeking international protection are victims of trafficking and serious exploitation.**

In order to facilitate the identification of victims of trafficking among applicants for international protection and their prompt referral to the anti-trafficking system, the UNHCR and the National Commission on the Right to Asylum have developed Guidelines **for the identification of victims of trafficking among international protection seekers and for the referral mechanism of trafficked persons to the social services**, which establish standard procedures to be adopted by the Territorial Commissions when examining these specific applications<sup>49</sup>.

In particular, the Guidelines establish **standard procedures** to be followed in the **presence of indicators of trafficking** (such as difficulty in leaving the context of exploitation; lack of freedom of movement as they are controlled by traffickers; subjection to violence or threats against themselves and their family members; mistrust of the authorities; fear of detection of their irregular status), to facilitate the identification of victims of this criminal phenomenon among applicants for international protection and to facilitate their access to appropriate assistance and protection measures.

The guidelines also **promote the referral mechanism** through a **multi-agency** approach<sup>50</sup>, to strengthen the coordination and cooperation between the Territorial Commissions and the public and private actors (e.g., NGOs) implementing **the single programme for the rescue, assistance and social integration in favour of the victims of crimes of modern slavery, trafficking in human beings or serious exploitation**<sup>51</sup>.

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<sup>48</sup> For the procedure see Article 3, Presidential Decree No. 21 of 12 January 2015.

<sup>49</sup> The Guidelines, adopted in the first edition in 2016 and updated in 2021, were drafted within the framework of the project of the National Commission on the Right to Asylum and the United Nations High Commissioner for Refugees - UNHCR "Coordination Mechanisms for Victims of Trafficking", aimed at identifying standard procedures for the correct identification of victims of trafficking during the recognition of international protection as well as for the coordinated intervention of the institutions and actors involved. They are addressed to the Territorial Commissions for the recognition of international protection and aim at constituting a useful support tool to contribute to the correct and early identification of victims of trafficking in human beings within the assessment procedures of asylum applications. Available here: <https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali-identificazione-vittime-di-tratta.pdf>.

<sup>50</sup> This is an operational strategy whereby NGOs and anti-trafficking bodies have a privileged channel of communication with the Territorial Commission for Asylum and with institutional actors (police, judicial authorities, prefectures) in order to effectively cooperate in identifying victims of violence and serious exploitation by criminal organisations, in possibly reporting the crimes they have suffered, in regularising their situation and in placing them in protection programmes.

<sup>51</sup> The person requesting international protection identified as a victim of trafficking is in fact entitled to access the single programme of the emergence, assistance and social integration and to be accommodated in a protected facility



In local practice, international protection<sup>52</sup> is usually requested by the anti-trafficking agencies assisting the victims of crime when it is not possible to place the person in social protection pathways under Art. 18 CLI<sup>53</sup>.

Article 10-*bis* CLI states that in the case of an **application for international protection under Legislative Decree No. 251 of 19 November 2007, the proceedings are suspended** and, if the protection is granted with the consequent issue of a residency permit, the judge shall pronounce a non-prosecution statement.

## 2.5. Access to justice for migrants with an irregular *status* entitled to special residence permits

**Victims of certain crimes can obtain special residence permits.** In these cases, the **reporting of a crime opens the door to the regularisation of the migrant and expulsion procedures are not initiated or are however suspended.**

In the Italian system provides for the following permits:

1. special residence permits **issued for reasons of social protection;**
2. special residence permits for **victims of domestic violence;**
3. special residence permits for **victims of severe labour exploitation;**
4. special residence permits for **investigative reasons** relating to terroristic crimes;
5. residence permits **for reasons of justice**

### 2.5.1. The special residence permit for social protection reasons

For migrants who are victims of particularly serious crimes committed by a criminal organisation, **Article 18 CLI** provides for a special residence permit for social protection.

Three requirements define the scope of the special permit for social protection reasons:

1) The victim has suffered one of the offences listed in Article 18 CLI, which includes particularly serious crimes, such as **human trafficking<sup>54</sup> and sexual exploitation<sup>55</sup>**. The permit also covers a wide range of offences which have in common the provision of mandatory arrest *in flagrante delicto*<sup>56</sup> (this including intentional crimes, committed or attempted, for which the law imposes the most severe punishments)<sup>57</sup>. In addition, Art. 18 CLI provides more cases which refer to a variety of

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managed by an entity authorised to carry out such a programme pursuant to Art. 18 CLI. The integration programme is provided for in the National Action Plan against trafficking and serious exploitation of human beings, see anti-trafficking plan 2022-2025 available here: <https://www.pariopportunita.gov.it/media/2427/piano-anti-tratta-2022-2025-ita.pdf>.

<sup>52</sup> At 1° January 2020 it is possible to estimate a total number of 40 thousand refugees on the national territory, of which 3 thousand resettled, in addition to 58 thousand beneficiaries of subsidiary protection and 8 thousand persons with humanitarian protection *status*. The total number of people in the protection area is thus approximately 105 thousand and in percentage terms this is just under 2% of the total number of foreigners present in Italy. See G. Langiardo, E. Codini, M. D'Odorico, G. Gilardoni, A. Menonna, S. Morlotti, *Beneficiaries of international protection and integration in Italy. Regulations, policies, numbers and challenges*, Report 2022, Fondazione ISMU: <https://www.ismu.org/wp-content/uploads/2022/06/NIEM- Italian-National-Report Beneficiari-protezione-internazionale 2022.pdf>.

<sup>53</sup> See *infra*, sect. 3.

<sup>54</sup> Art. 601 of the Criminal Code incriminating various types of trafficking-related conduct committed both nationally and internationally such as labour exploitation, sexual exploitation, forced begging or exploitation in illegal economies.

<sup>55</sup> L. No. 75 of 20 February 1958 incriminating various conduct related to sexual exploitation (e.g., exploitation as such, recruitment, aiding).

<sup>56</sup> Art. 380, para. 1 of the Criminal Procedure Code.

<sup>57</sup> Specifically: life sentence, and imprisonment for a minimum of at least five years and a maximum of at least ten years.





## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

crimes<sup>58</sup>. To name a few: **modern slavery**<sup>59</sup>; crimes related to child prostitution, child pornography, tourist initiatives aimed at exploiting child pornography<sup>60</sup>; illegal recruitment and **severe labour exploitation perpetrated with violence and threats**<sup>61</sup>; sexual abuse, gang rape, sexual activities with a minor<sup>62</sup>; crimes of aggravated theft and robbery<sup>63</sup>; crimes concerning weapons<sup>64</sup>; crimes concerning narcotic drugs<sup>65</sup>; criminal organisation aiming at committing other crimes and “mafia” criminal organisation<sup>66</sup>; **domestic abuse and stalking**<sup>67</sup>.

2) The situation of violence or serious exploitation must be ascertained: during police operations, investigations, or **criminal proceedings** for one or more offences expressly indicated by the provision; during the **interventions of the services for the protection of victims**<sup>68</sup>.

3) The danger of an actual threat to the migrant's safety for his attempts to escape the pressure of a criminal organisation committing one (or more) of the listed offences, or the risk of retaliation as a result of making statements during preliminary investigations or a trial. **It has to be taken into account the risks to the personal safety of the migrant and their families in their countries of origin if they are repatriated.**

It is important to note that the special permit for social protection reasons does not apply when the crime is perpetrated by a single person, **as it is necessarily the activity of a criminal organisation.**

Before issuing the residence permit, the Police Headquarters also checks that the victim has joined the assistance and social integration programme for victims of trafficking or serious exploitation **agreed with the social actors in charge of the local service.**

**The residency permit issued under Article 18 lasts six months renewable for one year or for the longer period necessary to complete the criminal proceedings.** It allows the migrant to find employment and, when it expires, **can be converted into a residence permit for work purposes. It may be revoked** in case of: interruption of the social assistance and integration programme; behaviour incompatible with the objectives of the programme; or cessation of the conditions justifying its issue.

**The victim's compliance with a social assistance and integration programme is a necessary condition** for the issue of a residence permit<sup>69</sup>, while it is not compulsory to file a complaint. In fact, the residence permit provided for by Article 18 CLI may be granted **both based on a complaint lodged by the victim and when the victim is unable or unwilling to go to court.**

The legal system therefore provides two distinct, alternative paths for the issuance of this residence permit **(the so-called dual track):**

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<sup>58</sup> Those listed in art. 380 para. 2 of the Criminal Procedure Code.

<sup>59</sup> Art. 600 of the Criminal Code.

<sup>60</sup> Art. 600-*bis*, para. 1 of the Criminal Code, Art. 600-*ter*, para. 1 and 2 of the Criminal Code, art. 600-*quarter*.1 of the Criminal Code, Art. 600-*quinquies* of the Criminal Code.

<sup>61</sup> Art. 603-*bis* para. 2 of the Criminal Code.

<sup>62</sup> Art. 609-*bis* of the Criminal Code, Art. 609-*octies* of the Criminal Code, Art. 609-*quarter* of the Criminal Code.

<sup>63</sup> Art. 624, 624-*bis*, 625 of the Criminal Code and 628 of the Criminal Code.

<sup>64</sup> L. No. 110 of 18 April 1975.

<sup>65</sup> Art. 73 of the Consolidated Text approved by Presidential Decree No. 309 of 9 October 1990.

<sup>66</sup> Art. 416 of the Criminal Code and 416-*bis* of the Criminal Code.

<sup>67</sup> Art. 572 of the Criminal Code and 612-*bis* of the Criminal Code.

<sup>68</sup> See *infra*, sect. 3.

<sup>69</sup> See *below*, Sections 3 and 4 on the difficulties in convincing people to enter/remain in social protection programmes.



- the **judicial process**: the victim **reports the crime suffered to the authorities**. The residence permit is issued by the Police Headquarters on the proposal or subject to the favourable opinion of the Public Prosecutor's Office in charge of the criminal proceedings relating to the reported facts;
- **social path**: the victim does not file a **complaint but relies on an organisation responsible for assisting trafficking victims and joins the social assistance and integration programme**. In this case, the residence permit is issued by the Police Headquarters on the proposal of the organisation that took charge of the victim, without the prior acquisition of the opinion of the Public Prosecutor's Office.

Reporting the crime **is only a secondary element compared to the need to protect the victim's fundamental rights** and therefore not decisive for the issuance of the residence permit. The main goal of the permit is to provide protection to the victim and not to reward them for their contribution to the detection of the crime.

In both cases, the Questore **verifies the migrant's adherence to the social assistance and integration programme and the acceptance of the related commitments**.

With specific reference to the context of trafficking and serious exploitation of human beings, the **"National Plan against Trafficking and Serious Exploitation of Human Beings"**<sup>70</sup> is periodically approved at the ministerial level. Its aim is to provide for: assistance and protection to persons during the preliminary phase of the assessment of the victim's situation (three months, which can be extended for a further three months); the tools necessary to achieve full autonomy (e.g., protection and social-health assistance; Italian language courses for adults; support in finding work and accommodation).

