

# Ireland's Actions Against Trafficking in Human Beings

Submission by the Irish Human Rights and  
Equality Commission to the Council of  
Europe Group of Experts on Action against  
Trafficking in Human Beings (GRETA)

October 2021



The Irish Human Rights and Equality Commission is Ireland's Independent National Rapporteur on the Trafficking of Human Beings. The Commission was designated as National Rapporteur under the EU's Anti-Trafficking Directive in October 2020.

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

## **Ireland's Actions against trafficking in human beings**

Submission by the Irish Human Rights and Equality Commission (IHREC) to the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) in advance of the Third Evaluation Round of Ireland

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## Introduction

The Irish Human Rights and Equality Commission ('IHREC') is Ireland's National Human Rights Institution and Equality Body, established under the *Irish Human Rights and Equality Commission Act 2014*.<sup>1</sup>

IHREC is the National Rapporteur on the Trafficking of Human Beings, as provided for in Article 19 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims.<sup>2</sup>

This submission follows previous Commission engagement with the Council of Europe's Group of Experts on Action against Trafficking in Human Beings ('GRETA') in the context of its 2016 second round evaluation of Ireland, under the Convention on Action against Trafficking in Human Beings (the Convention),<sup>3</sup> and subsequent follow-up.<sup>4</sup>

The material in this submission has been prepared following consultation with the GRETA secretariat, and is aligned to the areas of focus outlined in GRETA's third evaluation round questionnaire on Ireland, in particular the country-specific follow-up questions outlined in Part II of the questionnaire.<sup>5</sup>

In focusing on these questions, the submission elaborates on areas where developments of note have occurred.

These include: plans for a new national referral mechanism; plans for changes in the approach to accommodation; plans for a new National Action Plan; and some advances in the rights to employment for asylum seeking victims. Further developments include the establishment of a demand reduction framework with regard to trafficking and

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<sup>1</sup> The Commission was established in 2014 as an independent statutory agency, directly accountable to the Oireachtas and with a mandate to protect and promote human rights and equality in Ireland and build a culture of respect for human rights, equality and intercultural understanding in the State. See Irish Human Rights and Equality Commission Act 2014,

<http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>

<sup>2</sup> S.I. No. 432/2020 - European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020. See DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

<sup>3</sup> IHREC (2016), *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*.

<sup>4</sup> Correspondence between IHREC Chief Commissioner Emily Logan and Ms Petya Nestorova, Executive Secretary, Council of Europe Convention on Action against Trafficking in Human Beings, 1 November 2018.

<sup>5</sup> Council of Europe group of Experts on Action against Trafficking in Human Beings (2018), *Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties*, GRETA (2018)26\_IRL.

sexual exploitation of adults and children; a novel approach to decriminalisation of potential victims of trafficking; and progress in the prosecution of traffickers for sexual exploitation. Where relevant, IHREC will share observations on the effect that the Covid-19 pandemic has had.

This material can be read alongside IHREC's previous submissions to GRETA, the concerns, observations and recommendations outlined previously remain largely relevant to the current policy, legal and regulatory environment on human trafficking in Ireland. This is particularly the case in respect of a number of core areas in the anti-trafficking response that have been marked by inertia. These include: the lack of sufficient legal assistance for victims of human trafficking; the absence of viable compensation avenues for undocumented victims and victims of trafficking for sexual exploitation; issues around recovery and reflection, temporary residence permits and their interplay with international protection; specific measures to identify child trafficking; the investigation and prosecution of traffickers of victims of forced labour, and reduction of demand for this form of exploitation.

The quality of the official data available and the consistency between the different sources is of note due to the limitations these present to any in-depth analysis (See [Annex 1](#) for further details).

IHREC is at the disposal of the GRETA Committee should it require further information or assistance during the course of its third round evaluation of Ireland.

## Commentary on human trafficking in Ireland since GRETA's second evaluation.

Since GRETA's second evaluation report and country visit, measures by Ireland to combat human trafficking have been assessed by the US State Department ('State Department') annually and the Organisation for Security and Cooperation in Europe (OSCE), in 2020.

In its 2020 assessment of Ireland, the State Department downgraded Ireland to its Tier 2 Watch List<sup>6</sup> for the first time, due to a failure to meet:

“the minimum standards for the elimination of trafficking.”

Key issues identified by the State Department align with core areas of concern for the GRETA committee and include:

- Lack of convictions for trafficking since the law was amended in 2013. A lack of convictions weakens deterrence, contributes to impunity for traffickers, and undermines efforts to support victims to testify;<sup>7</sup>
- Chronic deficiencies in victim identification, referral, and assistance; and
- Continued lack of adequate supports for victims, including specialised accommodation.

