

Safe reporting for migrant victims of sexual violence: Mapping policies in Belgium, Ireland, and the UK

By Victim Support Europe and Ghent University

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Introduction

The INHeRE project aims to improve holistic care for migrants, applicants for international protection and refugees (MAR) who have been sexually victimised (SV) and/or sex trafficked (ST), regardless of their sex, gender, sexual orientation, legal and/or protection status. Crimes in general remain underreported in Europe¹. MAR individuals are among the victims, and they might experience multiple barriers in being able to report due to the sensitive nature of sexual victimisation and their potentially vulnerable legal and social status in a country. For these reasons, the possibility to report sexual crimes in ways it provides victims safety from perpetrators and from being prosecuted based on migration status is of utmost importance. Here, safe reporting is defined as “the freedom to report crimes without fear that one will be punished for coming forward. It requires prioritizing the rights of victims and the safety of communities in situations of vulnerability ahead of the enforcement of immigration rules.”²

Consequently, it is important to map the current situation in European countries to understand what possibilities and discrepancies exist in legislation and policy on safe reporting. To this end, the INHeRE project had conducted a rapid appraisal of national laws, policies, and practices on safe reporting for MAR victims in Belgium, the UK, and Ireland against existing EU legislation.

In order to perform the mapping and assessment of the aforementioned laws and policies, a comprehensive methodology was developed, consisting of desk research (with a systematised search strategy and sets of keywords), interviews, and consultations with international experts, practitioners, and NGOs. National legislation was recorded, evaluated, and refined in a research matrix (for the complete record of all national legislation used in this research, see Appendices 1-3.)

Initial desk research indicated that safe reporting should not only be understood as in the moment of reporting, but that safety must be seen as a holistic device prior and after reporting a crime. This is because any obstacles and discrepancies leading up to or following reporting ST/SV might hamper the ability of MAR victims to come forward safely. Therefore, four key categories, all intertwined with the subject of safe reporting, were included in this report: access to justice, support, protection, and detection. In the following sections, we describe the country cases of Belgium, the UK and Ireland. We start with a short summary of each country report, then explain the four components along the reporting process from the perspective of safety, and, finally, list all relevant legislation and policies that were included in this report.

¹ European Union Agency for Fundamental Rights, *Crime, Safety and Victims' Rights*, 2021.

² PICUM Report, *Undocumented victims of crime: data protection in EU legislation*, 2017, p.2.

Executive summary

The present document describes and summarises national legislation and policies in Belgium, Ireland, and the UK with regard to reporting a crime to a competent authority by migrants, applicants for international protection and refugees (MAR) who have been sexually victimised (SV) and/or sex trafficked (ST).

In Belgium, the practical implementation of many legal tools falls under a 'legal grey area'. Firewall measures, such as separating residence status from the crime reported, are not always effectively in place, hampering the willingness of undocumented victims of SV/ST to come forward. The public prosecutor, police officers, and their superiors play a critical role in assessing cases on an individual basis, leading to little certainty or clarity for MAR victims. In 2017, three holistic Sexual Assault Care Centre (SACC) centres were set up in Brussels, Ghent, and Liège. These centres have been positively received and proven to be an adequate solution to address specific needs of MAR victims of SV. Finally, raising awareness among all professionals who work with those victims is critical and must remain a priority for policy makers.

In the UK, various barriers exist when it comes to ensuring a safe reporting procedure. Data sharing between the police and immigration authorities is common practice, leading to possible deportation of undocumented victims of sexual violence. There is no mechanism to officially report a crime anonymously, and access to justice is therefore limited. Even though some measures are in place to enhance the safety of reporting, access to justice, and support, several NGOs and lawyers have called for a policy to treat undocumented victims first and foremost as victims and to set up a firewall between the competent authorities.

In Ireland, following the implementation of the Victims' Rights Directive, a victim-centred approach has become prevalent, and a victim's residence status does not play a role in their ability to lodge a complaint, nor is it asked about

by the competent authorities. An Garda Síochána (the national police service in Ireland) has a policy of treating all victims equally, no matter their immigration status in Ireland, and provides extensive protections to victims of SV and ST. At the same time, virtually no protections exist for MAR victims specifically.

While over the past years the victim-centred approach has gained traction and led to various improvements in understanding victims' needs and, therefore, creating adequate ways to respond to them both in legislation and in practice, there is still a long way to go until just and humane treatment is a reality for all MAR victims of SV/ST in the EU. Progress can be made by addressing existing gaps on various levels, from weaknesses in EU legislation to insufficient transposition into national law to the widespread lack of practical implementation of existing instruments.

Belgium

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1. Belgium

Belgium is a federal state with a civil law system. Belgian's legal base ensures a minimum set of rights for victims. These rights are guaranteed without regard to nationality, social origin, political conviction, religion, or sexual orientations. Thus, these fundamental rights should ensure a basic protection for MAR victims of SV/ST as well. The competence over immigration policy lies solely with the federal government, Ministry of Home Affairs and State Secretary for Asylum and Migration. The immigration Office (IO), the federal and local police and the Labour Inspectorate are the authorities involved in the immigration law enforcement. At the same time, Belgium is a country whose laws, policies, and practices towards migrants are constantly evolving.

1.1. Reporting

Both law and policy show a discrepancy between (1) refugees and applicants for international protection whose application is being processed and thus benefit from protection and have a legal right to remain in Belgium and (2) undocumented migrants and rejected applicants for international protection who are unlawfully staying on Belgium. When it comes to reporting crime and the ability to do that without risking immigration enforcement measures, an important difference is also found in treatment of victims dependent on the type of sexual violence they endured.

Victims of human trafficking and smuggling who are migrants and applicants for international protection are granted protection under the Belgian legislation on human trafficking and smuggling which is largely aligned with European directives as well as international protocols and conventions³. Article 77bis of the 1980 Aliens Act specifies that the offence of human smuggling is the fact of contributing in any way, directly or indirectly, to enable the entry, transit or stay of a person, noncitizen of an EU member country (...) in Belgium, in order to get a patrimonial

advantage⁴. The protection of victims of human trafficking and smuggling is then strengthened by four main pieces of legislation The Law of the 15 September 2006, Article 64-68 on the residency status of victims of trafficking and smuggling with aggravating circumstances; The law of the 30 March 2017 changes Article 61/2 to replace the order to leave the territory by a temporary residence document; the Law of the 24 June 2013 which enables to protect victims of sexual trafficking specifically and finally the Law of the 31 May 2016 complementing the implementation of European obligation regarding sexual exploitation of children, child pornography, human trafficking. According to Article 8 of the EU Trafficking Directive, undocumented victims of ST should not be prosecuted for being on the territory which is enforced in Belgium through the law of the 15 September 2006 (article 64-68), the law of the 30 March 2017 and the Circular letter of 23 December 2006.

Since 1994, foreign victims of human trafficking who are collaborating with the authorities can be offered a specific residence permit which secures the reporting of a human trafficking crime according to the 2007 Royal decree and the 1980 Alien Act modified by the law of 15th of December 2006 (Article 61/2 to 61/5)⁴⁴. The conditions for the specific residence status are threefold: (1) cooperating in the judicial investigation of those crimes; (2) no return to the environment of exploitation; (3) being guided by a specialised reception centre. The decision for this temporary residence status can be taken by the 'reference magistrate' (referentiemagistraat) on human trafficking and human smuggling that is present in the office of the prosecuting authorities. From the moment the status is granted, victims receive a permission for a reflection period of 45 days. In this period, they can decide whether they want to cooperate with the competent authorities. During this time, they also receive holistic care such as medical and psychological support in one of the three specialised reception centres (Payoke, Pagasa, Sürya). If, after 45 days, they

³ <https://www.myria.be/fr/traite/legislation#Belgique>, see also table in Appendix 2

⁴ Aliens Act (1980) – Article 77bis

decide to cooperate in the investigation, they get a certificate granting them another 3 months of stay. Based on repeated evaluation of the competent authorities the victim can be granted six months stay by inclusion in the aliens register which can be revised into an indefinite one. The conditions are strict and may lie out of the victim's control, such as a potential prosecution or conviction of the accused. Even when given a residence permit, competent authorities can decide to withdraw it if the victim breaches any of the conditions.

A similar disposition applies to victims of intimate partner violence in which sexual violence is committed by a partner and can be classified as domestic violence. In Belgium, Article 42 of the Alien Act foresees that if violent acts (specified in Articles 375, 398 – 400, 402, 403 and 405 of the Criminal Code) are committed against a victim whose residence permit is attached to the one of the perpetrators, the residence permit will not be withdrawn. In practice, the threshold to prove the victimhood of domestic violence, including when sexual violence is involved, is very high. Several pieces of legislation address domestic violence and intimate partner violence in particular. The legal basis is therefore in place to prosecute sexual and domestic violence. However, it remains unclear what is in place when the victim is an undocumented migrant.