The programme is implemented through local projects providing adequate assistance measures **to persons in a condition of serious exploitation for one of the offences provided for in Article 18 CLI**. The subjects involved may be **the social services of the Municipality or associations, agencies, and other private organisations**.

**The migrant who is granted a residence permit for social protection cannot be convicted of the previously committed crime of illegal entry and stay**, since Article 10-*bis*, section 6, of the Consolidated Law on Immigration is applicable, which provides that the judges will pronounce a non-prosecution statement (for the crime of illegal entry and residency in the territory of the State) against the foreigner with a residence permit under Article 18 CLI.

### 2.5.2. The special residence permit for victims of domestic violence

Article 59 of the Council of Europe Convention on Preventing and Combating Violence against Women (the so-called Istanbul Convention, ratified by Italy with Law No. 77 of 2013), provides that States shall take measures to ensure that victims, whose residency *status* depends on that of their partner, may obtain, in the event of dissolution of the marriage or relationship and **particularly difficult situations, an autonomous residence permit, regardless of the duration of the marriage or relationship**."

This provision was implemented in the Italian legal system with the inclusion in the Consolidated Law on Immigration of **Article 18-*bis* CLI** according to which the Questore - when situations of violence or abuse are ascertained and a concrete and current danger for the victim's safety emerges - issues a permit to **allow the foreign victim with irregular *status* to escape domestic violence**.

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<sup>70</sup> For the national anti-trafficking plan adopted for 2022-2025: <https://www.pariopportunita.gov.it/media/2427/piano-anti-tratta-2022-2025-ita.pdf>



According to Article 3 of the Istanbul Convention, the term 'domestic violence' designates all **acts of physical, sexual, psychological, or economic violence occurring within the family or household** or between current or former partners, **regardless of whether the perpetrator shares or has shared the same residence with the victim.**

A residence permit for domestic violence is issued only when, in the course of police operations, investigations or proceedings for any of the offences provided for in Articles 558-*bis*, 572, 582, 583, 583-*bis*, 605, 609-*bis* and 612-*bis* of the Criminal Code (listed below) or for offences for which mandatory arrest *in flagrante delicto* is provided for committed on the Italian territory in the context of domestic violence, are ascertained **situations of violence or abuse against a migrant person** and a concrete and current danger to his/her safety emerges as a consequence of the choice to evade violence or as a result of the statements made.

For such a residence permit to be issued, **domestic violence or abuse against a migrant person must, in particular, be established in the course of investigations or criminal proceedings for one of the following offences:**

1. mistreatment abuse against family members and cohabitants (Article 572 of the Criminal Code);
2. personal injuries, simple and aggravated (Articles 582 and 583 of the Criminal Code);
3. female genital mutilation (Article 583-*bis* of the Criminal Code);
4. kidnapping (Article 605 of the Criminal Code);
5. sexual violence (Article 609-*bis* of the Criminal Code);
6. stalking (Article 612-*bis* of the Criminal Code);
7. forced marriage (Article 558-*bis* of the Criminal Code)<sup>71</sup>;
8. as well as for any of the offences for which the Code of Criminal Procedure provides for mandatory arrest *in flagrante delicto* (Article 380 of the Code of Criminal Procedure).

The residence permit **may also be issued by the Questore when situations of violence or abuse emerge during interventions by anti-violence centres or social services specialised in assisting victims of violence.** The opinion of the judicial authority is always required to release the permit, but the complaint **is only a secondary element compared to the need to protect the fundamental rights of the victim** and therefore not decisive for the issuance of the residence permit. Even in this case, the main goal of the permit is to provide protection to the victim and not to reward them for their contribution to the detection of the crime.

The residence permit for victims of domestic violence is valid for **one year** and on expiry can be converted into a residence permit for work reasons.

It may be revoked in the event of behaviour incompatible with its purpose or if the conditions that justified its issue no longer apply.

**The migrant who is issued with a residence permit for domestic violence cannot be convicted of the previously committed crime of illegal entry and stay, since Article 10-*bis*, section 6, of the Consolidated Law on Immigration is applicable, which provides that the judges will pronounce a non-prosecution statement (for the crime of illegal entry and residency in the territory of the State) against the foreigner with a residence permit under Article 18 CLI.**

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<sup>71</sup> Conversion Law of the 'Cutro Decree', 5 May 2023, No. 50.



### 2.5.3. The special residence permit for severe labour exploitation

In the case of migrants who are **victims of severe labour exploitation**<sup>72</sup>, the law provides that the Questore, **on the proposal or with the favourable opinion of the Public Prosecutor**, may issue a special residence permit if the person fills a **complaint and cooperates in the criminal proceedings** instituted against the employer (Article 22, para. 12-*quater* CLI).

**Victims of severe labour exploitation are those who find themselves in conditions of exploitation according to one or more of the indicators listed in Article 603-*bis* para. 3 of the Criminal Code**<sup>73</sup> :

1) The repeated payment of wages in a manner that is manifestly at variance with the national or territorial collective agreements concluded by the most representative trade unions at national level or, in any case, disproportionate to the quantity and quality of the work performed; 2) the repeated violation of the labour on working hours, rest periods, weekly rest periods, compulsory holidays, vacations; 3) the existence of violations of law on safety and hygiene at the workplace; 4) the subjection of workers to degrading working conditions, methods of supervision or accommodation. The permit is valid for six months and may be renewed for one year or for any longer period necessary for the criminal proceedings to be concluded. It allows the holder to find employment and may be converted, upon expiry, into a residence permit for work reasons.

This is a permit that has the same formulation - special cases - as Article 18 CLI, but unlike the former, the residence permit provided for in Article 22, para. 12-*quater* CLI can only be issued by the Questore on the proposal of the Public Prosecutor. **Filing the complaint and cooperating in the proceeding is, therefore, a prerequisite for obtaining the residence permit.**

In the case of Article 18 of the CLI, the report is not an indispensable condition for the issuance of a residence permit, since it **is only a secondary element compared to the need to protect the fundamental rights of the victim** and therefore not decisive for the issuance of the residence permit.

The only case in which in a context of labour exploitation, a **residence permit can be obtained regardless of the complaint, is when the conditions required for the application of Article 18 CLI are met**: the aggravated case of 603-*bis* para.2 of the Criminal Code (the acts are committed with violence or threats) perpetrated by a criminal organisation, with the concrete danger to the victim's safety)<sup>74</sup>.

In this case, as already mentioned, the residence permit may also be issued by the Questore on the proposal of the social services of the local authorities, or by the associations, organisations and other agencies listed that carry out activities in favour of immigrants.

**The migrant who is issued with a residence permit for severe labour exploitation cannot be convicted of the previously committed crime of irregular entry and stay**, as Article 10-*bis*, section 6, of the Consolidated Law on Immigration is applicable, which provides that the judges will pronounce a non-prosecution statement (for the crime of illegal entry and residency in the territory of the State) against the foreigner with a residence permit under Article 18 CLI.

<sup>72</sup> Art. 603-*bis* of the Criminal Code: "Unless the act constitutes a more serious offence, it is punishable with imprisonment from one to six years and a fine ranging from 500 to 1.000 euro for each worker recruited, anyone who: 1) recruits labour for the purpose of assigning it to work for third parties in exploitative conditions, taking advantage of the workers' state of need; 2) uses, hires or employs labour, including through the intermediation activity referred to in paragraph 1), subjecting workers to exploitative conditions and taking advantage of their state of need".

<sup>73</sup> This is the criminal offence of severe labour exploitation in Italian law.

<sup>74</sup> Based on the indications contained in the Circular of the Ministry of the Interior of 4 August 2007.



#### 2.5.4. The special residence permit for investigative reasons

Decree-Law No. 144 of 2005<sup>75</sup>, which introduced “Urgent measures to combat international terrorism”, established a special permit for migrants who cooperate with Italian public authorities to prevent terrorist attacks<sup>76</sup>.

In this situation, the person who reports a crime is not a victim, but an informant **who is encouraged to report to the public authorities as a witness to the activities of a terrorist organisation.**

This special residence permit may be issued when, during police operations or investigations or criminal proceedings for terrorist offences, it is **necessary that the cooperating person remains in the territory of the State.**

The Questore may issue a residence permit to a person who has cooperated with the judicial authorities or the police by offering statements considered reliable, new, and complete, or of fundamental **importance for the continuation of the proceedings.** The permit may be issued on the initiative of the Questore, at the request of the Public Prosecutor or on the recommendation of the provincial police forces or the directors of the Information and Security Services. These public authorities are required to justify the existence of the above-mentioned conditions, with specific **regard to the cooperation offered by the foreigner.**

The permit lasts for one year and is renewable for a further year for reasons of justice or public security. It is revoked when the holder engages in behaviour incompatible with the purpose of the permit, if reported by the proposing authority or otherwise ascertained by the Questore. In addition, the permit may be revoked when the relevant conditions are no longer met.

If the cooperation has been **extraordinarily important in preventing terrorist attacks** and related damage or in identifying persons who have committed acts of terrorism, **the foreigner is eligible for an EU long-term residence permit.**

#### 2.5.5. The residence permit for reasons of justice

The permit for reasons of justice<sup>77</sup> is issued at the **express request of the judicial authority, when the presence of the person** in the national territory is indispensable in connection with ongoing criminal proceedings for one of the offences referred to in **Article 380 of the Code of Criminal Procedure<sup>78</sup>**, as well as for any of the offences referred to in **Article 3 of Law No. 75 of 20 February 1958 on sexual exploitation.**

The residence permit for **reasons of justice is issued for a maximum period of three months and may be extended once for a further three months.**

**This type of residency permit is never convertible:** the Italian legal system does not provide for a general principle of convertibility. It is inferred that the conversion of a permit is an exception to the rule, which is only possible in specific cases. Therefore, the person who obtains the permit for reasons of justice inevitably falls back into an irregular *status* after the period of the permit.

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<sup>75</sup> Converted by Law No. 155 of 31 July 2005.

<sup>76</sup> Art. 2 of Legislative Decree No. 144 of 27 July 2005.

<sup>77</sup> Art. 5 para. 2, CLI and Art. 11 para. 1, l. c-bis, Presidential Decree No. 394/1999.

<sup>78</sup> The list of offences for which is allowed arrest *in flagrante delicto* is rather long. In fact, in addition to the application of the edictal framework, which concerns only non-culpable offences, committed, or attempted, for which the law establishes the penalty of life imprisonment or imprisonment of not less than a minimum of five years and a maximum of twenty years, there are a series of offences listed in para. 2, e.g., for what is more relevant for our purposes, sexual violence, some cases of aggravated theft, robbery, extortion.



This residence permit could be issued to allow the migrants to exercise their right of defence, to participate in a trial in which they are offended or accused party<sup>79</sup>. In practice, however, it is granted within the limits of the usefulness that the judicial authorities can draw from it for investigative purposes, and it is rarely used in the Italian judicial system.