The State Department's 2021 assessment of Ireland acknowledged a number of efforts by the State, including the designation of IHREC as National Rapporteur. However, it chose to continue to place Ireland on its Tier 2 Watch List, citing continued:

“systemic deficiencies in victim identification, referral, and assistance, and [a lack of] specialized accommodation and adequate services for victims.”

The 2021 assessment also repeated the State Department's concerns regarding the lack of convictions under anti-trafficking legislation, which is an area where progress

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<sup>6</sup> US State Department Report (June 2020): [Trafficking in Persons Report 20<sup>th</sup> Edition](#)

<sup>7</sup> The Garda Anti-Trafficking unit reported 39 investigations in 2019 (36 for sex trafficking and three for labour trafficking, which included two for forced criminality), a significant decrease compared to 64 investigations in 2018. The government initiated prosecutions for five suspects, two for sex trafficking and three for forced labour (compared to zero in 2018, three in 2017, and nine in 2016). For the sixth year in a row, the government did not convict any traffickers; to date, there have been zero convictions under the anti-trafficking law, as amended—though the government has reported identifying 471 victims since 2013. See US State Department (June 2020): [Trafficking in Persons Report 20<sup>th</sup> Edition](#): p. 270.

has since occurred.<sup>8</sup> (For more information, please refer to [Annex 2](#) systematising the State's Department report's data regarding investigations and prosecutions)

At present, Ireland and Romania are the only EU Member States on the State Department's Tier 2 Watch List.

During their second visit to Ireland in 2020, the OSCE Special Representative on Trafficking in Human Beings acknowledged the enhanced political commitment and plans of Irish authorities to improve the response to prevent and combat human trafficking, but identified six particular areas where action is necessary, including:

- Improving the institutional and policy framework to better respond to human trafficking, particularly following the dissolution of the Department of Justice Anti- Human Trafficking Unit;
- Enhancing the legal and political framework, especially by reviewing the existing 2016 National Action Plan on human trafficking;
- Enhancing the monitoring and evaluation of anti-trafficking measures, including by improving data collection, analysis and research, suggesting particular focus on technology-facilitated trafficking;
- Promptly improving mechanisms for identification of and assistance to victims of human trafficking;
- Improving identification of child victims of trafficking; and
- Stepping up efforts to urgently and effectively investigate, prosecute and convict trafficking in human beings.<sup>9</sup>

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<sup>8</sup> US State Department (June 2021), [Trafficking in Persons Report](#), P. 302. It is to be noted that while the 2021 State Department assessment reiterates its concern with regard to the lack of convictions for trafficking, that in June 2021 the first such conviction was secured. See Séan McCárthaigh (11 June 2021), '[Two women guilty of human trafficking in first conviction of its type](#)', *Irish Times*. The report reflects data provided by An Garda Síochána indicating that its anti-trafficking unit investigated 22 suspects in 2020 (15 for sex trafficking and seven for labour trafficking). This is down from 39 in 2019. Three prosecutions for sex trafficking were initiated in 2020, while none were initiated for labour trafficking. The total number of victims identified from 2013-2020 was reported as 508.

<sup>9</sup> OSCE (2020), *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings*, Valiant Richey.

## Emerging Trends<sup>10</sup>

*GRETA question: emerging trends of trafficking in human beings (new forms of exploitation, new recruitment methods, vulnerable groups, gender-specific aspects of trafficking, child trafficking)*

Trafficking in human beings in Ireland remains a hidden but pervasive crime that predominantly affects people of migrant background. Ireland is both a destination and transition country for trafficking in persons. Overall more women than men are trafficked in Ireland, and almost all are migrants.

Certain sectors, such as hospitality, fishing, agriculture and construction may rely on the workforce of people (primarily migrant men) who are in a vulnerable situation.<sup>11</sup> At the same time, victims of trafficking for sexual exploitation are almost exclusively migrant women, who can be hidden within 'mixed populations of independent, exploited and coerced prostitutes and in mixed migration flows.'<sup>12</sup> Human trafficking is a highly gendered and racial act.

Due to the substantial presence of migrants in these high-risk environments for exploitation and trafficking,<sup>13</sup> and the discriminatory attitudes and beliefs based on both race and gender,<sup>14</sup> the State frameworks for combatting racism and gender-based violence, and for promoting equality are highly relevant to responding to the crime of trafficking in human beings, and the need to combat it. Irish citizen victims are rarely encountered, and primarily number among those recorded as child victims of trafficking.<sup>15</sup>

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<sup>10</sup> Unless specified otherwise, the tables and diagrams in this section and in the referenced annexes display absolute numbers.