For MAR that do not fall under the categories of victims of human trafficking, human smuggling, or domestic violence, the safety of reporting sexual violence is less regulated in laws and policies. An undocumented migrant or rejected applicant for international protection victim of SV/ST may be reluctant to come forward as a victim knowing that they are breaching the law. Given the legal and policy framework of Belgium, this apprehensiveness seems to be founded as the Belgian legislation states that the local and federal police can check the identity of any individual (Law of 21st March 2018 on police function, article 17 on identity check). According to Article 74/7 of the 1980 Aliens Act, the police may enforce a period of administrative detention for a foreigner who does not carry the identity or residence documents required by law. Article 29a of the Code of Criminal Procedure states the

obligation for an authority, civil servant, public officer, and any other associated institution to report a crime to the public prosecutor. Article 75 states that information the public prosecutor can ask a witness of a crime includes their name and status, allowing the public prosecutor to be aware of the victim's/witness's identity, including residence status.

The federal government is responsible for immigration legislation, and part of the implementation is carried out by local authorities. Consequently, there is no uniform practice at the local level due to the combination of power layers and practice of discretion.

For MAR victims, the possibility of anonymous reporting might offer some additional protection. However, whether anonymity is granted is at the discretion of different actors such as police, magistrates, and judges. These mechanisms are in addition rather developed to offer anonymity to protect from the potential perpetrator rather than from immigration services or other state agencies. There are several pieces of legislation to grant anonymity to victims and witnesses, including those with irregular residence status. The Law of 4th of August 2002 foresees the possibility to grant complete and partial anonymity for witnesses. Articles 58 and 59 of the Social Criminal Code grant protection to the reporter of an employment law offence. The Code of Criminal Procedure allows Third parties to act on behalf of a victim or report a crime (Article 21bis), gives the possibility to the examining magistrate to anonymise certain data in exceptional circumstances (Article 75bis), specifies the possibility to grant partial and anonymous testimony (Article 86bis and 86ter). Importantly, these articles stipulate that before deciding to grant anonymity to a witness of crime, the investigating judge becomes aware of the full identity of the witness and investigate his/her reliability.

1.2. Access to justice

In Belgium, access to justice is secured in Articles 23, 32 and 134 of the Constitution. The 2007 Circular letter GPI 58 on police assistance to victims stipulates that the police have “an essential duty to assist victims and their beloved”. In particular, the police shall provide relevant information and put the victims in contact with specialised services, specifically justice assistants (assistant de justice). Although scattered across instruments, most elements of information that should be provided under EU law is indeed stipulated in relevant laws or policy documents. The Belgian legislation stipulates that a registered interpreter assists the victim during the hearing and a victim can make a written statement in his/her native language. This support should be offered free of charge. Translation is often difficult due to practical impediments such as lack of consideration for dialects may prevent the victim’s understanding.

1.3. Support/care

Belgium’s legislation and policy largely echoes European standards of support and care for victims. When it comes to accessing support services, however, there does not seem to be an official guarantee that victim support services are accessible regardless of making a formal complaint. The VOIARE report⁵ illustrated how the service providers themselves are not clear on who takes on which function in the support process of victims. An important initiative was taken in Belgium with the setting up of three holistic Sexual Assault Care Centres (SACC) in Brussels, Ghent, and Liège. These centres have been positively received and proven to be an adequate solution to address specific needs of MAR victims.

For victims of human trafficking, the Ministerial Circular of 23 December 2016 describes a multidisciplinary approach. The Belgian legal and policy framework, primarily through the Ministerial Circular of 23 December 2016, outlines specific measures for the victims’ physical, psychological, and social recovery (Article 12) and establishes a recovery and reflection period (Article 13).

1.4. Protection

Another important aspect of a victim’s experience within and beyond the justice system as well as in their journey towards recovery is protection. Protection refers to the safeguards which are put in place to ensure the safety and privacy of a person. The Belgian legislation does describe the protection of victims of crime and sexual violence through Article 122 in the Code of Criminal Proceeding which refers to the use of videoconferencing for endangered victims in Belgium. However, protection measures seem to be scattered across large amounts of different legal instruments, making not only the present research but – more importantly – the task of guaranteeing protection rights to the MAR victims of sexual violence in Belgium difficult.

1.5. Detection

In Belgium, measures in place for victims of human smuggling and human trafficking are encompassed in several royal decrees, circular letters and detailed in action plans, however, they are confidential and were therefore not accessible for the present document.

⁵ https://victim-support.eu/wp-content/uploads/2021/02/VOIARE_Synthesis_Report.pdf



The UK

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2. The UK

In the UK, responsibility for immigration and asylum process rests with the Secretary of State for the Home Department, who is a government minister (the Home Secretary). Within the Home Office, asylum decision-making is allocated to a department called UK Visas and Immigration (UKVI) and within it to the Asylum Intake and Casework Directorate. The Home Office is responsible for all aspects of immigration and asylum: entry, in-country applications for leave to remain, monitoring compliance with immigration conditions, and enforcement including detention and removal⁶.

Contrary to most of the continental European countries, where civil law applies, the UK has a common law system, meaning that case law and previous judicial decisions determine the application of the law. In Scotland, there is a mixed system with aspects of both common and civil law. The law of the UK is composed of four legal systems: English law, Scots law, Northern Ireland law, and, since 2007, Welsh law, following the Government of Wales Act of 2006. There are overlaps but also differences among these legal systems, including legislation impacting MAR victims of sexual violence (SV) and/or sexual trafficking (ST). This report analyses five key areas within the rights of MAR victims of SV/ST.

2.1. Reporting

Both law and policy show a discrepancy between several pieces of legislation frame practices toward migrants, refugees, and applicants for international protection: three immigration Acts were issued in 1971, 2014 and 2016; in 1999 the Immigration and Asylum Act specified the conditions to be granted asylum in the UK. It was followed in 2002 by the Nationality Immigration and Asylum Act. The Asylum and

Immigration (Treatment of Claimants, etc.) Act (2004) deals with criminal justice, addressing legal protection and assistance to victims of crime, particularly domestic violence. In 2009, the Borders Citizenship and Immigration Act was brought forward to “strengthen border controls, by bringing together customs and immigration powers, and to ensure that newcomers to the United Kingdom earn the right to stay⁷.” Legislation on immigration has evolved on a restrictive path since 2010 following the election of a Conservative Government, which does not favour a safe reporting procedure for MAR victims of SV/ST. Specifically, the 2014 Immigration Bill does not contain any provision on granting special treatment if a victim without a leave to remain reports a crime as a victim or witness⁸.

The latest policy of the Metropolitan Police Service (MPS) on information sharing with the Home Office where victim or witness of crime is suspected of being an “immigration offender” strengthens the data sharing practice between the police and the Home Office, justifying this practice insofar that it “may assist the police and Home Office in the discharge of their respective functions. There is a clear public interest in a joined-up approach to upholding the law⁹.” Information sharing is presented as critical to protect the victim or witness from harm and carry out the investigation. There is no mention of immigration law enforcement measures such as detention and deportation. The document acknowledges the deterrence effect for undocumented victims and witnesses to report a crime but details only domestic violence cases, underlining the immigration rules for victims who came as the spouse or civil partner of someone who is already settled in the UK and the possible exception in case of domestic violence¹⁰.

⁶ Country report, AIDA, p.16. Op-cit.

⁷ <http://www.legislation.gov.uk/ukpga/2009/11/introduction>

⁸ Full text of the 2014 Immigration Bill, <https://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

⁹ Information Sharing with the Home Office where a victim or witness of crime is suspected of being an immigration offender – The policy has been formulated in accordance with the MPS’s obligations under s.149 of the Equality Act 2010 (the public sector equality duty).

¹⁰ Ibid

There is no process in place to report a crime anonymously and directly to the police. The only way to do so is through a charity service 'CrimeStoppers'¹¹, which allows people to report anonymously information about a crime that occurred, through a telephone line or an online form, and the representatives of CrimeStoppers report the crime to the police themselves.

The 1998 Data Protection Act does not mention any firewall measure enabling undocumented victims of SV/ST to report a crime without having his or her immigration status being checked and reported¹². It states that "personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes"¹³. The data minimisation principle contained in GDPR is almost identical to the principle of adequacy of the 1998 Act.

It should be underlined that regional differences allow for a variety of situations in the UK, including safe reporting for MAR victims. Documents consulted for this research as well as the interviewees confirm the disparities across the UK territory, both in reporting a crime and further access to justice, support, and protection.

On 21 January 2019, the British government unveiled a public bill to tackle domestic abuse. This Bill is the result of a range of consultations held with victims, support organisations, and frontline professionals. However, none of the nine measures taken forward in the draft address the issue of safe reporting for victims without a leave to remain in the UK¹⁴.