## 2.6. Effectiveness of special residence permits for migrant victims or witnesses

We have seen how migrants who are victims (or witnesses) of certain crimes can benefit from special residence permits that allow them to report in safety. However, as the 2019 report already showed, special residence permits are scarcely used in practice<sup>80</sup>. The Ministry of the Interior publishes annual data on the total number of residence permits issued in Italy<sup>81</sup> and the most recent, dating back to 2020<sup>82</sup>, confirm what has already been noted:

Permits for migrant victims/witnesses	2020
Permits for social protection reasons (art. 18 CLI)	643
Permits for victims of domestic violence (art. 18-bis CLI)	109
Permits for victims of severe labour exploitation (art. 22, para. 12- <i>quater</i> CLI)	29
Permits for cooperation against Terrorism (Law No. 155 of 31 July 2005)	21
Permits for justice reasons (Art. 11, para.1, l. c-bis, Presidential Decree 394/1999)	73
<b>Total</b>	<b>875</b>

With an estimated 506,000 migrants with irregular *status* in Italy (on 1° January 2022)<sup>83</sup>, permits issued to migrants who are victims or witnesses of crime in practice do not have a significant impact.

The permit for reasons of justice, which has a wider scope of application, is granted within the limits of the usefulness that the judicial authority can draw from it for investigative purposes and is an instrument that is rarely used in the Italian judicial system.

<sup>79</sup> See *infra*, sect. 5.

<sup>80</sup> For example, a Public Prosecutor who worked for several years in the office prosecuting crimes against vulnerable persons was only rarely called upon to participate in special permit proceedings. Out of an average of 3,000 proceedings seen during his career, only three cases concerned special permits. This was mainly due to the fact that there were very few proceedings involving irregular migrants. See S. B. Taverriti, (2019), *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, cit., p. 23.

<sup>81</sup> Data on the total number of residence permits issued in Italy can be found here: [https://ucs.interno.gov.it/ucs/contenuti/Annuario\\_delle\\_statistiche\\_ufficiali\\_del\\_ministero\\_dell\\_interno\\_edizione\\_2022-14957878.htm](https://ucs.interno.gov.it/ucs/contenuti/Annuario_delle_statistiche_ufficiali_del_ministero_dell_interno_edizione_2022-14957878.htm).

<sup>82</sup> The most recent data on individual special residence permits date back to 2020: [https://ucs.interno.gov.it/FILES/AllegatiPag/1263/INT0048\\_IMMIGRAZIONE\\_REGOLARE\\_ed\\_2020.pdf](https://ucs.interno.gov.it/FILES/AllegatiPag/1263/INT0048_IMMIGRAZIONE_REGOLARE_ed_2020.pdf).

<sup>83</sup> According to data collected by the ISMU Foundation, see <https://www.ismu.org/xxviii-rapporto-sulle-migrazioni-2022-comunicato-stampa-1-3-2023/>.





Special residence permits **certainly offer greater protection to the victim/witness of a crime for which they are intended**, but do not always allow victims effective access to justice.

As seen above, the **procedures for issuing special residence permits do not explicitly provide the possibility for migrant victims (or witnesses) to apply directly for these permits**. Requests are expected to come either from the Public Prosecutor or from victim support agencies and not from the migrants themselves. In theory, there is nothing to prevent migrant victims from (informally) asking a prosecutor or service providers to sponsor an application on their behalf, **but in fact this step may discourage the initiative**.

Among the reasons that discourage reporting, apart from cultural factors (that we'll discuss later), **most of the time migrants are not aware of the existence of special permits, or in any case would not be able to handle the procedure themselves**. Moreover, the issuance of the permit is not immediate nor automatic, and not everyone can afford a waiting period.

**The effectiveness of safe reporting leans on the external support**, that depends on the organisation at the local level<sup>84</sup>, *i.e.*, on the actual presence, within a given territory, of local initiatives implementing special social protection programmes. The absence of these special programmes in the territory may make it impossible to access the social path and thus prevent the granting of permits. The possibility of gaining access to special permits may therefore vary considerably depending on the territorial distribution of authorised associations that implement special social protection programmes.<sup>85</sup>

Moreover, the Questore and the Public Prosecutor **have wide discretion in supporting the issuance of a special permit at the local level**<sup>86</sup>. This in practice can create a situation of uneven geography in the usage of the permits, with authorities in certain areas particularly more inclined and trained in the use of the special permits, than those of other municipalities.

Therefore, the presence of social protection programmes in the territory is not enough: **effective cooperation between social workers and the various authorities involved is necessary**.

The implementation **of the multi-agency approach**, which has been promoted at the national level **in the anti-trafficking framework**<sup>87</sup>, is crucial. This is an operational strategy in which NGOs and anti-trafficking organisations have a **privileged channel of communication** with the Territorial Commission for Asylum and with institutional actors (police, judicial authorities, prefectures) to collaborate effectively in identifying victims of violence and serious exploitation by criminal organisations, in reporting the crimes they have suffered and in legalising and placing them in protection programmes.

The multi-agency approach is also promoted at the national level in the field of gender-based violence. Recently, standard procedures for **the emergence and referral of victims (or persons at risk) of gender-based violence in asylum procedures** have been published<sup>88</sup>.

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<sup>84</sup> As emerges from the interviews conducted with social workers and institutional actors at local level, see *below*, sect. 3.

<sup>85</sup> See on the topic N. Delvino, S. Spencer, (2014), *Irregular Migrants in Italy: Law and Policy on Entitlements to Services*, ESRC Centre on Migration, Policy and Society (COMPAS), University of Oxford, cit., p. 29; ASGI, (2009), *Social Protection Measures - Practical Outline*, edited by F. Nicodemi, P. Bonetti (eds.), [www.asgi.it](http://www.asgi.it).

<sup>86</sup> See S. B. Taverriti, *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, cit. p. 22 ff.

<sup>87</sup> See <https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali-identificazione-vittime-di-tratta.pdf> see already *supra*, footnote 49.

<sup>88</sup> See <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/pubblicazioni/pubblicate-procedure-operative-standard-lemersione-e-referral-delle>.



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

In Section 3 we shall see - through the results of the exploratory in-depth qualitative research - how **this approach has been implemented in the Municipality of Milan**, which is a particularly virtuous example of good synergies between authorities and other social actors.





### 3. Access to justice for migrants with irregular status: local practices in the Municipality of Milan

#### 3.1. The multi-agency approach at the local level

As highlighted at the end of the previous section **social operators play a key role in assisting victims of crime with irregular migration status at the local level**, either to report crimes they have suffered without direct contact with the authorities, or to be included in social paths for regularisation.

The adoption of **the multi-agency approach**, whereby NGOs and anti-trafficking agencies have a privileged channel of communication with the Territorial Asylum Commission and institutional actors (police, judicial authorities, prefectures) in order to collaborate effectively in identifying victims entitled to special permits, is fundamental to the success of the safe reporting process. **In this way, it is possible to report the crime without incurring adverse consequences, activating a path towards regularisation and inclusion in protection programmes.**

The Municipality of Milan implemented good practices based on legislative provisions. **In the case of trafficking**, these have led to the adoption of a **protocol** setting out the procedures to be followed for **more effective cooperation**<sup>89</sup>.

In particular, the anti-trafficking protocol promotes the **participation of trafficked persons in the decision-making process** concerning their case; **the exchange of information between the actors involved**, always guaranteeing the safety and privacy of the victims; the use of cultural mediators for a proper understanding of the victims; **the specific training for professionals with appropriate opportunities for refresher courses** on trafficking-related issues and on the appropriate approach to be used with trafficked persons; **a periodic and continuous monitoring and evaluation process to verify the actual functioning of the system and whether or not the expected results have been achieved.**

The key steps that exemplify the multi-agency approach are: (i) preliminary analysis; (ii) *referral*; (iii) transmission of information to the Public Prosecutor's Office.

**(i) Preliminary analysis.** It consists of a series of questions **to determine whether the person is a presumed trafficked person** and is conducted by the actors - who signed the protocol - when coming into contact with a presumed victim, either directly or following a referral from other actors (other trafficked persons, family or acquaintances, private individuals, health professionals, NGO volunteers, immigration services, *et alia*). The interview should be conducted taking into account that “presumed trafficked persons may not want to provide complete or truthful information about their trafficking experience, especially in the first phase of assistance”<sup>90</sup> due **to fear of law enforcement** (as they have an irregular *status*, or they have been engaged in illegal activities related to trafficking, or they have been deceived by their exploiters about law enforcement behaviour, *et*

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<sup>89</sup> Protocol No. 480/2021 on trafficking in human beings. The Protocol was signed by the Welfare Department of the Lombardy Region, the Prefectures of several Lombardy regional capitals, the Municipality of Milan, the Public Prosecutor's Office at the Court of Milan - Anti-Mafia Section, the Juvenile Court of Milan, the Public Prosecutor's Office at the Juvenile Court of Milan, the Territorial Commission for the Recognition of International Protection of Milan, the Cooperativa Lotta contro l'Emarginazione non-profit organization (for the territories of Como, Monza Brianza, Sondrio and Varese); Associazione LULE non-profit organization, Fondazione Somaschi non-profit organization (for the territories of Lecco, Lodi and Pavia). Available here: [https://www.interno.gov.it/sites/default/files/2021-04/protocollo\\_operativo\\_prefettura\\_milano\\_e\\_altri\\_su\\_contrasto\\_tratta\\_esseri\\_umani.pdf](https://www.interno.gov.it/sites/default/files/2021-04/protocollo_operativo_prefettura_milano_e_altri_su_contrasto_tratta_esseri_umani.pdf).

<sup>90</sup> Art. 4 of Protocol No. 480/2021.



*alia*) or **fear of traffickers and exploiters** (due to threats, abuse and retaliation against their families)<sup>91</sup>.

**(ii) Referral process.** Following the preliminary analysis, the anti-trafficking services will **carry out interviews for a formal identification** as a victim of trafficking and, if the person meets the requirements for inclusion in a social protection programme provided for in Article 18 CLI, they propose access to such programmes.

At the request of the actor (e.g., NGO) who came into contact with the victim in the first place, the anti-trafficking service (after having obtained the informed consent of the presumed victim) **must refer: the contents of the interviews, and the possible formal identification as a victim of trafficking and the access to the social protection pathway provided for in art. 18 CLI.**

**(iii) Transmission of information to the Public Prosecutor's Office.** If concrete indicators of trafficking emerge, *i.e.*, **formal identification has taken place**, the actor who came into contact with the victim in the first place must send to the Public Prosecutor's Office of Milan a confidential note concerning the data collected, specifying whether the person agrees to cooperate or not.

The Municipality of Milan launched the project "Derive e approdi"<sup>92</sup> to implement the multi-agency approach through *referrals* and periodic meetings with the aim of updating the protocols and creating safe reporting channels.

The multi-agency approach is also adopted at the local level for the **protection of victims of gender-based violence**, for which there is a **general protocol, applicable to all victims**<sup>93</sup>, that also applies to migrants.

On the other hand, negotiations are still ongoing to adopt a **territorial protocol for victims of severe labour exploitation**, involving the Labour Inspectorate and trade unions.