<sup>11</sup> EU (2021), EU Strategy on Combatting Trafficking in Human Beings 2021-2025

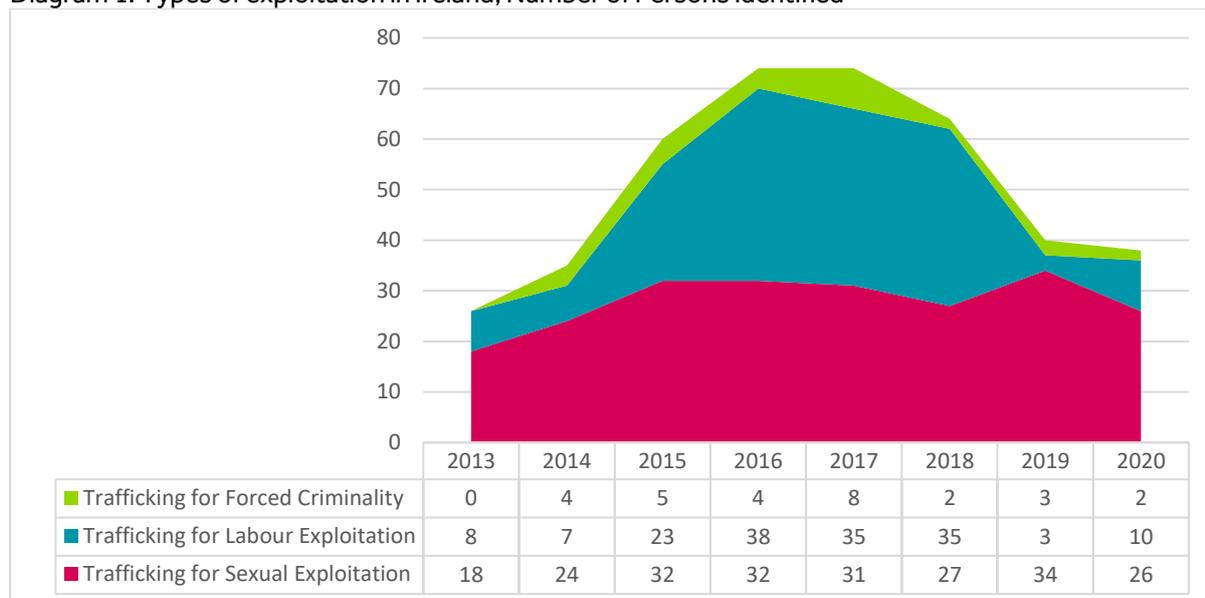
<sup>12</sup> EC (2016), Study of the Gender Dimension of Trafficking in Human Beings. EU: Luxembourg.

<sup>13</sup> The EU Strategy on Trafficking in human Beings (2021-2025) states that in the case of sexual exploitation, prostitution, escort services, massage parlours, bars and nightclubs are high risk environments, while in the case of labour trafficking, such environments can include: agricultural sector, construction, hospitality, cleaning sector, domestic work, forestry, textile and garments, food manufacturing.

<sup>14</sup> UNOHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (Geneva: UNOHCHR, 2010), p. 101.

<sup>15</sup> Note the reclassified statistical data in the annual State report in 2017, available at: <https://www.blueblindfold.ie/wp-content/uploads/2020/11/2017-Annual-Report.pdf>

Diagram 1: Types of exploitation in Ireland, Number of Persons Identified



The official data reported here is likely to underestimate prevalence due to the limitations of the current national referral mechanism for identification of victims of trafficking. According to the available data, the most frequently reported forms of trafficking in Ireland are trafficking for the purposes of sexual exploitation, labour exploitation, and criminal activity.<sup>16</sup>

### Trafficking for sexual exploitation

Available official data,<sup>17</sup> which is supported by independent estimations in a recent report,<sup>18</sup> indicates that trafficking of women for sexual exploitation is the most prevalent form of exploitation, yielding a steady stream of suspected trafficking cases

<sup>16</sup> See Department of Justice and Equality Blue Blindfold annual reports 2009-2019. Available at <https://www.blueblindfold.ie/about-blueblindfold-and-for-further-information/>

<sup>17</sup> Department of Justice Annual reports for 2017, 2018 and 2019 supplemented by the US State Department Trafficking in Persons report (2021) covering the statistics for 2020, present a complete reclassified official data for the period 2013-2020 indicating that trafficking for sexual exploitation represents 54% of all cases, while trafficking for labour exploitation and trafficking for criminal activities represent 39% and 7% respectively. See [www.blueblindfold](http://www.blueblindfold)