2.2. Access to justice

Access to justice beyond reporting is possible for MAR victims of SV/ST, although they may face impediments at every stage of the judicial process. This is primarily due to the nature of the British judicial system, in which victims are

treated as witnesses and sources of testimony with limited access to the investigation and information over the case they are involved in.

The 2015 Modern Slavery Act foresees access to relevant legal advice for individuals who are recognised as a potential victim of modern slavery through the National Referral Mechanism (NRM). The organisation of the judicial system in the UK plays an important role to explain this provision. Because victims are not party to the criminal proceedings, they are therefore not expected to be in need of separate representation or financing, as the state prosecutor represents the case¹⁵. Only those victims acting as witnesses are entitled to some forms of legal aid, such as the reimbursement of costs related to their presence at the trial. Private party prosecution may be possible under certain conditions, but the public prosecutor can subsequently take over and may then decide to discontinue prosecution¹⁶.

Nonetheless, some legal provisions aim at securing access to justice beyond reporting for victims and a fortiori for MAR victims of SV/ST. The Code of practice for victims of crime grants victims specific rights, such as the right to receive a written acknowledgement of reporting a crime, an enhanced service for victims of serious crime, including vulnerable or intimidated victims. The Code also allows victims to make a Victim Personal Statement (VPS) where victims can explain how they have been affected by the crime.

The Guidance on interviewing victims and witnesses stipulates that special measures are available to vulnerable and intimidated witnesses with the agreement of the court. These measures include: the use of screens (Section 23); the use of live TV link (Section 24); in case of sexual offences and those involving intimidation, it is possible to give evidence in private (Section 25); the removal of wigs and gowns (Section 26); the use of video recorded interviews as evidence-

¹¹ <https://crimestoppers-uk.org/>

¹² <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

¹³ *Supplementary guidance: public sector data sharing for prevention and detection of crime*, published on 28th March 2018. <https://www.gov.uk/government/publications/identity-document-validation-technology/supplementary-guidance-public-sector-data-sharing-for-prevention-and-detection-of-crime>

¹⁴ <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-bill-2020-overarching-factsheet>

¹⁵ *FRA report*, p.45., *op-cit*.

¹⁶ *Ibid.*, *op-cit*.

in-chief (Section 27). Furthermore, the Domestic Abuse Bill (2020) prohibits perpetrators of abuse from cross-examining their victims in person in the courts in England and Wales and creates a statutory presumption that victims of domestic abuse are eligible for special measures in the criminal courts, for example, to enable them to give evidence via video link.

To help the victim and the relevant authorities to easily keep track of a case as it proceeds through the different stages, the UK has also introduced a Victim Care Card¹⁷. This is supposed to assist in the implementation of the right of victims to receive information about their case. A victim is informed if the suspect is prosecuted or given an out of court disposal. The victim can also seek a review of the police or The Crown Prosecution Service's (CPS) decision not to prosecute in accordance with the National Police Chiefs Council (NPCC) and CPS Victims' Right to review schemes¹⁸.

2.3. Support/care

The UK is one of the first European countries to have set up a victim support organisation with the establishment in 1973 of Victim Support¹⁹. In England and Wales, Victim Support works in partnership with the criminal justice system and engages with victims mostly through police referrals²⁰. Victim Support provides services to victims of crime without checking their immigration status²¹. Undocumented victims of SV/ST can therefore access it without fear of reprisal. Support to all victims of crime and thus to MAR victims of SV/ST is enshrined in the legislation. Firstly, the 2015 Code of practice for victims of crime foresees a need assessment to determine what support the victim needs and a referral to organisations supporting victims of crime. This support includes access

to medical support, specialised support such as psychological support and alternative accommodation²². Secondly, particular support is granted to applicants for international protection within the Immigration and Asylum Act 1999.

In England, there is free hospital treatment for asylum seekers with a current claim, those whose claims were refused but who are protected under Section 95 or Section 4, and unaccompanied minors in the care of the local authority²³. Specialised treatments for victims of torture and traumatised asylum seekers are available, though in short supply²⁴. Specialist trauma practitioners, including psychiatrists, psychologists and trauma counsellors and therapists work in health authorities and trusts around the country, but they are few and access is limited²⁵. Survivors are confronted with "postcode lottery" when seeking safety in an emergency accommodation as provisions vary greatly from one local authority to another and across the UK²⁶.

2.4. Protection

Apart from those who are granted the refugee status, protection of MAR victims of SV/ST remains weak in the UK, and most of the time victims receive a temporary residence permit, which significantly hampers their recovery process²⁷. The Helen Bamber Foundation has issued a call for the UK Government to protect and safeguard survivors of modern slavery who have insecure immigration status during the COVID-19 crisis. The measures called for by the Helen Bamber Foundation include a UK Government Strategy, COVID-19 Modern Slavery Crisis Committee, and urgent procedural measures for survivors of Modern Slavery²⁸.

¹⁷ European Parliament Report, implementation of the Victims Right Directive, op-cit, p.58.

¹⁸ <https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme>

¹⁹ For a complete overview of the victim support's historical evolution, see: RI Mawby, *Victim Support in England and Wales: The end of an era?*, *International review of victimology*, 2016, Vol. 22(3) 203-221

²⁰ RI Mawby, *Victim Support in England and Wales: The end of an era?*, op-cit.

²¹ Mawby R and Harris.D, *Overview and assessment of victim's rights in practice for Victim Support Services in the EU*, 2014, p.5.

²² *Code of practice for victims of crime*, p.94.

²³ <https://www.legislation.gov.uk/ukpga/1999/33/contents>

²⁴ Asylum Information database (AIDA), *Country Report: United Kingdom, Refugee Council*, 2019, <http://www.asylumineurope.org/reports/country/united-kingdom>

²⁵ *Ibid.*

²⁶ <https://www.bbc.com/news/uk-48249330>

²⁷ Interview

Protection for victims of ST is foreseen in the Modern Slavery Act for individuals who are recognised as a potential victim of modern slavery through the NRM²⁹. The same Act stipulates that a person who has experienced modern slavery, but is not eligible for asylum or international protection, may have access to discretionary leave³⁰. Whether a person has experienced modern slavery is assessed by the recently introduced Single Competent Authority (SCA) in the Home Office. However, the credibility of these assessments is put into question. A report titled *Lessons not Learned: the failures of asylum decision-making in the UK* documents flawed credibility assessments and finds that the current system places “an unrealistic and unlawful evidential burden on asylum applicants³¹”. The report charts the “consistent failure of the Home Office to implement recommendations to improve procedures”³². These flaws in procedure can deprive undocumented victims of SV/ST of protection and are in direct contradiction with the provision of the 1951 United Nation Convention relating to the status of refugee and stating that “an asylum seeker must be given access to fair and efficient asylum procedures and measures to ensure they live in dignity and safety while their claims are processed”.

2.5. Detection

This section explores measures in place to detect MAR victims as early as possible and prevent future SV/ST crimes from happening. There are various factors which may deter MAR victims of SV/ST from coming forward to make a complaint. While the impediment for reporting exists as in other victims of SV/ST, such as shame, fear of reprisals, and guilt, an added layer of complexity exists for MAR victims. Law enforcement and practitioners describe the burden of distrust in governments and authorities that MAR victims hold because of their own experiences in their country of origin or during their journey to the UK.

To raise awareness, the government publishes materials such as a leaflet outlining the support available for victims of modern slavery in 11 foreign languages among the most spoken languages in the countries of origin accounting for more than 60% of victims of modern slavery³³. This leaflet offers help and advice for people who think they may be victims of modern slavery in the UK. It offers information on modern slavery, victims’ rights, and where victims can get help.

For female genital mutilation (FGM), which is considered a form of sexual violence, the British government has developed and updated a resource pack encompassing case studies where FGM has been experienced by girls and women in the UK, information on what local authorities and others can do to raise awareness of FGM in their local area and links to support organisations, clinics and helplines which can guide people who think they might be at risk³⁴.

Regarding police trainings, there is no systematic policy, resulting in a lack of knowledge of the legislation and in some case a blatant lack of awareness when it comes to prejudices and what can be framed as cultural differences.