However, as we shall see, the existence of a territorial protocol does not necessarily mean that the multi-agency approach is perfectly successful: **much depends on its proper implementation**, especially in terms of information exchanged between the actors involved and their proper training. In order to understand how local practices work, several actors were interviewed: operators from the anti-trafficking network, NGO volunteers, and police forces operating in Milan, whose testimonies are summarised in the following paragraphs.

According to the common model of the VisaRoc project (see Attachments), the interviews are structured to obtain information on: the access **of migrant victims to the assistance service**; the functioning of the service; the implementation of **the multi-agency approach** between social workers and authorities.

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<sup>91</sup> Art. 4 of Protocol No. 480/2021.

<sup>92</sup> The socio-welfare services of the Municipality of Milan (Rights and Inclusion Area), partner of the University of Milan in the VisaRoc research, is the leading part of the project "Derive e approdi" in which public and private actors collaborate for the assistance of victims of trafficking and modern slavery, severe sexual and/or labour exploitation. See the interview with the project leaders <https://www.youtube.com/watch?v=IQDDtPrkAXk>; <https://www.youtube.com/watch?v=RBlsvGb6HMM>; [https://www.comune.milano.it/home/-/asset\\_publisher/ePzf0B9j3CKD/content/welfare.-il-comune-capofila-del-progetto-contro-la-tratta](https://www.comune.milano.it/home/-/asset_publisher/ePzf0B9j3CKD/content/welfare.-il-comune-capofila-del-progetto-contro-la-tratta).

<sup>93</sup> See the communication released by the municipality of Milan <https://www.comune.milano.it/-/palazzo-marino.-nasce-il-protocollo-per-favorire-l-autonomia-delle-donne-vittime-di-violenza>.



## 3.2. Safe reporting practices through anti-trafficking agencies

### 3.2.1. Anti-trafficking agency No.1

The non-profit organisation interviewed, composed of religious and lay people, operates in the field of social and health care, charity and training in favour of disadvantaged people, exclusively for the pursuit of social solidarity purposes. Among the activities, it carries out a service **for victims of trafficking and serious exploitation**<sup>94</sup> within the project "Derive e approdi" funded by the Department of Equal Opportunities and the Municipality of Milan<sup>95</sup>.

#### a) Victims' access to assistance

Victims access the service mainly through **the street unit**, which presents itself as part of **an association supporting migrants for health care and residence permit issues (not as an anti-trafficking organisation)** and distributes leaflets with useful information. It is also possible for users to contact them through **the anti-trafficking emergency line or thanks to word of mouth**.

In addition, some migrants come to the agency through **referrals**<sup>96</sup>, which are used for the formal identification of trafficking victims. Referrals come from the Territorial Commission, but also, for example, from the police, trade unions, or the Labour Inspectorate or the health sector.

**The service is dedicated to victims of various trafficking-related crimes**, such as sexual exploitation, labour exploitation, forced begging, exploitation in the illegal economy, forced marriage. Most of them are migrants with an irregular *status*, of different genders and geographical origins.

The victims of *indoor* and *outdoor* sexual exploitation are cisgender or transgender women from Eastern Europe<sup>97</sup>, South America<sup>98</sup> or China<sup>99</sup>. The victims of labour exploitation, illegal economies and forced begging are predominantly men from South Asia (e.g., Pakistan, Bangladesh)<sup>100</sup>, Africa (e.g., Maghreb or Nigeria)<sup>101</sup> or Eastern Europe<sup>102</sup>.

They are generally aged between 18 and 35, with a few exceptions<sup>103</sup>. In fact, they are often "firstborns" or people with dependent families who accept any working conditions "just to bring money home". The link with the family of origin is also a motive for blackmail on the part of the exploiters, which discourages them from reporting.

A common characteristic of most victims is a low to medium level of education, which leads them to be deceived by traffickers and to "fall into the trafficking ring". In addition, many of them have health problems, both physical and psychological, linked to the "migration trauma", *i.e.*, the violence they suffered on the way to Italy, or to the inhuman and degrading conditions in which they are exploited in Italy.

#### b) The assistance service

For a victim of trafficking or serious exploitation, the alternatives presented are the international protection and the special permit for social protection (with or without complaint). Moreover, for

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<sup>94</sup> Interview No. 4.

<sup>95</sup> See *supra*, footnote 92.

<sup>96</sup> See *supra* sect. 2.4.

<sup>97</sup> Predominantly *outdoor* sexual exploitation.

<sup>98</sup> *Indoor* and *outdoor* sexual exploitation.

<sup>99</sup> Predominantly *indoor* sexual exploitation.

<sup>100</sup> Mainly exploitation in agriculture or logistics (e.g., food delivery service).

<sup>101</sup> Mostly exploitation in construction or illegal economies.

<sup>102</sup> Predominantly exploitation in forced begging.

<sup>103</sup> Chinese women exploited in *indoor* prostitution and people employed in begging are older.



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

victims of severe labour exploitation who do not meet the requirements for a permit under Art. 18 CLI, there is the special permit under Art. 22 para. 12-*quater* CLI, for the issuance of which reporting is compulsory.

According to the results of the interviews, migrants prefer to apply for international protection, not only because it lasts for five years, but also because victims are often **reluctant to participate in social protection programmes** under Art. 18 CLI. For a positive outcome, the anti-trafficking agency's report on the person's situation, attached to the request, plays a crucial role.

In the case of art. 18 CLI, **social protection** allows obtaining a residence permit regardless of the complaint, even if the interviews revealed that Milan is one of the few places where the Questore issues the permit even without a formal filing of a report for the crime suffered by the migrant.

Despite the social operators' intermediation, migrants with irregular *status* are unlikely to be persuaded to interface with the authorities in order to make a complaint.

**Victims of sexual exploitation** when suffering a crime tend to rely on their criminal network, which dissuades them from turning to the Italian authorities for the adverse consequences linked to irregularity on the territory ("the police will deport you, they will put you in jail"). The exploiters take advantage of the fact that in the countries they come from, the police **are not a reference point for the population**. As for transgender people, their gender identity not conforming to binarism is sometimes a source of discrimination and is a further cause of vulnerability that leads them to avoid interfacing with the authorities.

**Victims of exploitation in the illegal economy linked to trafficking** are people who have been forced to commit crimes that often prevent them from obtaining a residence permit (e.g., drug dealing) and lead them to avoid contact with the authorities. In line with the multi-agency approach, they should not suffer adverse consequences if they file a report, but according to the interview, a person who was accompanied by the anti-trafficking agency to report was arrested for a few hours.

It is also not easy to get **victims of severe labour exploitation to "step out" from the criminal context**. Often people are not even aware that they are being exploited until it becomes very serious, such as repeated violence/threats. **As a result, they usually prefer to change employers rather than report**. By the way, many of them could not 'afford' to wait for regularisation to work, as they need to maintain their families in their country of origin. Besides, several interviews revealed that it is difficult for the operators of victim support centres to identify "severe labour exploitation" that allow access to the special permit under Article 22 para. 12-*quater* CLI<sup>104</sup>, as this is a phenomenon that is constantly taking on new forms. This means that, given the uncertainty surrounding the granting of the permit under article 22 para. 12-*quater* CLI, the social operator sometimes avoids accompanying the migrants to report the crime, to not expose them to adverse consequences resulting from the lack of requirements for the permit. If there were a protocol on labour exploitation involving the Inspectorate, there would be clearer parameters to refer to in order to check from the start whether the person is eligible for a permit.

If the person, thanks to the anti-trafficking agency's important mediation work, decides to file a complaint, the operators accompany them to the police station and **cooperate in the reconstruction of the facts** with the police officers. At this stage, an attempt is made to create a 'safe environment' for the victims: often the police appear 'in plain clothes' and use the assistance of a mediator or a psychologist to avoid secondary victimisation.

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<sup>104</sup> See *supra*, sect. 2.5.3.



If the criminal proceeding continues, the social operators keep on accompanying the person also during the course of the trial (e.g., during an evidentiary hearing).

Usually, the agency chooses to interact with authorities only if victims have detailed information about the crime to file the report, as it is more likely that in this case the judicial process will continue. Otherwise, it is preferable to avoid involving people who are often in a precarious state of health.

In conclusion, of all the victims who have access to the service, **very few irregular migrants report a crime**. At this stage, the interview revealed that the agency's mediation work is crucial, as victims 'do not dare' to go to the police station alone, even if they would be entitled to a permit.

### c) The multi-agency approach in practice

The interviewed agency participates in the project "Derive e approdi"<sup>105</sup>, which – in implementation of the protocol<sup>106</sup> signed at the municipal level – promotes the multi-agency approach with the cooperation of public and private stakeholders (anti-trafficking agencies, judiciary, police headquarters, prefecture) through *referrals* and meetings.

The effectiveness of this system depends on the proper training of all actors and the correct communication of information to victims. The anti-trafficking organisation always tries to keep the networks "alive" (e.g., by 'going to the police station when the officers change').

According to the interviewee, the new network for the protection of victims of labour exploitation, which is currently being developed also includes Labour Inspectorate, so that anti-trafficking agencies can have access to inspections and thus get in touch with victims.

### 3.2.2. Anti-Trafficking agency No. 2

The non-profit organisation interviewed, composed of lay people, operates in the field of trafficking and assistance to victims of exploitation through various social or health care activities carried out at the local level, collaborating constantly with the other organisations operating in the area, for example, it participates to the project "Derive e approdi"<sup>107</sup> funded by the Department of Equal Opportunities and the Municipality of Milan. The interviews collected concern the activities carried out by the two street units, which respectively deal with victims of sexual exploitation and victims of severe labour exploitation<sup>108</sup>.

#### a) Victims' access to assistance

The street unit assisting victims of sexual exploitation meets the people directly where the *outdoor* and *indoor* prostitution takes place.

**In contrast**, the street unit assisting **victims of labour exploitation** cannot directly access the workplaces without the consent of the employer (the exploiter). In this case, therefore, the street unit identifies the most vulnerable people outside the work environment, trying to get the victims of labour exploitation **to come forward**.

Another way for the migrants to access the service is **through 'word of mouth' from other victims** or through other voluntary associations working in the area.

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<sup>105</sup> See *supra*, footnote 92.

<sup>106</sup> See *supra*, sect. 3.1.

<sup>107</sup> See *supra*, footnote 92.

<sup>108</sup> Interviews No. 7 and 8.





## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

Most of the people who contact the service are migrants with an irregular *status* who are **victims of trafficking for the purpose of sexual exploitation or severe labour exploitation** (not always aware of their condition), but there are also people who are not victims of trafficking (e.g., second-generation migrants still in the exploitation cycle). Victims of sexual exploitation are often subjected to domestic violence by their partners, as well as street crimes such as theft and robbery, which are common in *outdoor* prostitution.

The victims of sexual exploitation who come to the service are usually cisgender or transgender women from Eastern Europe, South America<sup>109</sup> or China<sup>110</sup>, and some men from North Africa. They are aged between 20 and 60. They are often migrants who have moved from their country of origin for economic reasons (e.g., single mothers with children or people caring for family members with health problems). In some cases, the reason for migration is related to the risk of discrimination in the country of origin (e.g., transgender people)

Victims of severe labour exploitation come from Africa (Niger) or South Asia (e.g., Bengalis, Pakistanis) and are employed in various sectors of the economy, including agriculture, logistics (e.g., food delivery) and catering. Most of them are in an irregular administrative *status*.