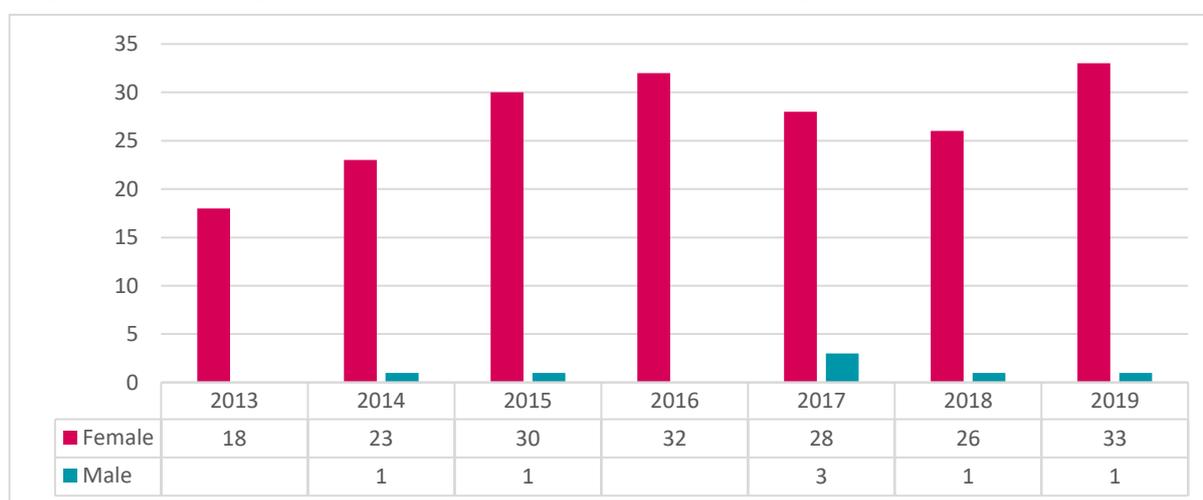
<sup>18</sup> Breen, M.J., Healy, Amy Erbe, Healy, Michael G. (2021), *Report on Human Trafficking and Exploitation on the Island of Ireland*, Limerick: Mary Immaculate Collage. In addition to the official 346 cases of human trafficking in 2014-2019, the report uncovers 132 'unofficial' cases. The vast majority of the additional data pertains to female victims (92), while trafficking for sexual exploitation is the prevalent exploitation type (94) among these 132 additional cases.

over the years, which appear to have been resilient to the pandemic situation<sup>19</sup> (See Diagram 1).<sup>20</sup>

This primarily involves the trafficking of women into commercial sexual exploitation,<sup>21</sup> which mirrors the information in the *EU Strategy on Combatting Trafficking in Human Beings 2021-2025*, identifying prostitution as a high-risk sector/environment for human trafficking.<sup>22</sup>

Trafficking for the purposes of sexual exploitation in Ireland is highly gendered<sup>23</sup> and it affects almost exclusively women and girls (see Diagram 2). This mirrors the overall statistics presented in the latest European Study on Data Collection on Trafficking in Human Beings.<sup>24</sup>

Diagram 2: Trafficking for sexual exploitation, Number of persons by gender



The European Economic Area (EEA), Africa, Latin America and to a lesser extent Asia are the relevant regions of origin of victims of trafficking of women for the purposes of sexual exploitation in Ireland, based on the data available for the period 2013-2018. The

<sup>19</sup> See also Breslin, R (2020), *Exploitation as usual: Emerging evidence on the impact of Covid-19 on Ireland's sex trade*, Dublin: UCD, SERP.

<sup>20</sup> Cases of mixed or unknown exploitation are not entered in the diagram. Over the years 5 women and 2 men have been subjected to both sexual and labour exploitation as well as other forms of exploitation. For further 5 women and 2 men, the exploitation type remains unknown.

<sup>21</sup> Official website [www.blueblindfold.ie](http://www.blueblindfold.ie) and non-governmental specialist service Ruhama's website [www.ruhama.ie](http://www.ruhama.ie)

<sup>22</sup> European Commission (2021), *Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025*, COM(2021) 171 final. Page 6.

<sup>23</sup> Department of Justice and Equality (2019), *Trafficking in Human Beings in Ireland: Annual Report 2019*, p. 11. See [www.blueblindfold.ie](http://www.blueblindfold.ie); It is noted that over the years, there is one transgender person identified as a victim of trafficking for sexual exploitation in 2015.

<sup>24</sup> European Commission (2020), *Data collection on trafficking in human beings in the EU*, p. 17.

trend of increased trafficking of third country national women from the African continent is easily detectable from the available data (See [Annex 4](#), Diagram 5 and further information on the regions of origin in [Annex 3](#)).

In recent EU research trafficking for sexual exploitation has also been identified as the type of exploitation associated with the highest economic, social and human costs.<sup>25</sup>

The online nature of trafficking for the purpose of sexual exploitation has also meant it has proven resilient to restrictions placed on society during the course of the Covid-19 pandemic.<sup>26</sup> IHREC notes the particular challenges facing law enforcement and policy makers in addressing the online dimension of trafficking in human beings.