²⁸ See the full report here: <http://www.helenbamber.org/wp-content/uploads/2020/04/HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf>

²⁹ Modern Slavery Act (2015), part 5 “Protection of victims” – Human trafficking, including sexual trafficking, is included in this Act as part of the umbrella term “Modern Slavery” <https://www.legislation.gov.uk/ukpga/2015/30/part/5/enacted>

³⁰ For Guidance on discretionary leave see: <https://www.gov.uk/government/publications/interim-operation-guidance-discretionary-leave-for-victims-of-modern-slavery>

³¹ Report available here: <https://www.freedomfromtorture.org/news/lessons-not-learned-report-september-2019>

³² *Ibid.*

³³ <https://www.gov.uk/government/publications/support-for-victims-of-human-trafficking>

³⁴ <https://www.gov.uk/government/publications/female-genital-mutilation-resource-pack/female-genital-mutilation-resource-pack>

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3. Ireland

3.1. Reporting

In Ireland, reporting happens mostly to An Garda Síochána, the national police service. Victims can report directly to the police by calling free line 1800 666 111 or 999/112, as well as confidentially by calling free line 1800 250 025 or emailing blueblindfold@garda.ie. Crime Victims Helpline (CVH) can also help victims contacting the police³⁵. CVH is a volunteer-run organisation that keeps victims' information confidential, listens to victims' experiences, advises about support services, special services, the criminal justice system, victims' rights, and compensation where applicable.³⁶

On first contact, An Garda Síochána is obligated to provide information to victims on a number of matters. The Criminal Justice (Victims of Crime) Act 2017 stipulates these as information about: 1) relevant support services for victims; 2) the procedure of making a complaint related to the offence; 3) enquiries by a victim related to a complaint; 4) interpretation and translation; 5) the role of the victim in criminal justice process; 6) measures, procedures and arrangements available for victims who are residents of a Member State other than where the alleged offence was committed; 7) measures, procedures and arrangements for child victims; 8) protection; 9) compensation; 10) a victim's right to give evidence or make submissions; 11) the procedures of making a complaint to competent authorities related to any alleged breach of rights or obligations; 12) restorative justice schemes; 13) legal advice and legal aid; and 14) any entitlement to expenses arising from the participation of a victim in any proceedings³⁷.

This information must be provided in a language the victim understands, and thus, the police have an online booklet available in 37 languages. This

booklet provides information on the criminal justice system, external agencies, legal aid, compensations and how to make complaints. In practice, on first contact with the victim, An Garda Síochána takes the report, hands an information card to the victim that includes the link to the multilingual material, contact details of the police and of CVH. An automatic letter is issued within three working days containing the same information.

When interviewing, An Garda Síochána's policy on the investigation of sexual crime³⁸ stipulates the police to be highly sensitive and trained on interviewing victims of SV/ST. An officer with specialist training or advanced interviewing skills is required for conducting such interviews. The interviews may take place in specialised rooms off-site Garda stations, if required. These interviews should take place as soon as 'practicable'³⁹ and victims of SV/ST can ask for a male or female interviewer.

Stakeholder interviews remarked that the police investigate all cases and have a victim-centred approach. While there is no legal framework for a formal firewall, it is not a routine practice of the police to ask for migration status when coming in contact with a victim and investigating crime. The priority of the police when investigating crime is to regard the victim's statements at face value and to investigate the complaint, rather than investigating the migration status of the victim. However, this is not a formal 'do not ask' policy.

In the context of human trafficking, the police identify victims of ST and, with the agreement of the victim, coordinate with the immigration bureau to enter victims into the NRM that grants legal stay, as well as appropriate protection and support measures for these victims⁴⁰. They receive a permission to stay by the Immigration

³⁵ Government of Ireland (2020). *Victims charter*. <https://www.victimscharter.ie/wp-content/uploads/2020/04/Victims-Charter-22042020.pdf> Accessed 4th November 2020

³⁶ Government of Ireland (2020). *Victim's Charter*.

³⁷ *Criminal Justice (Victims of Crime) Act 2017*. 7 (1).

³⁸ An Garda Síochána (2013). *Garda Síochána policy on the investigation of sexual crime, crimes against children and child welfare*, p. 12. Accessed 11th December 2020 <https://www.garda.ie/en/about-us/publications/policy-documents/policy-on-the-investigation-of-sexual-crime-crimes-against-children-and-child-welfare-.pdf>

³⁹ *Criminal Justice (Victims of Crime) Act 2017*, 14(1b).

Service Delivery under the 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking'. This starts with an initial 60-day period of 'Recovery and Reflection', followed by a Stamp 4 permit (6 months) that can be extended up to two years. However, procedures for handling migration status are a lot less clear for victims of other forms of SV. While legislation does not deny stay or extension of permit from these victims, it is not stated specifically what would happen with victims' residency and how victims can go about changing their migration status. Stakeholder interviews note that this is particularly alarming for victims of domestic and sexual violence whose residence permit depends on perpetrators and who, in the absence of a clear policy, often do not know what would happen with their stay when their relationship breaks down. Applicants for a resident status here typically should have formal status and apply for independent status. In the absence of permit or expired permit, while the application can still be made, there is no formal guarantee or formal policy on the outcome of such applications.

Consequently, while reporting in Ireland is relatively safe for MAR victims, and authorities do encourage reporting of ST/SV without any negative consequences for MAR victims, reporting for all MAR victims is still a challenge. This may be due to the vulnerable situation of victims of SV/ST in general, prevailing misconceptions and worries about the role of the police in immigration law enforcement, many victims not being aware of their rights, a certain level of unclarity of policy regarding MAR victims outside the human trafficking context, and the absence of a formal firewall.

3.2. Access to justice

After reporting, all victims have the right to be informed about the progress of the investigation and any proceedings in the criminal justice system⁴¹. This information includes the decision not to prosecute or discontinue with a case and its reasons, the victim's right to review that decision, information on what and when a person has been charged and sentenced with, arresting a person, and about any release including bail or escape of the person serving prison sentence. Providing information is the obligation of An Garda Síochána, and victim liaison officers are regularly in contact with the victims.

The Victims Charter is also available online for victims. This is a guide for victims of crime that provides information on the criminal justice system, state agencies and support services. Victims, including MAR, may receive free legal aid and support. Information about the criminal justice system and victims' eligibility to legal aid where applicable is established on first contact as part of An Garda Síochána's information package to the victim. Legal aid and support are provided by the Legal Aid Board to which, in theory, all victims can turn to, yet it is not legal entitlement for all victims⁴². Our desk research and stakeholders' interviews point to the vulnerable position of victims, the lack of awareness of the service, and the language barrier as potential barriers to accessing legal advice. In addition, with respect of legal advice for victims of Human Trafficking, the fact that the Legal Aid Board is only available at 3 locations in Ireland constitutes a potential important obstacle for victims to exercise their right to access to justice.

Providing information during accessing the criminal justice system in a language that victims understand is a right of victims. Thus, state authorities as well as NGOs provide translators and interpreters. However, stakeholder interviews confirm that language barriers continue to exist when seeking legal aid and during investigations.

⁴⁰ Department of Justice. *Support Services for Victims*. Accessed on 13th December 2020 <https://www.blueblindfold.ie/support-services-for-victims>.

⁴¹ *Criminal Justice (Victims of Crime) Act, 2017, 8.*

⁴² *The O'Malley report (2020) cites the Civil Legal Aid Act 1995, as inserted by the Civil Law (Miscellaneous Provisions) Act 2008 to grant legal aid (yet unspecified, whether free) to victims of (a) the offence of rape under the common law, (b) the offence of rape under section 2 of the Criminal Law (Rape) Act 1981, (c) the offence of aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990, (d) the offence of rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990, (e) an offence under section 6 (substituted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the Criminal Law (Sexual Offences) Act 1993. (f) an offence under the Criminal Law (Sexual Offences) Act 2006. (g) an offence of incest under section 1 or 2 of the Punishment of Incest Act 1908.*

3.3. Support/care

There are many support and care services provided in Ireland, predominantly undertaken by several NGOs in a decentralised system. Altogether, these NGOs advise and provide information to victims as well as direct them to the relevant services and authorities. As a whole, Ireland's civil society and frontline social sector offer medical assistance, shelter, legal advice, emotional and psychological support, help with migration status and other arrangements to victims. However, this is a highly decentralised system where many NGOs exist offering different types of support⁴³. Victims of ST are entitled to support services including accommodation, medical care, support with immigration status, legal aid and advice, translation and interpretation, services for children, employment, and voluntary return⁴⁴. Outside the human trafficking context, MAR are not named in measures of support and care, yet they are not formally excluded from these services.

While many support and care services are available, they are offered by several different providers (predominantly NGOs). This means that victims should be knowledgeable enough about where to turn to seek for appropriate help. Stakeholder interviews note that while information on the support services is provided by the police on first contact, victims might still find it difficult to navigate this system and be aware of their support options.

3.4. Protection

The means of specific protection are decided as part of victim assessment that must consider the personal needs and circumstances of the victim⁴⁵. This can include measures to avoid physical and mental distress, sheltered accommodation, and other means of protective support. While there is

no explicit legal framework for the protection of foreign nationals in Ireland except those applying for international protection and refugees, several protection services are available for MAR.