### b) The assistance service

According to the interview with the street unit for victims of sexual exploitation, the agency's intervention in this area is primarily preventive. They help **potential victims to build up a relationship of trust with the police**. In this way, victims can contact the police directly in times of emergency<sup>111</sup>, even if they do not always decide to file a formal complaint.

When interfacing with a crime victim, **the main task of the organisation is to provide social and medical assistance and to include the migrant in the social path, which may also be independent of the complaint (Art. 18 CLI)**.

If the person decides to **report**, the agency takes care of **the drafting complaint** and - usually - interfaces with the police only **after the person** has entered the social path leading to regularisation. If, on the other hand, as sometimes happens, the person reports the crime independently - before meeting the agency -, it is possible that a deportation procedure will be initiated by the authorities as the person **is not recognized as a victim under Article 18 of the CLI**.

When the victim is heard by the police, the social operator can help assessing the facts, but the absence of cultural mediators may cause problems. In fact, the operators of the anti-trafficking agency cannot be used as mediators because their personal data would be revealed in the complaint, thereby compromising their anonymity in assisting victims and exposing themselves to retaliation by the exploiters. Furthermore, it is suitable for police stations to use mediators who are familiar with the phenomenon of trafficking, otherwise, they risk misinterpreting the victims' statements (e.g., it happened that "Madame"<sup>112</sup> was translated as "mother").

When the victim decides not to file a complaint, practitioners **informally** report the crime **to the police** (e.g., a woman who suffers a sexual assault but gives no further information) so that they intensify checks in the at-risk area.

<sup>109</sup> Predominantly *outdoor* sexual exploitation.

<sup>110</sup> Predominantly *indoor* sexual exploitation.

<sup>111</sup> The interview revealed that in the case of *outdoor* prostitution, it is easier to establish direct interactions with law enforcement, whereas in the case of *indoor* prostitution, it is more complex because the exploiter prevents the victims from going to the police, so the anti-trafficking agency's intermediation is crucial.

<sup>112</sup> They are victims of sexual exploitation who became traffickers/exploiters.



Moreover, it emerged that, even in the absence of a complaint, many people prefer not to be included in the social path leading to regularisation because “the anti-trafficking proposal does not always meet their needs”. In this regard, **it should be noted that during the first months of the protection programme, while waiting for regularisation, the person cannot work**: this can be a problem **for those who have to support their families** or pay health expenses for certain therapies (e.g., transgender people).

Likewise, according to the interview with the street unit assisting victims of labour exploitation, it is not easy to **take the social path** especially because of the waiting period to work regularly. They are very often men, who come from a patriarchal culture in which the obligation to maintain the family in the country of origin rests on them. Also, they do not always perceive their condition as exploitation, at least as long as it does not lead to violence or threats.

The assistance service allows victims to access the permit ex art. 18 CLI in the case of severe labour exploitation (603-*bis* para. 2 of the Criminal Code) perpetrated with **violence or threats by a criminal organisation** or art. 22 para. 12-*quater* in the case of **severe labour exploitation** (art. 603-*bis* of the Criminal Code). In the first case, the migrant can access **the social path to regularisation even without reporting**, in the second case, reporting is mandatory.

When the person does not intend to file a complaint, the organisation itself stimulates an intervention of the **Inspectorate** without exposing either the single operator or the victim. Usually, the report submitted by social operators to the Inspectorate identifies the indicators of exploitation by collecting the testimonies of several victims.

### c) The multi-agency approach in practice

According to the interviewee from the anti-trafficking agency, the actual functioning of safe reporting strategies is highly dependent on the people with whom one interacts; therefore, it is crucial to 'renew' relationships with the authorities when, for example, police officers controlling the area change.

When proceeding with a complaint, social operators usually prefer to contact law **enforcement officers with whom they have built a relationship of trust**.

For the network to function effectively, there is a need to improve the dissemination of information and the proper training of all operators on the procedures to follow for the multi-agency approach. In practice, it sometimes happens that local police officers are not familiar with the activities of social workers and do not know how to interact with them (e.g., they do not protect the "anonymity" of the street unit's operators, unwittingly revealing their activities to exploiters, or they bring a potential trafficking victim to the police station without calling the agency).

Moreover, according to the interviewed organisation, the social operators should be better protected also during the trial, which is not regulated by the anti-trafficking protocol (e.g., if they are asked to testify, their anonymity is not protected).

Finally, there is a lack of a specific protocol on severe labour exploitation, which would include also trade unions and the Labour Inspectorate. It would be necessary to formalise relations especially with the Labour Inspectorate for a more effective collaboration<sup>113</sup>.

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<sup>113</sup> Currently, there is only a protocol between the Labour Inspectorate and the International Organisation for Migration (IOM), which allows cultural mediators access to workplaces during inspections. See <https://italy.iom.int/it/news/oim-e-inl-rinnovano-la-collaborazione-nel-contrasto-allo-sfruttamento-lavorativo>.



### 3.3. Safe reporting practices through the local police

#### 3.3.1. Local police unit for women and child protection

The local police unit for women and child protection intervenes and investigates cases involving the so-called vulnerable groups, *i.e.*, those victims exposed to the crime of their gender or age. The subject of the interview focuses on gender-based violence, which is a transversal phenomenon from a socio-economic point of view, but often concerns migrant women<sup>114</sup>.

##### a) How migrants learn about the service and who contacts it

Migrants who are victims of crime come into contact with the local police unit through anti-violence centres, especially those located in hospitals, or through schools that report family abuse and intra-family sexual violence. Another way is 'word of mouth' through other people who belong to the same community as the victim and are familiar with the work of the local police because they perform auxiliary work (e.g., interpreters or mediators).

**Victims rarely present themselves spontaneously**, partly because they live in a very closed social context. It only happens “when they have reached the point of despair and believe that their lives or those of their children are in danger.”.

Most victims of **gender-based violence are irregular migrant women** of various origins (Maghreb, South America, South Asia) **who come to Italy to join their husbands or close relatives, often with their children.**

##### b) The assistance service

The investigative and prevention unit deals with investigations on its own initiative and on behalf of the Milan Public Prosecutor's Office in the field of gender-based violence (e.g., family abuse, stalking, intra-family sexual abuse, revenge porn).

According to the interviewed operators, it is not easy for the victims to report the crime, especially because they are 'subjugated' by the male figure, who uses the woman's lack of residence permit as a weapon of psychological violence (e.g., “you cannot go to the police because they will send you back to your country and take your children away”). Moreover, living within a closed community (or “ghetto” community) also disempowers women, who have little perception **of being victims of violence**, because certain behaviours are socially accepted in their culture.

**Consequently, they most often turn to the police when they “have reached the limit of their endurance” or when they fear for the safety of their children.**

**Receiving a complaint from an irregular migrant** presents many difficulties when listening to the victim. In fact, the person is often **afraid to talk to the police, afraid to expose herself, afraid to bring her situation to light**. It is not easy to make her understand that she has several rights under the law and that she can report without adverse consequences even if she does not have a residence permit. **Communication is crucial** from both the police and the anti-violence centre, as the women who turn to them are not aware that they have rights as victims of domestic violence. Furthermore, it is difficult for police officers to assess the relevant facts to file the report, as victims often omit many details.

The Police unit interacting with the victim could solicit the **Public Prosecutor** to request a special permit under Article 18-*bis* CLI **from the police immigration office**. Once the **Article 18-*bis* CLI** procedure is activated, **the anti-violence centre or the social services intervene**, but it is not always

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<sup>114</sup> Interviews No. 5 and 6.





easy to **convince the victims to participate in the protection programme and some of them** withdraw during the process.

### c) The multi-agency approach in practice

The local police unit interviewed is part of a 'network' that also involves social services, which are immediately activated in order to legitimise the presence of the migrant woman or her children in the area. There are regular meetings between the actors involved and there is a protocol which is frequently updated.

**Often, the existence of crimes is revealed thanks to the collaboration of the associations that come into contact with the victims and the relevant facts by drafting a complaint or bringing the victim to the police station specifically for reporting a crime or filing a complaint.** Victims turn to the police almost exclusively through associations.

**The police take care of the investigation phase,** after which they are not informed about the outcomes of the trial or the victim's social path to regularisation, except in some cases (e.g., sometimes the victim keeps in touch with them).

## 3.4. Safe reporting practices through NGOs

### 3.4.1. NGO not included in the anti-trafficking network

The voluntary association interviewed supports migrants with both socio-legal assistance (legal assistance with residence permits, asylum applications, assistance to prisoners) and health assistance. The subject of the interview concerns the activities of the legal desk's services and the street unit, which assists victims of sexual exploitation<sup>115</sup>. The association is not part of the anti-trafficking network coordinated by the municipality<sup>116</sup>.

### a) Victims' access to assistance

Most migrants access the legal desk's services through 'word of mouth' or thanks to leafleting in key locations or telephone contacts. Sometimes they reach it through other associations or institutional actors that informally address migrants to them. The people who turn to the service are migrants of all ages, genders, and social backgrounds, most of whom have been irregularly present in the territory for several years. Individuals who come to the service may be victims of various crimes such as sexual exploitation, and labour exploitation in various sectors of the economy (e.g., also domestic work).

Focusing on the street unit, it deals with victims of sexual exploitation and meets them by going directly to the places of prostitution. Mostly they are transgender women migrating from South America, particularly vulnerable victims who not only suffer from the stigma of being with an irregular *status* and sex workers, but **also from gender identity that does not conform to binarism.**

### b) The assistance service

The 'desk' activity assists with various immigration issues (e.g., obtaining residence permits, and applying for international protection). It is also possible that a victim of a crime may come to them. In this case they address the person to the relevant services e.g., trade unions, anti-violence centres, anti-trafficking agencies.

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<sup>115</sup> Interviews No. 1, 2 and 3.

<sup>116</sup> See *supra*, footnote 92.



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

The street unit mainly deals with healthcare support and in this context can deal with victims of crime, who need treatment because they have been assaulted, which is a recurring circumstance in case of prostitution *outdoor*. According to the interviewees' experience, when the crime occurs, unless it is extremely serious, migrants do not call the police, **as they perceive "victim blaming"** by the authorities for their lifestyle. Sometimes, they even prefer to avoid hospital treatment for fear of being reported to the authorities.

When a crime victim who comes into contact with them intends to report a crime, they accompany them to the police station, but **the association's volunteers are not allowed to assist the migrant person filing the complaint**. The interviewees point out that, given the fear migrant victims have of the authorities, they would feel comfortable in the presence of a volunteer with whom they already built a trusting relationship.

### c) The multi-agency approach in practice

The association interviewed is not officially part of the municipal anti-trafficking network, but it has, especially for issues related to residence permits, informal relations with other institutional bodies operating in the area, such as the municipal offices, hospitals, the prefecture and the police headquarters (e.g., for issues related to residence permits, the police headquarters informally refer migrants to them). They are also in contact with the "CPRs"<sup>117</sup> to provide legal assistance to persons detained there.