**IHREC recommends that a gender-specific and exploitation-specific approach is taken to implementation of anti-trafficking measures, in order to ensure early identification and assistance. This is especially relevant to trafficking for sexual exploitation, which leads to the highest cost to the society and the individual involved.**

**IHREC recommends that the State consider what concrete action can be taken to more effectively prevent human trafficking, including through strengthening the regulation of online platforms and internet providers.**

### Trafficking for labour exploitation

On the basis of the data available, it would appear that trafficking for the purposes of labour exploitation sees notable, sporadic surges linked to the operations of various production and service sectors.<sup>27</sup> The attention these sectors attracted over the years

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<sup>25</sup> European Commission (2020), [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#), p27: The costs are EUR 364 474 for sexual exploitation, compared to EUR 232 923 for labour exploitation. This is largely driven by the larger costs to health associated with sexual violence rather than physical violence or threat. There are higher costs for female rather than male victims (disproportionately experienced by women and linked to greater utilisation of health and social protection) (p.27).

<sup>26</sup> Breslin, R (2020), *Exploitation as usual: Emerging evidence on the impact of Covid-19 on Ireland's sex trade*, Dublin: UCD, SERP.

<sup>27</sup> For instance, the data surge in 2015 was due to victims discovered in temporary Romanian car wash businesses, yet in 2016 it was linked to a waste recycling business investigation where 23 Romanian nationals were identified as potential victims. Similarly, the higher numbers in 2018 could be accounted for by the suspected trafficking in the fishing and farming industry respectively. Overall, the identification of suspected victims of trafficking in the fishing industry was a recurring trend over a period of time from 2015-2018.

as a result of the detected cases, has prompted greater scrutiny and adoption of specific measures aimed at suppressing trafficking in human beings within them. A notable example of such measures taken, are the efforts to address the detection of suspected human trafficking of third country nationals on Irish fishing vessels.<sup>28</sup> IHREC notes that this issue prominently features in recent international assessments of the State's anti-trafficking response, and that the degree to which human trafficking represents a problem within the industry is under dispute.<sup>29</sup> IHREC notes that notwithstanding this, further scrutiny of the industry and its treatment of migrant fishermen would be necessary in order to identify and redress any instances of labour exploitation, including in cases where it is deemed to amount to human trafficking. In terms of regions of origin, it appears that men from Asia and Africa are targeted for the purposes of forced labour in the fishing industry. Available data suggests that EEA Nationals are primarily featured in the national statistics on trafficking for labour exploitation in the sectors of construction, car washing and waste recycling (For further information regarding regions of origin, see [Annex 3](#) and [Annex 4](#), Diagram 6). According to latest EU research, the agricultural sector is particularly affected by labour exploitation, due to:

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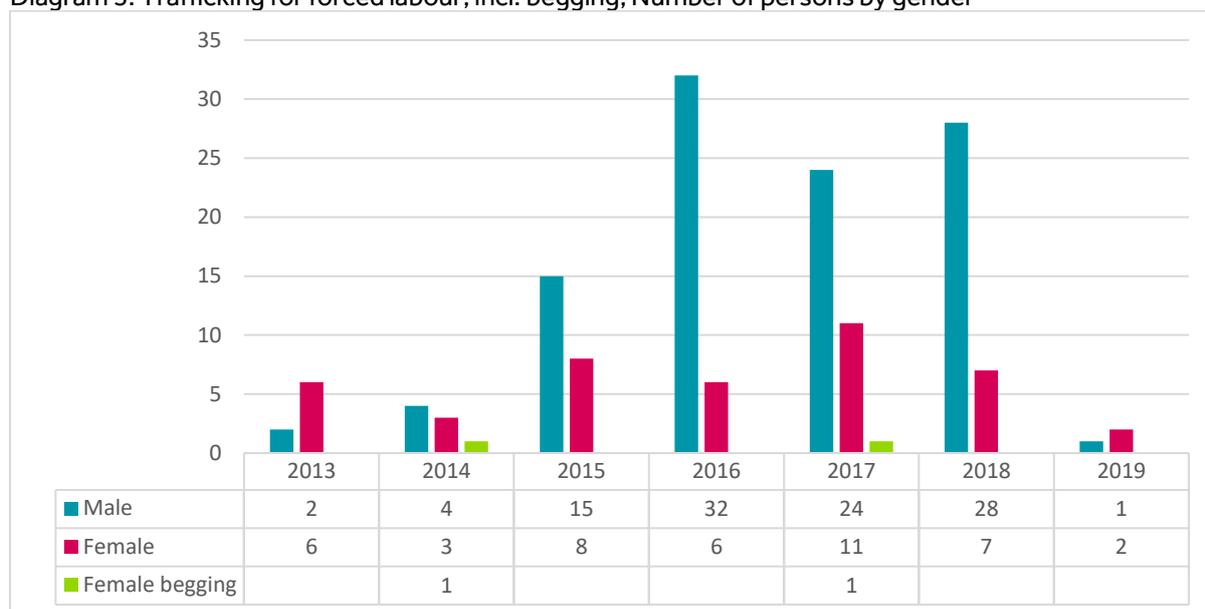
<sup>28</sup> Department of Justice – INIS (2016) "Atypical working scheme: Non-EEA crew in Fishing Fleet", Available at: <http://www.inis.gov.ie/en/inis/pages/atypical-scheme-fishing-crew>. For further discussion of the atypical working scheme, and the oversight and inspection of fishing vessels, see Murphy, C., Doyle, D. M., and Murphy, M., "Still Waiting for Justice: Migrant Workers' Perspectives on Labour Exploitation in Ireland." *Industrial Law Journal*, online Nov. 7, 2019, [doi.org/10.1093/indlaw/dwz023](https://doi.org/10.1093/indlaw/dwz023).