During investigation and criminal proceedings, protection from perpetrators can be provided by issuing harassment, safety and barring orders⁴⁶ and bail conditions can be set for accused persons. Harassment orders are imposed by the Judge of the Courts in order to protect the victim after a sentence has been made from unwanted harassment from prison or on release from prison. Barring, Protection, Safety and Interim Barring Orders can be obtained from courts prior to sentence being imposed⁴⁷. These orders are mainly imposed in domestic violence incidents and in respect of co-habiting persons.

Anonymity is also provided to victims of trafficking⁴⁸ and sexual offence⁴⁹. This principle is practiced through the exclusion of public or any persons identified relevant from trials, as well as the possibility to give evidence from behind a screen, through a live television link, pre-recorded video recording or by an intermediary⁵⁰.

Safe accommodation is another form of physical and mental protection. There are a range of accommodation facilities made available by several refuge providers, mostly NGOs. Emergency accommodation also exists. More specifically, victims of ST in international protection are directed to accommodation centres (called 'direct provision centres') by the International Protection Accommodation Services. These are located around Ireland in different types of accommodation ranging from hotels, guesthouses, hostels and apartments. However, desk research and stakeholder interviews note that several problems exist with providing safe accommodation safety for all MAR victims. For example, foreign nationals can apply for international protection and

⁴³ European Agency for Fundamental Rights (2014). *Victim support services in the EU: An overview and assessment of victims' rights in practice. Ireland*. Accessed 30th October 2020 https://fra.europa.eu/sites/default/files/fra_uploads/country-study-victim-support-services-ie.pdf

⁴⁴ Department of Justice. *Support Services for Victims*. Accessed on 13th December 2020 <https://www.blueblindfold.ie/support-services-for-victims/>

⁴⁵ *Criminal Justice (Victims of Crime) Act 2017*, 15(2).

⁴⁶ *Criminal Law (Sexual Offences) Act 2017*, 46.

⁴⁷ *Domestic Violence Act 2018*.

⁴⁸ *Criminal Law (Human Trafficking) Act 2008*, 11.

⁴⁹ *Criminal Law (Rape) Act, 1981, amended in 1990*, 7.

⁵⁰ *Criminal Law (Victims of Crime) Act 2017*, 19(2), 20.

therefore, for being placed in direct provision⁵¹. This accommodation provides initial lodging, but challenges arise from hosting applicants in a mixed environment (victims with highly diverse age, gender, civil status (single or with family), and experience with SV/ST might lodge together), and conditions might not be ideal for a longer stay that might expose victims to further anxieties⁵².

Access to shelter might be further complicated for undocumented migrants outside the international protection framework. While shelter is not denied from these victims, and they can access emergency accommodation or shelter provided by several NGOs, they might experience problems in being able to stay in these shelters for a longer time in the absence of documentation.

3.5. Detection

Detection and awareness-raising are continued efforts of An Garda Síochána, the Department of Justice, and many NGOs. They engage in public activities as well as offer trainings to staff and other frontline workers to raise awareness of victims of ST/SV.

An Garda Síochána has a strong focus on training and specialised units (DPSUs) receive training on how to engage with victims of SV/ST with regard to the victim's perspective. These trainings will be provided to all police officers by 2022. The Human Trafficking and Co-Ordination Unit at the Garda National Protective Services Bureau provide specialised training in Human Trafficking awareness for new police officers while training at the Garda College. Diversity training includes cultural, religious, and migration issues in An Garda Síochána's domestic violence policy⁵³. Similarly, judges and lawyers working on trials with victims of SV/ST will receive similar training as part of specialist training by 2021.

NGOs also provide training on human trafficking and sexual violence to state agencies as well as other frontline workers such as healthcare professionals, and a broad range of professionals working with disadvantaged groups and children. These trainings include issues around signs of sexual trafficking and include a trauma-informed approach when providing services.

There is a wide range of awareness raising activities undertaken by several state agencies and NGOs that target awareness about and for victims of SV/ST. Such examples are, for instance, the Blue Blind-Fold campaign, participation in the Europol EMPACT week of action and the European Crime Prevention Network, organising international and national conferences on migrants, gender-based violence and human trafficking, and awareness-raising activities during the National Ploughing Championships⁵⁴.

Stakeholder interviews note that while there are many training and awareness-raising activities to detect SV/ST, little is known about the actual impact of these activities. It is also less known how they reach MAR victims specifically. Therefore, detection might remain rather accidental than systemic.

⁵¹ *International Protection Act 2015 and the Refugee Act 1996 cited in Government on Ireland (2020). Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process. Accessed on 9th December 2020 <https://www.gov.ie/en/publication/634ad-report-of-the-advisory-group-on-the-provision-of-support-including-accommodation-to-persons-in-the-international-protection-process/>*

⁵² *Ibid.*

⁵³ *An Garda Síochána (2017). Domestic violence policy.*

⁵⁴ *See also Crime Victims Helpline (2019). Annual Report 2019.*

Appendices

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National legislation – Belgium	
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APPENDIX 3	34
National legislation – Ireland	

APPENDIX 1

National legislation – Belgium

CONSTITUTION ⁵⁵	
Article 23	<p>Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.</p> <p>These rights include among others:</p> <p>1°. the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation;</p> <p>2°. the right to social security, to health care and to social, medical and legal aid;</p> <p>3°. the right to decent accommodation;</p> <p>4°. the right to the protection of a healthy environment;</p> <p>5°. the right to cultural and social fulfilment;</p> <p>6°. the right to family allowances.</p>
Article 32	<p>Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134.</p>
Article 39	<p>The law assigns to the regional bodies that it creates and that are composed of elected representatives the power to manage the matters that it determines</p>
Article 134	<p>Laws passed in order to execute Article 39 determine the judicial force of the rules which the bodies that they create enact in matters which they determine.</p> <p>They can confer to these bodies the power to pass federate laws that have the force of law, within the jurisdiction and in the manner that they determine.</p>
Article 191	<p>All foreigners on Belgian soil benefit from the protection provided to persons and property, except for those exceptions provided for by the law.</p>
Article 371 - 378	<p>Chapter five of the CPC is devoted to Voyeurism, assault on honour and rape it defines both the nature of the criminal offences related to sexual assault and the criminal punishment for assailants</p>

⁵⁵ Belgium's Constitution of 1831 with Amendments through 2014, Accessible in English: https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en

LAWS

<p>Law 15/12/1980 Belgium Aliens Act⁵⁶</p>	<p>Article 4bis: Unauthorised entry and stay is an administrative offence Article 9bis: Possibility to grant a residence permit on exceptional circumstances Article 11: Motivation to end a residence permit (e.g. end of marital life), the victimhood of an unauthorised foreigner must be taken into account when deciding to issue an Obligation to leave the territory (OLT) Article 42quarter: Possibility to end a residence permit granted on the basis of family gathering in case of separation Articles 74, 74/11: Conditions to grant a humanitarian visa Article 77: Non criminalisation of humanitarian help to unauthorised migrants Title IV(Article 75 to 81) On criminal provision (dispositions pénales) → Article 75: Having received an entry ban or having overstayed an OLT are criminal offences</p>
<p>Law 04/07/1989</p>	<p>Definition of rape and criminalisation of marital rape Rape is defined as "any act of sexual penetration of any kind and by any mean, against a non-agreeing person⁵⁷" - Article 375 of Penal Code*</p>
<p>Law 16/06/1993</p>	<p>Law on punishment of serious breaches of international humanitarian law⁵⁸. A full anonymity can be granted if the crime is labelled as: slavery, rape, forced prostitution, serious damage to health - Article 136quarter Penal Code and violation of the personal dignity - Article 136quarter Penal Code</p>
<p>Law 24/11/1997</p>	<p>« Lizin Law » addressing domestic violence against partners⁵⁹</p>
<p>Law 08/04/2002</p>	<p>On anonymity of witnesses. Introduced partial - Chapter II, Articles 2-10 - and complete - Chapter III, Articles 11-16 - anonymous testimony in the Belgium Code of Criminal Procedure^{**60}</p>
<p>Law 12/02/2003</p>	<p>On the allocation of the family home to the spouse or to the legal co-habitant who is victim of physical acts of violence by his partner and to supplement article 410 of the Penal Code^{***61}</p>
<p>Law 12/01/2007</p>	<p>On reception of asylum seekers and other categories of foreigners⁶²</p>

⁵⁶ *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.*

⁵⁷ *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.*

⁵⁸ « *Tout acte de pénétration sexuelle de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas* »

⁵⁹ *Loi relative à la répression des violations graves du droit international humanitaire*

⁶⁰ *Visant à combattre la violence au sein du couple (M.B. 06/02/1998)*

⁶¹ *Loi relative à l'anonymat des témoins articles 594 et 627 du Code judiciaire*