When dealing with victims of crime, they turn to other associations and agencies competent in the field (e.g., anti-trafficking agencies, anti-violence centres, trade unions, specialised municipal services).

## 3.5. Difficulty in accessing safe reporting paths and proposals to improve the local practices

The field research allowed us to verify the functioning in practice of the safe reporting practices. **According to the operators and institutional actors working in the field, many factors make it difficult to access safe reporting paths, and some improvements can be suggested.**

### a) Difficulties in leaving the criminal network

Concrete experience highlights **the difficulties in bringing the person out of the criminal context**, confirmed by the fact that few people accept the social path to regularisation and even fewer decide to report the crime they suffered. Sometimes, victims refuse to enter the social path because they are not willing to wait for regularisation to be able to work, since they have to support their families or pay for medical treatments; in other cases, the social path is perceived as a limitation of their freedom with respect to the life they lead, which is not always perceived as an exploitative condition.

### b) Lack of awareness of one's *status* as a crime victim

Several interviews revealed a lack of awareness that they are victims of crime, especially in some contexts.

While in the case of sexual exploitation there is a top-down system, in which the presence of the exploiter is more evident and so is the sense of shame that usually leads women to recognise

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<sup>117</sup> "CPRs" (Centre of Permanence for Repatriation) are places of detention for foreign citizens awaiting the execution of expulsion orders (Article 14, CLI).



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

themselves as exploited, in the case of labour exploitation, the system is more fragmented, and the victims do not realise that they are being exploited, at least until it leads to mistreatment or violence (e.g., insults by the employer).

In the context of domestic violence, women often do not **realise that certain behaviours, sometimes socially accepted in their culture, constitute a crime.**

Communication and dissemination of information to victims about their rights is therefore crucial.

### c) Need to formalise a protocol on labour exploitation

Several interviews revealed that it is difficult for the operators of victim support centres to identify "severe labour exploitation" that allow access to the special permit under Article 22 para. 12-*quater* CLI, as this is a phenomenon that is constantly taking on new forms. According to the law (603-*bis* of the Criminal Code), a single indicator of exploitation would be sufficient for the existence of the crime, but the operators fear that in case "light" complaints, supported by just one indicator, the permit could not be granted. That explains why social operator sometimes avoids accompanying the migrants to report the crime, to not expose them to adverse consequence resulting from the lack of requirements for the permit. The existence of a protocol on labour exploitation, involving the inspectorate and the trade unions, could make it easier to clarify the requirements for the issuing of Article 22 para. 12-*quater* CLI.

### d) Building a relationship of trust with the authorities

Practical experience shows that in most cases victims are **not able to interface directly with police forces** and that it would not be possible to file a complaint without the mediation of social operators. **It is necessary to be able to build up a relationship of trust** with the police before a crime is committed, so that victims, at least those who are legally entitled to protection, can have direct access to them in case of emergency.

### e) Dissemination of information and training of those involved in the network

Although there are protocols regulating the multi-agency approach, their proper implementation often depends on individuals. There is a need to improve the **dissemination of information and the proper training of all actors on the procedures to be followed.** In practice, it sometimes happens that local police officers are not familiar with the activities of social workers and do not know how to interact with them (e.g., they do not protect the "anonymity" of the street unit's operators, unwittingly revealing their activities to exploiters, or they bring a potential trafficking victim to the police station without calling the agency). Moreover, according to the interviewed organisation, the social operators should be better protected also during the trial, which is not regulated by the anti-trafficking protocol (e.g., if they are asked to testify, their anonymity is not protected).

### f) Victims of crime not entitled to special leave

Interviews with operators confirm that, where the legal requirements for special permits are not met, interfacing with the authorities to report a crime remains a great deal: **in this case, migrant victims are exposed to adverse consequences for their irregular status.**



#### 4. Access to justice for migrants with irregular status: direct and indirect experiences of victims

After examining the perspective of social actors and authorities involved in assisting migrants, it is necessary to complement the analysis with the experience of victims. Through direct and indirect testimonies, it was possible to reconstruct the context in which migrant victims of crime live as well as the factors that hinder their effective access to justice.

##### 4.1. Experiences of trafficking and sexual exploitation victims

Most victims of sexual exploitation are or have been trafficked. They are also victims of various crimes (e.g., theft, robbery, assault, sexual violence), particularly in the case of *outdoor* prostitution. The interviewees are cisgender or transgender women from different geographical backgrounds.

**a)** a transgender woman migrating from South America<sup>118</sup>, who is currently a victim of trafficking, stated that she had been subjected to several rapes and assaults when she was working as a prostitute *outdoor* and that she did not report it because of “a lack of trust in the authorities”. In several cases, she even avoided hospital treatment for fear of being reported to the police for her irregular *status*. Being a transgender person makes her feel more vulnerable as she is exposed to more discrimination. The only people she has a trusting relationship with are the workers of the anti-trafficking organisation she met through the street unit, through which she applied for international protection. She considers this path preferable to Art. 18 CLI because she does not want to enter the social protection programme “in order not to give up her freedom”.

**b)** a transgender woman migrant from South America<sup>119</sup> was trafficked for sexual exploitation 30 years ago and has been victim of an attempted murder committed by a client a few years ago. On that occasion, criminal proceedings started *ex officio* and she was granted a **permit for reasons of justice**. Her relations with the authorities took place **through her lawyer**. Today, she has once again an irregular *status* and continues to work as a prostitute; she got in touch with the street unit of an anti-trafficking organisation through which she applied for international protection. She could not apply for Art. 18 CLI because she doesn't meet the requirements, as she is no longer a victim of trafficking (there is no “concrete and present danger to her safety as a consequence of her choice to escape violence or as a result of the statements made”). She stated that if she suffered a crime again, **she would avoid reporting “to avoid problems related to her irregular status”** and would turn to her “protection network” (in her case, other women working on the street or her lawyer).

**c)** From the interviews with social operators, were also collected indirect testimonies of trafficking victims. The most problematic cases concern Nigerian women, who left their country with the prospect of finding employment and were forced into prostitution as soon as they arrived in Italy<sup>120</sup>. In order to convince them to report, one must first ensure the **safety of their family** of origin. In fact, one of the most frequently used means of psychological coercion by Nigerian criminal networks is the so-called 'Juju' tribal practice. This is an oath that is taken before leaving home to establish a debt relationship and a 'work contract' with the criminal network. Several criminal organisations

<sup>118</sup> Interview No. M1.

<sup>119</sup> Interview No. M2.

<sup>120</sup> Interview No. 4 with anti-trafficking organisation.



involved in human trafficking make use of this practice to instil fear of consequences involving their relatives if the victims oppose the oath by reporting the crime. However, once persuaded these women to file a complaint, the main problems encountered are the correct assessment of the facts by appropriate cultural mediators and the difficulty of tracing the true personal data of the exploiters, who often use a pseudonym.

d) Through indirect testimonies,<sup>121</sup> operators referred that Eastern European women who work as prostitutes *outdoor* are subject to various crimes such as theft, robbery, injuries, and sexual assault by clients. In some cases, they report the crimes they have suffered, in others they prefer not to involve the authorities. We heard several examples of victims who - despite their irregular *status* - reported **the robberies** they had suffered, although some stated that “the police were not very helpful”. In **one case of serious injuries** caused by a client, the irregular migrant victim reported the crime; the trial is ongoing and the person is waiting to be called to testify. In one **case of sexual abuse**, the irregular migrant victim “took the law into her own hands” assaulting her rapist and was herself reported for injuries. In one case, a client tried to hit with his car a sex worker, who, despite the presence of the social operators, did not want to call an ambulance or the police, but preferred to call people she trusted.

#### 4.2. Experiences of domestic violence victims

The interviews revealed that victims of trafficking and sexual exploitation are often also victims of gender-based violence. The people from whom we collected direct and indirect testimonies are women who suffered mistreatment by their partners and found it difficult to report the crime because of their particularly vulnerable situation, especially when they have children.

a) A woman irregular migrant from Eastern Europe who was a victim of mistreatment did not report her violent partner because **she was afraid of losing custody of her children**. Through the anti-trafficking organisation<sup>122</sup> she managed to get out of the violent context and was included in a social path (under Art. 18 CLI, not Art. 18-*bis* CLI), but she still decided not to report either her exploiter or her abusive partner.

b) A woman irregular migrant from Eastern Europe who was mistreated by her partner managed to report the two most striking criminal acts. The police referred her to health service, where she was given the contact details of the anti-trafficking organisation and the anti-violence centre, but she did not contact them fearing that she would have to leave her home to get assistance. In addition, her exploiters warned her to withdraw her complaint and told her that she risked deportation, but the police reassured her. She therefore intends to continue with the criminal proceedings, with the support of social operators she met through the street unit of an anti-trafficking organisation<sup>123</sup> who are providing her with the necessary information to participate in the trial.

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<sup>121</sup> Interview No. 7 with anti-trafficking organisation.

<sup>122</sup> Interview No. 7 with anti-trafficking organisation.

<sup>123</sup> Interview No. 7 with anti-trafficking organisation.



c) A woman irregular migrant from Eastern Europe who had been mistreated by her partner told the street unit of an anti-trafficking organisation<sup>124</sup> that she had tried to go to the police, **but she didn't feel to be adequately supported** and therefore sought protection from her exploiters.

#### 4.3. Experiences of trafficked victims exploited in illegal economies

Some victims of trafficking are employed in illegal economies and forced to commit crimes by their exploiters. The case is illustrative of a recurring situation: very often these are young men (18-35 years old) with a medium to low education, who are forced into drug dealing.

a) A man irregular migrant from Nigeria was forced to deal drugs on behalf of the criminal association<sup>125</sup>. He contracted a debt with the criminal association through a tribal ritual in his home country and, once in Italy, he discovered that he had to pay it by selling drugs, under threat of killing his family. He was arrested for the crime committed but did not tell the authorities about this situation. The families of origin discouraged reporting it because they feared the consequences if the tribal oath was broken. He got in touch with an anti-trafficking organisation that informally contacted the Public Prosecutor's Office to ensure that the victim would be protected and prepared a complaint draft reconstructing his story. The person entered the Art. 18 CLI protection programme and was regularised.

#### 4.4. Experiences of victims of trafficking and severe labour exploitation

Victims of severe labour exploitation are entitled to a special permit under Article 22 para. 12-quarter CLI, while they are entitled to a permit under Article 18 CLI in the case of conduct provided for in Article 603-*bis* para. 2 of the Criminal Code (aggravated by violence or threats) perpetrated by criminal associations. Only in the first case, in order to obtain regularisation, the complaint is compulsory. The indirect testimonies collected concern men of different nationalities, exploited in various economic sectors<sup>126</sup> and some of them are victims of trafficking, more or less aware that they are. They all have an irregular *status*. Usually, if they suffer exploitative conditions, they prefer to look for another job rather than report the crime, as they have the urge to support their families in their country of origin.

a) A man irregular migrant, who worked for an Italian employer, was paid in a way **that clearly did not comply with the national collective agreements**, and for the last four months of work he had not been paid at all. The employer's conduct is an indicator of exploitation according to Article 603-*bis* para. 3 of the Criminal Code as a single indicator is sufficient for the existence of the offence, but the operators fear that in these cases (of so-called 'light' denunciation, which is supported by little evidence), the permit under Article 22 para. 12-*quater* CLI will not be granted and therefore the person will be unnecessarily exposed to adverse consequences for his irregular *status*. In the uncertainty, the operators decided by mutual agreement with the person **not to report**<sup>127</sup> the crime.