<sup>29</sup> In response to the release of the 2021 US State Department Trafficking in Persons report, Minister of State for Criminal and Civil Justice Hildegard Naughton stated "No evidence has been found to support the allegations of widespread human trafficking in the fishing industry and it is worrying that the State Department chose to place weight on one voice and not to take account of the balance of stakeholder assessment – including assessment by NGOs active in Ireland in tackling human trafficking – that these accusations are without foundation." Department of Justice Press Release, 1 July 2021, '[Department of Justice disappointed Ireland's ranking not upgraded in latest 'Trafficking in Persons' Report](#)'; In its own press release, the union body International Transport Federation -Ireland responded "... Minister saw fit to make specific claims about the fishing industry where she asserts that reports of human trafficking are 'without foundation' ...If the reports, which were made to the Gardaí by the ITF and have to date resulted in over 30 fishers being admitting into the National Referral Mechanism were 'without foundation' by dint of the DPP refusing to act on them it should then follow that every single other referral that was initiated by others on behalf of sex workers, agricultural workers, nail bar workers and domestic servants were equally 'without foundation', International Transport Federation Ireland Press Release, 2 July 2021, 'Minister of State Naughton's response to Trafficking In Person's report highly damaging to the cause of migrant fisher rights'.

“the large number of workers employed on a non-regular basis, through third parties or as illegal workers.”<sup>30</sup>

Trafficking for the purposes of labour exploitation is also gendered but to a lesser extent (see Diagram 3), yet there are specific forms of labour exploitation that disproportionately affect one gender. For example, trafficking for exploitation in the domestic sphere affects mainly women, while trafficking within the fishing industry affects mainly men.

Diagram 3: Trafficking for forced labour, incl. begging, Number of persons by gender



In its engagement with the US State Department in the preparation of its 2020 Trafficking in People report, the Irish Government observed that the issue of forced labour is growing in the country, with traffickers exploiting victims of forced labour in sectors such as domestic work (particularly au pairs), the restaurant industry, waste management and car washing. It was also observed that women from Eastern Europe who are forced into marriage in Ireland are at risk of sex trafficking and forced labour.<sup>31</sup>

<sup>30</sup> EU (2021) EU Strategy to tackle Organised Crime & EU Strategy on combatting Trafficking in Human Beings: Questions and Answers

<sup>31</sup> To note, Eastern European countries are further broken down in the assessment of Northern Ireland, where young women and girls from Albania, Bulgaria, and Romania, including ethnic Roma, were identified as remaining vulnerable to sex trafficking. Furthermore, in 2019 the Police Service in Northern Ireland added five new detectives to the anti-trafficking unit to help manage the potential increase in cases as a result of the UK leaving the EU, in light of Northern Ireland’s land border with the EU. See US State Department Report (June 2020): [Trafficking in Persons Report 20<sup>th</sup> Edition](#) p. 514.

IHREC remains concerned, however, that the State is extremely limited in its ability to detect and record incidences of trafficking, making its prevalence difficult to establish. This is, in part, due to the continued reliance on a very limited national referral mechanism, and the ongoing inadequacies in the State’s victim identification infrastructure. Proposals for a reformed national referral mechanism have recently been announced. This is covered in more detail in the section discussing Safeguards against labour exploitation.