⁶² *Visant à l'attribution du logement familial au conjoint ou au cohabitant légal victime d'actes de violence physique de son partenaire et complétant l'article 410 du Code pénal*

LAWS	
Law 15/05/2012	On temporary restraining orders in the event of domestic violence ⁶³
Law 15/06/2012	Penalising the lack of respect of restraining orders in the event of domestic violence ⁶⁴
Law 05/02/2016	Law changing penal law and penal processes in particular concerning rape – changing limitation period for public action ⁶⁵
Law 21/03/2018	Law of police functions ⁶⁶ – Article 17 on identity check
Law 30/07/2018	Law on the protection of physical persons regarding personnel data processing ⁶⁷ (implementing GDPR)
ROYAL DECREE (ARRÊTÉ ROYAL)	
Royal decree 08/10/1981	On access to the territory, stay, installation and deportation of foreigners
PENAL CODE (CODE PÉNAL)	
375*	Definition of rape
398	Punishment for assault and battery, if intended, punishment increase
400	Punishment for assault and battery leading to an incurable disease, a permanent incapacity of working or a total loss of an organ
402 403 405	Punishment in case of administering drug to someone else
410***	Additional punishment if the above-mentioned crimes are committed against family members, spouse, cohabiting person, or anyone having or used to have longstanding affective and sexual relationship
458	The federal and local police have a right to professional secrecy

⁶³ *Loi sur l'accueil des demandeurs d'asile et certaines autres catégories d'étrangers, section II hébergement, section IV accompagnement médical, psychologique, social et aide juridique, section V allocation journalière et service communautaire*

⁶⁴ *Loi relative à l'interdiction temporaire de résidence en cas de violence domestique*

⁶⁵ *Loi tendant à réprimer le non-respect de l'interdiction temporaire de résidence en cas de violence domestique et modifiant les*

⁶⁶ *Loi modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice – dite « pot-pourri II » - de nouveaux délais de prescription de l'action publique concernant le viol et l'attentat à la pudeur sont ainsi entrés en vigueur.*

⁶⁷ *Loi sur les fonctions de police*

PENAL CODE (CODE PÉNAL)	
458bis	Professionals bound to professional secrecy can break conditions when suspected partner violence
CIVIL CODE (CODE CIVIL)	
223 1147 1478	On the allocation of the house to the victim of domestic violence
SOCIAL CRIMINAL CODE (SCC)⁶⁸ (CODE PÉNAL SOCIAL)	
Chapter IV	Illegal work: sanction of the employer and not of the employee, including if the employee is an unauthorised migrant
58-59	A reporter of an employment law offence can have his/her identity protected
181/1	Punishment of undeclared work
CRIMINAL PROCEDURAL CODE (CODE D'INSTRUCTION CRIMINELLE)	
21bis	Third parties can act on behalf of a victim or report a crime
28quater	Public prosecutor assesses the opportunity to prosecute on the basis of the Guidelines of Criminal Law Policy
29a⁶⁹	Obligation for an authority, civil servant, public officer and any other associated institutions to report a crime to the public prosecutor
46	Public prosecutor is given wider power concerning partner violence
47 bis	On the right to interpreter for victims and witnesses during the judicial process, including for writing down declarations – the fees are paid by the State
63	A third party can become civil party (partie civile) if it has been disadvantaged by a crime

⁶⁸ Loi relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel

⁶⁹ Introduced by the law of 6 June 2010 and the Act of 2 June 2010 on the provision of Social Criminal Law. The major aim of the Belgian SCC was to group all the social criminal laws (incriminations, administrative sanctions, criminal sanctions and procedural rules) into a coordinated and coherent codification

CRIMINAL PROCEDURAL CODE (CODE D'INSTRUCTION CRIMINELLE)

75	Information that the Public prosecutor can ask to a witness of a crime include, name, family name, status
75bis	Possibility for the examining magistrate to anonymise certain data in exceptional circumstances
86bis, 86ter**	On partial and complete anonymous testimony for witnesses of crimes: before deciding to grant anonymity, the investigating judge becomes aware of the full identity of the witness and investigate his/her reliability – main criteria witness or victim threaten
122	On the use of videoconference for endangered witnesses. The decision to grant protective measures to endangered witnesses is taken by the Commission on witness protection. A witness, an expert or a suspected individual residing abroad can also be heard by video conference.
155bis	On partial anonymous testimony, the identity and thus the residence status of a witness remains anonymous including in court
189bis	On the value of anonymous statement: it cannot constitute the sole evidence as an accused person must be able to test every evidence made against him or her for value and truth
433quinquiesdecies	Possibility for victims filling a complaint against slumlord to be offered an accommodation in a shelter

POLICE ADMINISTRATION ACTS ⁷⁰

14	Possibility to report a crime anonymously
21	Obligation for the federal and local police to follow the measures prescribed by law regarding migrants with irregular status
34	Mayors can prescribe identity checks to maintain public safety and/or to comply with the Aliens Act
40	The federal and local police are obliged to provide assistance to all victims

⁷⁰ "Toute autorité constituée, tout fonctionnaire ou officier public, [ainsi que, pour ce qui concerne le secteur des prestations familiales, toute institution coopérante au sens de la loi du 11 avril 1995 visant à instituer la charte de l'assuré social] qui, dans l'exercice de ses fonctions, acquerra la connaissance d'un crime ou d'un délit, sera tenu d'en donner avis sur-le-champ au [procureur du Roi] près le tribunal dans le ressort duquel ce crime ou délit aura été commis ou dans lequel [l'inculpé] pourrait être trouvé, et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs. "

POLICE ADMINISTRATION ACTS ⁷⁰

44/11/9	The federal and local police can request the assistance of the Immigration Office when verifying a foreigner's identity and residence documents
44/11/9 44/11/3ter	Personal data available to the police may be passed on to the IO with the public prosecutor's permission
46	Stating seven basic functions for local police, among them is support to victims though ensuring adequate reception, information and assistance

CIRCULAR LETTERS (CIRCULAIRES)

COL/3/2006	Definition of domestic violence (violence intrafamiliale)
COL/4/2006	On criminal policy toward domestic violence ⁷¹
COL 05/06/2007	When a victim or witness of crime wants to file a complaint, the local and federal police must draw up the declaration in a police report and must deliver it to the public prosecutor
COL 23/11/2009	Specifying the procedure for identifying foreigners staying irregularly on the territory
COL 18/2012	On temporary house ban for the perpetrator of domestic violence

THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)

CHAPTER VII – MIGRATION AND ASYLUM

59	Residence status: Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
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⁷¹ Mentioned in Anja Van den Durpel, *Safe reporting of crime for migrants with irregular status in Belgium*, 31 March 2019.

THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)

60	<p>Gender-based asylum claim:</p> <p>1 Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.</p> <p>2 Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.</p> <p>3 Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.</p>
61	<p>Non-refoulement: Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.</p>

BELGIUM LEGISLATION AGAINST HUMAN TRAFFICKING AND SMUGGLING

LAWS

Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers	Law of the 15 December 1980 on access to the territory, stay, installation and deportation of foreigners → Aliens Act
Loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite et du trafic des êtres humains	Law of the 13 April 1995 encompassing provisions in order to punish smuggling and trafficking of human being
Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil	Law of the 10 August 2005 changing several provisions in order to strengthen the fight against smuggling and trafficking of human beings and against the risk of slumlords

BELGIUM LEGISLATION AGAINST HUMAN TRAFFICKING AND SMUGGLING

LAWS

Loi du 29 avril 2013 visant à modifier l'article 433quinquies du Code pénal* en vue de clarifier et d'étendre la définition de la traite des êtres humains

Law of the 29 April 2013 aiming at changing article 433quinquies of the Penal Code* in order to clarify and extend the definition of smuggling of human beings

Loi 29 avril 2013 modifiant l'article 433decies du Code pénal en vue de préciser la situation particulièrement vulnérable de la victime d'un marchand de sommeil

Laws of the 29 April 2013 changing the article 433decies of the Penal Code in order to specify the situation particularly vulnerable of slumlords' victims

CHANGES AND ADDITIONS TO LAWS

Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil

Law of the 10 August changing several provisions in order to strengthen the fight against smuggling and trafficking of human beings and against practices of slumlord**

Loi du 15 septembre 2006, articles 64-68 sur le statut de séjour des victimes de traite ou de trafic aggravé

Law of the 15 September 2006, article 64-68 on the residency status of victims of smuggling or aggravating traffic

Loi du 24 juin 2013 portant répression de l'exploitation de la mendicité et de la prostitution, de la traite et du trafic des êtres humains en fonction du nombre de victimes

Law of the 24 June 2013 supporting punishment of the exploitation of begging and prostitution, smuggling and trafficking of human beings depending on the number of victims