<sup>124</sup> Interview No. 7 with anti-trafficking organisation.

<sup>125</sup> Interview No. 4 with anti-trafficking organisation.

<sup>126</sup> Predominantly exploited in construction: Bengalis, Pakistanis, Maghrebi, Indians and Nigerians; in agriculture, logistics (e.g., food delivery service) and catering: Maghrebi, Pakistani, Bengalis.

<sup>127</sup> Interview No. 4 with anti-trafficking organisation.





b) A man irregular migrant who worked for the company involved in the notorious “Straberry” case<sup>128</sup> about the exploitation of agricultural workers. Instead of reporting the employer, the person preferred to look for another job. The social operator referred that in this case the person did not seem unaware of being a victim of exploitation with rights linked to this condition<sup>129</sup>.

c) A man irregular migrant was identified as a victim of trafficking for severe labour exploitation and was placed on the social pathway ex art. 18 CL<sup>130</sup>. Initially, when the person came into contact with the anti-trafficking agency, there were no strong indicators of the crime; it was crucial to be able to trace a person who, in agreement with the traffickers, was **attempting to place him in exploitative circuits**.

#### 4.5. Experiences of victims of other crimes

Once they arrive in Italy, migrants can suffer various crimes somehow linked to their irregular *status*. Indirect testimonies collected concern scams suffered in the attempt to obtain a residence permit or *ex post* regularisation, as well as violence suffered by people detained inside the “CPRs”.

a) A man migrating from Morocco, together with his sister, was the victim of a scam in an attempt to obtain a residence permit. Trying to enter Italy legally, he **paid an intermediary a significant sum of money to find him an Italian employer** and thus obtain a work permit. Once they arrived in Italy, **the alleged employer refused to receive them**. They were offered the possibility of reporting both the alleged employer and the intermediary (collecting several other reports of similar scams), but they preferred not to.<sup>131</sup>

b) The same mechanism described in the previous case is frequently repeated with *ex post* regularisation. The irregular migrant unable to find an employer ‘buy’ a fake work contract from an intermediary. When the alleged employer is supposed to sign the contract for the residence permit at the Prefecture, no one shows up; on the contrary, in some cases the employers summoned have filed a complaint for identity theft claiming that they are being used as frontmen. In this regard, an association operating in the area<sup>132</sup> presented a dossier to the Public Prosecutor's office in which **several cases of victims of similar scams were reported, with the intention of having their intermediaries and pseudo-employers prosecuted**. The outcomes of the investigation came after several years, but the case ended with dismissal because the people involved (except two, in a group of hundreds) had already found another way to obtain a permit and therefore no longer wanted to prosecute the swindlers.<sup>133</sup>

c) One of the associations interviewed, which also deals with assistance to people detained in “CPRs”, collected the testimonies of some migrants during an inspection of one of these centres, which took place in the presence of a senator of the Italian Republic. The people detainees reported

<sup>128</sup> <https://www.ilpost.it/2020/08/25/straberry-milano-sequestrata/>

<sup>129</sup> Interview No. 8 with anti-trafficking organisation.

<sup>130</sup> Interview No. 8 with anti-trafficking organisation.

<sup>131</sup> Interview No. 2 with voluntary association.

<sup>132</sup> About the NGO's investigation 'Truffasi': <https://www.youtube.com/watch?v=tzhP7vMRbd8>.

<sup>133</sup> It is a special government measure through which irregular foreign nationals are given the opportunity to obtain a residence permit *ex post*.



injures - evidenced by their medical records - that they referred to violence perpetrated by the police. The association **filed a complaint with the Public Prosecutor's Office** and they are waiting for the outcomes.<sup>134</sup>

#### 4.6. Impact factors on victims' detection and underreporting of crimes

The direct and indirect testimonies from irregular migrants revealed different factors that make it difficult to leave the contexts of violence and exploitation and prevent effective access to justice.

##### a) Cultural and social factors that make it difficult to leave the criminal context

There are cultural and social factors, which vary according to geographical origin, that can make it difficult for victims to leave the contexts of violence and exploitation.

For example, victims of gender-based violence are generally submissive to their partners, other family members or the criminal network and fear losing their children if they report; victims of trafficking for sexual exploitation, on the other hand, are sometimes influenced by tribal superstitions and believe that **reporting will affect their safety or that of their loved ones**. Transgender women suffer not only the stigma of being with an irregular *status* and sex workers, but **also the stigma of gender identity that does not conform to binarism**, which adds to their vulnerability.

Moreover, the reference culture affects the migrant person's perception of being a **victim of crime: the situation of violence or exploitation is only recognised when taken to extremes**.

##### b) Mistrust of the authorities and obstacles to a proper reconstruction of the facts

From the interviews conducted, it appears that irregular migrant victims avoid interfacing directly with the authorities, and sometimes even with health services for fear of being reported for their irregular *status*. Several migrants referred that they do **not feel adequately supported by the police and prefer to turn to their 'protection network'** (people from their community, exploiters, but also lawyers they trust) **in case they suffer a crime**. Most of them only managed to file a complaint after contacting social operators. When people are persuaded to report, the main problems encountered are the correct reconstruction of the facts by appropriate cultural mediators and the difficulty of tracing the true personal details of the exploiters, who often use a pseudonym.

##### c) Difficult integration into social protection schemes

It is possible in some cases to obtain regularisation without necessarily filing a complaint (Art. 18 CLI, Art. 18-*bis* CLI). However, it emerged from the interviews that inclusion in social pathways is not always easy. In this regard, **it must be considered that during the first months of entry into the protection programme the person cannot work**: this can be a problem **for those who have to support their families** or pay healthcare costs for certain therapies (e.g., transgender people). Moreover, in some cases migrants prefer not to join because they perceive inclusion in the social paths as "a restriction of freedom".

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<sup>134</sup> Interview No. 2 with voluntary association.





## 5. Final proposals for the improvement of safe reporting in Italy

The results of the research confirmed that the irregular status of the migrant victim is a source of vulnerability<sup>135</sup>.

From the legal framework emerged that reporting a crime to the authorities inevitably leads to the 'disclosure' of the migrant's administrative *status*. The **police forces are obliged to report the migrant victim of a crime**, with the resulting adverse consequences such as expulsion and criminal proceedings for violation of Article 10-*bis* CLI. Irregular migrants receive special protection from the legal system only when they are entitled to international protection or can benefit from a special permit for victims of certain crimes<sup>136</sup>.

### 5.1. Legal reforms for effective access to justice for victims of crime with irregular migration status

#### a) Extension of special permits

The field research shows that several **crimes in which the victims are typically irregular migrants are currently not covered by special permits**: a situation that creates inequality between migrants and citizens, and between migrants who are victims of crime, depending on the crimes they have suffered. It could be considered to expand the scope of the special permits to certain crimes that make victims particularly vulnerable (e.g., extending the applicative prerequisites of Article 18 even when the crimes, such as a robbery, scam, sexual assault, injuries, are committed occasionally by a single perpetrator, outside the existence of a criminal organisation). However, extending the scope of special permits does not seem a likely solution **in the current political context**.

#### b) The use of leave for reasons of justice to guarantee the right of defence

**The residence permit for reasons of justice** has a potentially wider range of application compared to special permits<sup>137</sup>, as it can be granted to many crime victims with irregular *status*. In practice, however, this permit is hardly used. It is granted only when the public prosecutor's office needs a specific witness or complainant useful for the investigation and not for the **victim to exercise the right of defence**. From this point of view, this institution could be reformed: firstly, by extending the permit for the duration of the entire criminal proceedings, to allow irregular migrants who have suffered or witnessed a crime to participate in the trial. Currently, the permit is only valid for three months, renewable once (for another three months). Furthermore, it should be possible to convert the permit into other permits after its expiry (e.g., work permit), which is currently not allowed.

#### c) Special exemption from the obligation to report the irregular migrant victim or witness

However, the ideal solution remains a legislative reform at the national level to protect all irregular migrants when they spontaneously present themselves to the police. Similarly to what is envisaged for doctors<sup>138</sup>, **police officers should be exempted from the obligation to report migrants for their**

<sup>135</sup> On this topic see already S.B. Taverriti, (2019), Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy, <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Italy-country-report.pdf>, cit., p. 4 ff., who analyses crimes against foreigners from a criminological perspective, highlighting the particular vulnerability of irregular migrants.

<sup>136</sup> See *supra*, sect. 2.

<sup>137</sup> See *supra*, sect. 2.5.

<sup>138</sup> See *supra*, footnote 36.



**irregular status when interacting with crime victims, so that their right of defence of the victim is guaranteed as well as the right of access to healthcare<sup>139</sup>**. This exemption would encourage the reporting of offences that are currently not covered by the special permit and are often difficult to detect, providing **greater protection for vulnerable persons but also for the whole community**. Such a reform could achieve the minimum and indispensable protection that the legislation should provide for all victims, **regardless of their personal status**.

## 5.2. Strengthening and implementing local practices of safe reporting for migrant victims of crime

Analysing local practices in the Municipality of Milan, we found that **even in cases where national legislation provides safe reporting paths** for migrant crime victims, their effectiveness depends on the **proper implementation of the law and protocols stipulated at local level**. Therefore, these proposals aim to strengthen and enhance the synergy between institutional actors (both social and police forces) and the private organisations supporting migrants.

### a) Construction and implementation of strong local networks

When migrant crime victims are entitled to special permits, the multi-agency approach provides significant help to ensure safe reporting paths, but the effectiveness of this system depends on the proper dissemination of information to victims, adequate training of all actors, and the implementation of protocols in the different areas of intervention.

We found that migrants **are often unaware of being victims of violence and exploitation**. Indeed, various cultural or social factors tend to normalise certain behaviours (e.g., domestic violence, working in exploitative conditions) and make it difficult for them to leave the criminal context. Besides, victims who could benefit from special permits are not aware of their existence and this holds them back from reporting, fearing adverse consequences linked to their irregular *status*.

Moreover, the correct application of the law depends on the individual operator, despite the presence of protocols. For the effective functioning of the network and safe reporting paths, there is a need for more **awareness of the procedures to be followed in cooperation by all the actors involved**. In practice, it sometimes happens that local police officers are not familiar with the activities of social operators and do not know how to interact with them (e.g., they do not protect the "anonymity" of the street unit's operators, unwittingly revealing their activities to exploiters, or they bring a potential trafficking victim to the police station without calling the agency). Moreover, according to the interviewed organisation, the social operators should be better protected also during the trial, which is not regulated by the anti-trafficking protocol (e.g., if they are asked to testify, their anonymity is not protected).