**IHREC recommends that the State steps up its identification efforts in high-risk sectors for forced labour where trafficking for such exploitation can occur. It should also deploy resources to the Workplace Relations Commission and other relevant agencies for a targeted and proactive labour inspection programme in such sectors.**

### Trafficking for forced criminal activities

Judging by the limited available data (see Table 1), trafficking for forced criminal activities has become a steady feature of the criminal landscape and while at a lower level than trafficking for sexual and labour exploitation, it is the third most frequently detected form of exploitation in Ireland. This form of trafficking manifests itself primarily in trafficking of Asian nationals for the purposes of cannabis production and to a lesser extent in trafficking for sale of illegal substances. There is insufficient information for more specific observations. More male victims (approximately 63%) are detected than female (approximately 30%), which indicates a gendered character in the trafficking for criminal activities.<sup>32</sup> The presence of minors among the victims captured by the Department of Justice annual reports in 2014 and 2015, indicates that the issue must not be overlooked.

Table 1: Victims of forced criminality per year, persons by gender

Year	Male	Female	Total
2013	0	0	0
2014	4	0	4
2015	4	1	5
2016	4	0	4
2017	3	5	8

<sup>32</sup> The gender breakdown for the victims of trafficking identified in 2020 (7%) remains unknown.

<b>2018</b>	2	0	2
<b>2019*</b>	2	3	5
<b>2020**</b>	-	-	2
<b>2013 - 2019</b>	19	9	28
<b>2013-2020</b>	-	-	30

\*The 2 male victims in 2019 were subjected to a combination of exploitation, including criminal activities.

\*\*The available data for 2020 was not disaggregated by gender.

The principle of non-punishment is particularly important within the complex identification process surrounding cases of trafficking for forced criminal activities, especially where a serious criminal act is committed. The Committee will recall, in this connection, the case of *P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* in which IHREC acted as *Amicus Curiae*.<sup>33</sup>

**IHREC recommends that the principle of non-punishment assume a central role in suspected cases of trafficking for the purposes of criminal activities, especially in the context of cannabis production which is of relevance to Ireland.**

### Trafficking of children

There is an indication that trafficking of children in Ireland occurs but its extent and prevalence is hard to establish due to the re-classification of the official data in previous years and due to the current limited data available in the Department of Justice's annual reports and complemented by the US State Department Trafficking in Persons reports. These sources do not provide information about the type of exploitation of child victims.

Based on these sources to date, it is established that at least 34 minors were trafficked in Ireland since 2013, mostly girls (26) but also boys (8) (See Table 2).<sup>34</sup>

<sup>33</sup> In this case the applicant, charged with involvement in cannabis cultivation, had spent almost three years in detention in the Dóchas Centre (a closed, medium-security prison for women), much of that time waiting for a decision on her application to be recognised as a victim of human trafficking. See also Migrant Rights Centre of Ireland (2013) *Trafficking for Forced Labour in Cannabis Production: The Case of Ireland*. In its 2016 submission to GRETA, the Commission underscored this case as demonstrating the urgent need to put the current administrative arrangements for identification of victims on a statutory basis. As outlined further below, progress in this respect has been marked by inertia in the intervening period.

<sup>34</sup> Sources of data: 2013 – 2014 data: 2015 - 2019 data: Department of Justice and Equality, Trafficking in Human Beings in Ireland Annual Report 2017 (August 2018), p.5; Department of Justice and Equality,

Table 2: Identified minor victims of human trafficking per year, persons by gender

Year	Minor Female	Minor Male	Minor total	Proportion of minor victims among all victims
2013	4	1	5	15%
2014	2	2	4	11%
2015	6	1	7	11%
2016	1	-	1	1%
2017	3	-	3	4%
2018	3	2	5	8%
2019	7	2	9	21%
2020	0	0	0	0%
<b>Total 2013 -2020</b>	26	8	34	9%

It is evident that minor victims represent a visible minority among victims that, in some years, has risen to 15% and 21% of all victims, which is concerning. However, information about the forms of exploitation and the reasons for the surge in child trafficking are not available. The issue of child trafficking is further interrogated in [Section 9](#).

**IHREC recommends that the data on child victims of trafficking is disaggregated by type of exploitation in future State’s annual reports.**

### Potential forms of exploitation

There are some reports mentioning other forms of exploitation in Ireland and internationally, such as the trafficking for forced marriages, trafficking of pregnant women for the sale of babies or illegal adoptions.<sup>35</sup> IHREC notes, in this regard, the significant potential that exists for exploitation of women’s reproductive capacity, and for child trafficking, in the absence of regulation for assisted human reproduction and

Trafficking in Human Beings in Ireland Annual Report 2019, p.9; 2020 data: State Department, Trafficking in Persons Report (June 2021), p.303