Loi du 31 mai 2016 complétant la mise en œuvre des obligations européennes en matière d'exploitation sexuelle des enfants, de pédopornographie, de traite des êtres humains et d'aide à l'entrée, au transit et au séjour irréguliers

Law of the 31 May 2016 complementing the implementation of European obligation regarding sexual exploitation of children, child pornography, human trafficking and assistance to entry, transit and irregular stay

Loi du 30 mars 2017 modifiant l'article 61/2 afin de remplacer l'ordre de quitter le territoire par un document de séjour temporaire dans le cadre de la procédure traite des êtres humains

Law of the 30 March 2017 changing article 61/2 in order to replace the order to leave the territory by a temporary residence document in the framework of the process of human being smuggling

DECREES (ARRÊTÉS)

Arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains: version consolidée
Modifications :Arrêté royal 21 juillet 2014

Royal decree of the 16 May 2004 relating to the fight against traffic and smuggling of human beings
Changing the Royal decree of the 21 July 2014

Circulaire du 23 décembre 2016 relative à la mise en œuvre d'une coopération multidisciplinaire concernant les victimes de la traite des êtres humains et/ou certaines formes aggravées de trafic des êtres humains

Circular letter of 23 December 2016 relating to the implementation of a multidisciplinary cooperation on victims of human smuggling and/or certain aggravated forms of human trafficking

CIRCULAR LETTERS (CIRCULAIRES)⁷²

Circulaire du 23 décembre 2016 relative à la mise en œuvre d'une coopération multidisciplinaire concernant les victimes de la traite des êtres humains et/ou certaines formes aggravées de trafic des êtres humains

Circular letter of 23 December 2016 relating to the implementation of a multidisciplinary cooperation on victims of human smuggling and/or certain aggravated forms of human trafficking

⁷² Relative à la politique criminelle en matière de violence dans le couple

APPENDIX 2

National legislation – UK

MAIN LEGISLATIVE ACTS RELEVANT TO ASYLUM PROCEDURES, RECEPTION CONDITIONS, DETENTION AND CONTENT OF PROTECTION⁷³

Immigration Act 1971

IMMIGRATION AND ASYLUM ACT 1999

Section 4 provides support to a former asylum seeker whose appeal rights are exhausted if the individual (and their dependents) have a temporary legal or medical reason for being unable to return to their country of origin.

Section 20 **The police are permitted to supply information, documents, or articles to the Home Office for use for immigration purposes.**

Section 95 provides that support is given to adults and their dependents with an outstanding asylum claim or appeal and who are accepted to be destitute or will be destitute within the next 14 days.

Section 98 provides mainly for non-cash assistance to applicants during the asylum procedure

Nationality Immigration and Asylum Act 2002

Asylum and Immigration (Treatment of Claimants etc.) Act 2004: Concerned with criminal justice and concentrates upon legal protection and assistance to victims of crime, particularly domestic violence

Borders Citizenship and Immigration Act 2009

Immigration Act 2014

Immigration Act 2016

MAIN IMPLEMENTING DECREES AND ADMINISTRATIVE GUIDELINES AND REGULATIONS RELEVANT TO ASYLUM PROCEDURES, RECEPTION CONDITIONS, DETENTION AND CONTENT OF PROTECTION

Regular statements of Changes in Immigration Rules (last one from 12th of March 2020)

Asylum Support Regulations 2000 SI 704

The Detention Centre Rules 2001 SI 238

Asylum Process Guidance and Asylum Policy Instructions

Asylum Seekers (Reception Conditions) Regulations 2005 SI 7

⁷³ *Asylum Information database (AIDA), Country Report: United Kingdom, Refugee Council, 2019, accessed : <http://www.asylumineurope.org/reports/country/united-kingdom>*

Asylum Support (Amendment) Regulations 2005 SI 11 on the provision of accommodation to failed asylum seekers

The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (S.I. 2014 No.2604 (L.31))

Detention Service Orders Reception, Induction and Discharge Checklist and Supplementary Guidance (last review from July 2016)

Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017

Statement of Changes in Immigration Rules 2018

Statement of Changes in Immigration Rules 2019

MAIN LEGISLATIVE ACTS RELEVANT TO VICTIMS OF HUMAN TRAFFICKING AND SMUGGLING

Human Trafficking and Exploitation (Scotland) Act 2015

MAIN LEGISLATIVE ACTS RELEVANT TO VICTIMS OF CRIME, INCLUDING DOMESTIC VIOLENCE

Harassment Act 1997

SEXUAL OFFENCE ACT 2003

Extended the definition of rape

Section 74 Changes the law about consent and belief in consent, consent is defined as someone engaging in sexual activity if they agree by choice and they have the freedom and capacity to make that choice

Criminal Justice Act (Scotland) 2003

Domestic Violence, Crime and Victims Act 2004

Equalities Act 2006

DOMESTIC ABUSE BILL 2020 UNDER SCRUTINY

Chapter 1: Statutory definition of domestic abuse, emphasising that domestic abuse is not just physical violence, but can also be emotional, coercive or controlling and economic abuse

Clause 1(3) definition of abusive behaviour - first statutory definition of domestic abuse for England. Different definitions apply in Wales since 2015 and in Scotland since 2018

Article 29: Bill applies to all victims" irrespective of race and migrant status

Article 32: The role description of the Domestic Abuse Commissioner states that they must adopt a specific focus on the needs of victims and survivors of domestic abuse from minority or marginalised groups with particular needs, such as (amongst others) victims who are BME (Black Minority Ethnic) and migrants

CASE LAW

R (DA and Ors) v Secretary of State for Works and Pension: The High Court declared the decision of the Home Office to cut weekly benefits to asylum seeking victims of trafficking by over 40% - from £65 to £37.75 per week - to be unlawful. More than 1,000 victims of trafficking were affected by the cut that was unilaterally implemented by the Home Office without consultation with the affected victims or their support providers

Key words used to check if the following documents contained provision enabling safe reporting for MAR victims of sexual violence: migrant; illegal; report; anonymity

Code of practice for victims of crime, Ministry of Justice, 2015: MAR victim are not mentioned, no specific disposition for undocumented migrant who may be a victim.

Code of Practice for Victims of Crime: No mention of undocumented migrant. The police seek consent before passing the data of the compliant to Victim support services.

Violence against women and girl, Strategy 2017-2020, Crown Prosecution Service: MAR victims are not mentioned.

CPS Policy for Prosecuting Cases of Rape (revised 2012) acknowledges that barriers exist for people victim of offences but do not name lack of or insecure status as being such a barrier.

APPENDIX 3

National legislation – Ireland

CHILD TRAFFICKING AND PORNOGRAPHY ACT, 1998

Identifies “child” as a person under the age of 17 years (2). MAR children are not specifically mentioned, has a general approach to children.

CHILD TRAFFICKING AND PORNOGRAPHY ACT, 1998

Legal advice is granted to victims of human trafficking (PART 2/3).

CRIMINAL JUSTICE (FEMALE GENITAL MUTILATION) ACT 2012

Has a general approach to “girls and women” victims, MAR is not named specifically.

CRIMINAL JUSTICE (VICTIMS OF CRIME) ACT, 2017

Defines victim as “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence.” Migration or residence status of victims is not part of the definition (PART 1/ 2,1). Establishes a comprehensive list of information that victims have to be provided on first contact. These include 1) relevant support services for victims 2) the procedure of making a complaint related to the offence 3) enquiries by a victim related to a complaint 4) interpretation and translation 5) the role of the victim in criminal justice process 6) measures, procedures and arrangements available for victims who are residents of a Member State other than where the alleged offence was committed 7) measures, procedures and arrangements for child victims 8) protection 9) compensation 10) a victim’s right to give evidence or make submissions 11) the procedures of making a complaint to competent authorities related to any alleged breach of rights or obligations 12) restorative justice schemes 13) legal advice and legal aid 14) any entitlement to expenses arising from the participation of a victim in any proceedings (PART 2/ 7,1). Defines victims’ rights to information regarding investigations and criminal proceedings (PART 2/8). Defines rights, processes and measures of protection of victims during investigation and criminal proceedings (PART 3/16-17, 19). Specific protection is decided as part of victim assessment that must consider the personal needs and circumstances of the victim (PART 3/15). When applicable, interpretation and/or translation services are arranged when reporting and investigating a crime, as well as during criminal proceedings (PART 3/22).

CRIMINAL LAW (HUMAN TRAFFICKING) ACT 2008

CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT) 2013

Sexual exploitation is named as a form of exploitation (1/1). MAR status is not specifically mentioned, has a general victim approach to any person and child. Establishes anonymity of victims of trafficking to the public (11).

CRIMINAL LAW (RAPE) ACT, 1981

CRIMINAL LAW (RAPE) (AMENDMENT), 1990

Has a general approach to victims (“complainants”), MAR individuals are not named specifically. Provides ano-nymity for the victim (6).