Finally, social operators are working on the stipulation of a **protocol on severe labour exploitation<sup>140</sup>**, also involving the Labour Inspectorate and trade unions.

<sup>139</sup> Meanwhile, some Courts developed a practice whereby the judicial police avoid asking for documents from those who present themselves to testify in a trial. See *supra*, sect. 2.3.

<sup>140</sup> See for example the protocol to fight severe labour exploitation signed by the Municipality of Prato (Tuscany) with Judicial Authorities, Inspectorate, Trade Unions, Local Health Authority and Associations for the Rights of Migrants [https://www.cisfirenzeprato.com/uploads/2/8/4/2/28428959/protocollo\\_unitario\\_contrasto\\_sfruttamento\\_2021-2024\\_all.\\_a.pdf](https://www.cisfirenzeprato.com/uploads/2/8/4/2/28428959/protocollo_unitario_contrasto_sfruttamento_2021-2024_all._a.pdf)



## b) Public-private partnership for the creation of local hubs operating as “safe harbours”

Given that the obligation to report does not allow for exceptions at the legislative level and that immigration enforcement is managed centrally, but spread across all police forces, the experiences (widespread in the so-called "Sanctuary cities" and other cities participating in the project) that provide for firewall mechanisms that prevent public officers from reporting irregular status to the competent authority, seem far to be realized within the Italian legal system<sup>141</sup>.

At present, a solution - to facilitate access to justice for all victims at the local level - could be the **creation, through a public-private partnership, of “safe harbours”**<sup>142</sup> where complaints would be drafted **by lawyers on behalf of migrant victims and transmitted directly to the Public Prosecutor's Office**, guaranteeing confidentiality on administrative *status*. Moreover, in cases of eligibility for a special permit for victims and witnesses of crime, the Public Prosecutor could initiate the administrative procedure by addressing the request to the Questore.

The public sector would be required to participate in the project (e.g., through financial support), as it is in the public interest to ensure respect for the fundamental right of defence as well as the right not to incriminate oneself '*nemo tenetur se detegere*'<sup>143</sup> for irregular migrants.

As far as the private sector is concerned, legal professionals are perfectly able to facilitate interactions with irregular migrants, as professional secrecy does not oblige them to report them<sup>144</sup>.

## c) Legal clinic for safe reporting of crimes

To keep alive the virtuous synergy established at the local level with the project partners, the research unit in Milan is considering setting up a legal clinic to assist migrants during the drafting phase of the complaint. In fact, the university could be the ideal place to bring together the activities of different operators. In addition, the involvement of lawyers would ensure the protection of victims' confidentiality and the necessary support in terms of legal assistance. Moreover, the university environment could be perceived as safer and more trustworthy by the victims, who would thus be encouraged to participate.

## d) Do not require to exhibit a residence permits or other documents if not necessary

Residence permits or other documents proving legal presence on the territory of the State should not be required **when they are not strictly necessary**, especially when this implies the exercise of a

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<sup>141</sup> The term '*Sanctuary City*' is used here to refer mainly to municipalities that have adopted local ordinances that restrict or prohibit proactive cooperation of municipal employees (including local police) with the US federal government in the enforcement of immigration law. These policies are usually adopted by municipal ordinances and include one or more of the following components: a '*don't ask*' component, which prohibits municipal employees from inquiring about the immigration *status* of persons with whom they interact in the course of their duties; a '*don't tell*' component, which prevents municipal employees from reporting immigrants to immigration law enforcement agencies; and a '*don't enforce*' component, which limits the ability of local police to arrest or detain someone at the request of immigration law enforcement authorities. Cf. N. Delvino, (2019) Safe reporting of crime for victims and witnesses with irregular migration *status* in the United States, cit.

<sup>142</sup> See S. B. Taverri, (2019), *Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Italy*, cit. p. 34 ff.

<sup>143</sup> S. B. Taverri, (2023), *Gimme Shelter: The Right to Silence for Silenced Migrant Victims*, cit., *passim*.

<sup>144</sup> Professional secrecy is protected by Art. 200 of the Code of Criminal Procedure, which states that lawyers (as well as other professionals) cannot be compelled to testify about what they have learned as a result of their profession. In addition, Art. 380 of the Criminal Code provides for the offence of unfaithful legal assistance, which is committed whenever a lawyer causes damage to his clients by breaching the duties associated with the legal profession.



fundamental right such as the right to defence (and the right not to incriminate oneself). Interviews revealed that, for example, **some courts** accepted any identification document and, in some cases, they do not even require one: a practice that protects irregular migrants who are called to testify<sup>145</sup>.

### 5.3. European harmonisation to enhance victims' protection

**The European Commission's proposal for Directive 424-2023 presented on 12 July 2023**, which intend to amend Directive 2012/29/EU on **minimum standards on the rights, support and protection of victims of crime**<sup>146</sup>, could impose a significant strengthening of victim protection on national governments. In particular, the Commission's objectives include achieving a higher level of safety in reporting crime and a more victim-centred justice system, in which victims are recognised and can **assert their rights and participate more effectively in criminal proceedings**.

At the same time, the European Union has taken significant steps to strengthen the protection of the presumption of innocence with Directive 2016/343/EU<sup>147</sup> which explicitly provides for the right to remain silent and the right not to incriminate oneself in Article 7<sup>148</sup>, which is tendentially granted to the accused/suspected<sup>149</sup>, though with some limitations<sup>150</sup>.

Victims with irregular migrant *status* who approach the authorities to report a crime they suffered are not yet accused or suspected of a crime, but the '*disclosure*' of their administrative *status* carries both administrative and criminal sanctions. This - in substance - represents an imposed "self-incrimination".

Considering that, as someone suggested, it should be enhance the 'right to silence' also for the protection of irregular migrant victims<sup>151</sup>.

As a result of the research, it can be stated that irregular migrants who suffered a crime face serious discrimination both in their effective access to justice and in the related protection for victims of crimes. This situation discourages irregular migrants from reporting and makes them further exposed to suffer crimes and live in vulnerable conditions in the territory of the State. From this point of view, it has been observed how this entails a violation not only of the right of defence (and the right not to incriminate oneself) but also of the positive obligations of protection of life established by the European Convention on Human Rights (Articles 1, 2, 3, 8, 14 ECHR), which require States to adopt the necessary safeguards to protect the life of individuals without discrimination<sup>152</sup>.

<sup>145</sup> See *supra*, p. 11, esp. footnote 39.

<sup>146</sup> Link to the proposal: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu\\_en#revision-of-the-victims-rights-directive](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en#revision-of-the-victims-rights-directive).

<sup>147</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on strengthening certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings.

<sup>148</sup> At European level, the right to silence is recognised as a fundamental right in Articles 47 and 48 of the EU Charter of Fundamental Rights, which provide for the right to a fair trial, the presumption of innocence and the right to defence. As usual, in accordance with Art. 52 (3) ECHR, these standards are interpreted taking into account Art. 6 ECHR and related case law.

<sup>149</sup> See A. Pivaty, A. Beazley, Y. M. Daly, L. Beckers, D. de Vocht, P. ter Vrugt, (2021): "Opening Pandora's box: The right to silence in police interrogations and the Directive 2016/343/EU" *New Journal of European Criminal Law*, 12(3), pp. 328-346.

<sup>150</sup> S. B. Taverri S. B., (2023), *Gimme Shelter: The Right to Silence for Silenced Migrant Victims*, cit. p. 234.

<sup>151</sup> See for this proposal S. B. Taverri, (2023), "*Gimme Shelter*": *The Right to Silence for Silenced Migrant Victims*, cit.

<sup>152</sup> S. B. Taverri S. B., (2023), *Gimme Shelter: The Right to Silence for Silenced Migrant Victims*, cit. p. 240.



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

Pending such possible developments, the proposals on the table move toward a desirable reform of the existing legal framework, but - in the meantime – it is necessary to enhance and properly implement the **forms of protection already provided by domestic legislation as well as the good practices**, interpreting the law in accordance with constitutional principles and human rights.



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**Victims with Irregular migration Status' Safe Reporting of Crimes**  
Project: 101056675 — VISA RoC — JUST-2021-JACC

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## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

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Attachments

**Victims with irregular migration status.  
Safe Reporting of Crime (VISA RoC)  
Interview Guides for undocumented migrants**

Key aspects	
<b>1. Migratory context</b>	<p>Information about his/her current situation from a legal point of view.</p> <p>Information about their social situation: housing, family, economic resources</p>
<b>2. Have you been a victim of any kind of crime?</b>	<p>Affirmative case with police report: information about the crime, contacts and if he/she file a report</p> <p>Affirmative case without police report: reasons why and if her/his decision would change with a support network</p> <p>Negative case: information about the perception of being protected (by the police, institutions and ONG) in case they are victims of crime.</p>
<b>3. Have you ever filed a report for a crime?</b>	<p><b>Yes:</b> Information about the experience, barriers, personal/economic/psychological support, interaction with the police and other public officers, and consequences regarding their migration status. If they will report again for future cases</p>
<b>4. Elements that may influence filing a report</b>	<p>Information about the key factors that would make he/she feel confident enough to file a report: personal/economic/psychological support; consular support from the country of origin, translator</p> <p>Information about crime reports in the country of origin</p>
<b>5. Perceptions about institutions</b>	<p>Information about institutions, and organizations they trust (doctors, social services, NGOs, Police, consulates)? [even putting them on a scale]</p> <p>Information about offices, institutions or NGOs they would trust for a safe reporting of crime.</p>
<b>6. Final comments</b>	



## Victims with Irregular migration Status' Safe Reporting of Crimes

Project: 101056675 — VISA RoC — JUST-2021-JACC

Anything to add

### **7. Final data relative to the *background* (10 minutes)**

Age, gender, years living in the country and city, alone or with family, dependent children or family in the country of origin, friends and networks in Milan, the intention of staying in Italy or moving to another country.



## Victims with irregular migration status.

### Safe Reporting of Crime (VISA RoC)

#### Interview Guides for victim support services/institutions

##### Key aspects

##### 1 General Information

How do victims reach the services: how do migrants get to know about the services, are they referred from other services/institutions?

What is the profile of migrants that arrive at the service (irregular administrative situation): origin, age, gender, type of migration: economic, reunification, forced?  
Documentation/administrative situation. Years of previous residence. Family and social networks.

##### 2 About the services/support

What kind of victim support services are provided: the protocol, human and economic resources, type of service: information, accompaniment, claim to tribunals, referral to other support or legal services?

Are there any differences in the provision of the services in case of a migrant in an undocumented/administrative irregular situation (adaptation of the service to administrative irregularity)

Ways/strategies to avoid reporting/contacting the migration officers or other authorities involved in the deportation/return process. Information about the effectiveness, limitations, or improvements of those strategies.



### 3 Coordination/experience with other authorities

Information about coordination/experiences with public authorities like:

- City council
- Immigration authorities,
- public prosecutor,
- police,
- Tribunals
- labour inspectors,
- NGO/institutions for legal support (public or private funded).