CRIMINAL LAW (SEXUAL OFFENCES) ACT, 2017

Has a general approach to victims (“complainants”), MAR individuals are not named specifically. Provides ano-nymity for the victim (6).

DOMESTIC VIOLENCE ACT, 2018

Specifies safety, barring, interim barring and protection orders as ways of victim protection from perpetrators (6-10). Establishes victims’ rights to be accompanied to court in certain circumstances (26), to be given information on support services (28). Has a general victim approach and MAR individuals are not explicitly named.

INTERNATIONAL PROTECTION ACT 2015

An applicant is understood in the context of immigration and refugee law (PART 1/ 2). Identifies eligibility, cas-es and processes for applicants for international protection. Sexual violence is named as an act that may result in a type of persecution that qualifies for international protection (PART 2/ 7(2)). Grants temporary residence for successful applicants for international protection (PART 3/17). Establishes the ways of protecting an appli-cant’s identity to the public (confidentiality) (PART 3/ 26). Identifies acts of protection and means of protec-tion (PART 4/ 31-32). The right to communication in a language that applicants understand is established.

INTERNATIONAL PROTECTION ACT 2015

An applicant is understood in the context of immigration and refugee law (PART 1/ 2). Identifies eligibility, cas-es and processes for applicants for international protection. Sexual violence is named as an act that may result in a type of persecution that qualifies of international protection (PART 2/ 7(2)). Grants temporary residence for successful applicants of international protection (PART 3/17). Establishes the ways of protecting an applicant’s identity to the public (confidentiality) (PART 3/ 26). Identifies acts of protection and means of protec-tion (PART 4/ 31-32). The right to communication in a language that applicants understand is established.

ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

Defines illegal immigrant as “means a non-national who enters or seeks to enter or has entered the State unlawfully” (1/1). Provides legal base for trafficking offense in the case of illegal immigrants.

AN GARDA SÍOCHÁNA (2020). HUMAN RIGHTS STRATEGY 2020-2022. ACCESSED ON 4TH NOVEMBER 2020 [HTTPS://WWW.GARDA.IE/EN/ABOUT-US/PUBLICATIONS/POLICY-DOCUMENTS/AN-GARDA-SIOCHANA-HUMAN-RIGHTS-STRATEGY-2020-2022.PDF](https://www.garda.ie/en/about-us/publications/policy-documents/an-garda-siochana-human-rights-strategy-2020-2022.pdf)

States that a human rights approach should be included as a transversal element to all parts of An Garda Síochána's work including when understanding victims' rights (p. 5). It should underpin all actions and operations developed and conducted by An Garda Síochána. Actions include training on the topic, a recognition of human rights in everyday work, being updated on human rights developments, monitoring and complying with human rights, taking into account external recommendations, assessing the implementation of the human rights strategy, and developing a successor strategy. This policy does not specifically mention MAR individual in the scope of human rights work, but has a general victim approach, building on the Irish Human Rights and Equality Act 2014 that talks about "persons" and "human beings" (PART 1/2).

AN GARDA SÍOCHÁNA (2013). GARDA SÍOCHÁNA POLICY ON THE INVESTIGATION OF SEXUAL CRIME, CRIMES AGAINST CHILDREN AND CHILD WELFARE. ACCESSED 11TH DECEMBER 2020 [HTTPS://WWW.GARDA.IE/EN/ABOUT-US/PUBLICATIONS/POLICY-DOCUMENTS/POLICY-ON-THE-INVESTIGATION-OF-SEXUAL-CRIME-CRIMES-AGAINST-CHILDREN-AND-CHILD-WELFARE-.PDF](https://www.garda.ie/en/about-us/publications/policy-documents/policy-on-the-investigation-of-sexual-crime-crimes-against-children-and-child-welfare-.pdf)

Establishes a comprehensive framework for investigating sexual crime. Names the duty of the police to investigate all sexual crime (1.7, 15.1). The document points to victims' vulnerable and sensitive circumstances (e.g. 1.9, 2.2.1) and draws attention to the importance of compassionate behaviour (2.2.2), and the use of positive language (2.4.6). Victims' migration status is not explicitly stated as a type of information to collect on reporting. Establishes the police's role in providing medical attention (2.3). Establishes that trained specialist interviewers should conduct the interviews (2.4.1) in appropriate locations, such as special interview suites (2.4.2), "as soon as possible" (2.4.10). The victims can ask for a male or female interviewer (2.4.10). Establishes the possibilities for safety, barring, interim barring and protection orders (3). Establishes ways of advice and support for victims (15), migrant cases are not mentioned specifically. While this policy does not draw a particular attention to migrant victims and has a holistic approach towards victim, it notes cultural and language aspects as issues the police should be mindful about when investigating sexual crime (12). One of these issues are "immigration issues (immigration status tied to a living spouse)" (12.2). Other issues mentioned are distrust in the police due to experiences in home country, religious and cultural practices, language barrier (12.2).

AN GARDA SÍOCHÁNA (2017). DOMESTIC VIOLENCE POLICY. ACCESSED 11TH DECEMBER [HTTPS://WWW.GARDA.IE/EN/ABOUT-US/PUBLICATIONS/POLICY-DOCUMENTS/DOMESTIC-VIOLENCE-POLICY-.PDF](https://www.garda.ie/en/about-us/publications/policy-documents/domestic-violence-policy-.pdf)

Safety and barring orders are mentioned as means of potential protection (p. 1). It has a general victim approach and notes that victims' situations can be diverse (p. 1). While it names some specific groups of victims (older people, people with disabilities), it does not specify MAR individuals as potential victims of domestic violence. At the same time, it mentions "cultural issues" (7) the police has to be aware of and be trained on in a diversity training (7.2). One of these issues are "immigration issues (immigration status tied to a living spouse)" (7.2). Other issues mentioned are distrust in the police due to experiences in home country, religious and cultural practices, language barrier (7.2). This policy also draws attention to the importance of calm, patient, positive and non-judgemental police behaviour (2.4). Victims' migration status is not specified as a type of information to record on reporting. Specifies safety, barring, interim barring and protection orders as ways of victim protection from perpetrators (4).

GOVERNMENT OF IRELAND (2020). VICTIMS' CHARTER. ACCESSED 4TH NOVEMBER 2020 ON [HTTPS://WWW.VICTIMSCHARTER.IE/WP-CONTENT/UPLOADS/2020/04/VICTIMS-CHARTER-22042020.PDF](https://www.victimscharter.ie/wp-content/uploads/2020/04/victims-charter-22042020.pdf)

A guide that provides information to victims of crime about the agencies and authorities involved in reporting, investigation and providing support and care. Victims of sexual offences is one of the named groups of victims (p. 13). Has a general victim approach and does not name MAR as a specific group of victims. States that the police is victim-centred, and is responsive to the needs of victims (p. 8). It also states that An Garda Síochána "treat victims with dignity and respect" regardless personal characteristics and circumstances, one of them being nationality (p. 9). Does not name migration status as a type of information to be given to the police when reporting a crime. States that An Garda Síochána provides information on support and other services, eligibility for compensation, (p. 10). A reference to different migration backgrounds is made as part of support services as "support services in your home country if you live outside Ireland" (p. 10) and information "if you are a visitor to Ireland" (p.13). In cases of investigating sexual offence, An Garda Síochána aims to provide a Garda member of the same gender as the victim, a doctor of the same gender and gives information on support organisations (p. 13). States that free interpretation and translation and a leaflet in the victim's language is organized, as far as possible (p. 15). States that victim is informed about the decision to prosecute or not (p. 18). Provides information on victim's rights as witness in the criminal justice proceedings (p. 20). This includes confidentiality to public and giving evidence through a live television link (p. 20). States the victim's right to receive support (p. 98).

DEPARTMENT OF JUSTICE AND EQUALITY/ THE NATIONAL OFFICE FOR THE PREVENTION OF DOMESTIC, SEXUAL AND GENDER-BASED VIOLENCE. (2016) SECOND NATIONAL STRATEGY ON DOMESTIC, SEXUAL AND GENDER- BASED VIOLENCE 2016-2021. ACCESSED ON 4TH NOVEMBER 2020 [HTTP://WWW.JUSTICE.IE/EN/JELR/PAGES/SECOND-NATIONAL-STRATEGY-ON-DOMESTIC-SEXUAL-AND-GENDER-BASED-VIOLENCE-2016-2021](http://www.justice.ie/en/jelr/pages/second-national-strategy-on-domestic-sexual-and-gender-based-violence-2016-2021)

Has a general victim approach, does not specifically name MAR individuals as potential victims of domestic, sexual and gender-based violence. Names the means of supporting victims as providing information, emotional support, counselling, accommodation, and referral to other services (p. 6).