<sup>35</sup> O’Connor, M., Cosgrave, C. and Yonkova, N. (2016), Exploitative Sham Marriages and Human Trafficking in Ireland, Dublin: ICI. Varenikova, M. (2020) Mothers, Babies Stranded in Ukraine Surrogacy Industry, The New York Times, 15 August. Available at: <https://www.nytimes.com/2020/08/15/world/europe/ukraine-baby-surrogate.html>[https://emn.ie/files/p\\_201803151126272016\\_Exploitative%20Sham%20Marriages%20Irish%20Report.pdf](https://emn.ie/files/p_201803151126272016_Exploitative%20Sham%20Marriages%20Irish%20Report.pdf). Ekathimerini (2021) Probe launched following allegations of illegal adoptions, Newsroom (7 January). Available at: <https://www.ekathimerini.com/news/260970/probe-launched-following-allegations-of-illegal-adoptions/>

surrogacy. The Special Rapporteur on Child Protection has underscored the importance of this, commenting that:

“Any model of regulation of domestic surrogacy must provide sufficient safeguards to ensure that domestic surrogacy arrangements do not fall foul of the prohibition of the sale and trafficking of children.”<sup>36</sup>

The UN Special Rapporteur on the sale and sexual exploitation of children has stressed that provision for altruistic surrogacy requires strong regulation in order to mitigate the risk of *de-facto* commercial and for-profit surrogacy arrangements occurring in practice.<sup>37</sup>

An *Assisted Human Reproduction Bill* is currently in the process of being drafted in the Department of Health. The Bill is intended to provide for regulation of a range of assisted human reproduction practices, including provision for and regulation of altruistic domestic surrogacy.<sup>38</sup>

**IHREC recommends that the State ensures that the *Assisted Human Reproduction Bill* contains adequate safeguards against the risk of child trafficking and exploitation of women and girls, in line with the recommendations of the Special Rapporteur on Child Protection and the UN Special Rapporteur on the Sale and Sexual Exploitation of Children.**

### Cross-border criminal justice cooperation post-Brexit

Significant changes have taken place since GRETA's second evaluation report with respect to Brexit, culminating in the UK's complete departure from the EU in early 2021. IHREC and the Northern Ireland Human Rights Commission have identified significant challenges posed by Brexit with respect to cross-border criminal justice cooperation.<sup>39</sup> A range of cooperation measures spanning the breadth of policing work exists in the EU, including intelligence sharing, investigation assistance, evidence-sharing, and

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<sup>36</sup> Conor O'Mahony and Elaine O'Callaghan (2020), [A Review of Children's Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law](#), p20.

<sup>37</sup> United Nations Human Rights Council (2018), [Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#), A/HRC/37/60. P69.

<sup>38</sup> See Minister for Health, Proposed Legislation, Dáil Éireann Debate (27 May 2020).

<sup>39</sup> IHREC and NIHRC jointly commissioned and published research on this in 2019. See Kramer, Dickson and Pues (2019), [Evolving Justice Arrangements Post-Brexit](#) (IHREC/ NIHRC).

extradition arrangements. These arrangements usually concern serious crime, including trafficking in human beings.<sup>40</sup> On the island of Ireland, human trafficking is one of the 'routine' crimes that have a cross-border element.<sup>41</sup>

Cross-border policing cooperation has historically been on an informal basis, due to historical social and political divisions on the island of Ireland. However, the context of EU membership has facilitated:

“structured mechanisms related to justice and security cooperation [to be] developed.”<sup>42</sup>

The context of EU membership has also been central to UK-Ireland intergovernmental agreements on criminal justice cooperation.<sup>43</sup> The departure of the UK from the EU raises questions about how well-grounded these arrangements will remain in the future.

In the immediate term, post-Brexit cross-border policing cooperation on organised crime continues to take place under the aegis of the Joint Agency Task Force, which is led by senior officials from An Garda Síochána, the Revenue Commissioners, the Police Service of Northern Ireland (PSNI) and United Kingdom Revenue and Customs.<sup>44</sup>

According to the Government, this cooperation has been continuing at a 'high level' since the UK's exit from the EU, and continues to be of 'practical value' in tackling organised crime, including trafficking in human beings.<sup>45</sup> IHREC has been informed by An Garda Síochána that lines of cooperation and communication between and the PSNI are well-established, and are particularly effective in the areas of combatting organised crime and child protection.

IHREC would emphasise the importance of retaining a high level of cross-border criminal justice cooperation post-Brexit, including through the grounding of such cooperation in the fundamental rights enshrined in the European Convention on

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<sup>40</sup> Kramer, Dickson and Poes (2019), [Evolving Justice Arrangements Post-Brexit](#) (IHREC/ NIHRC), p14.

<sup>41</sup> Kramer, Dickson and Poes (2019), [Evolving Justice Arrangements Post-Brexit](#) (IHREC/ NIHRC), p50.

<sup>42</sup> Kramer, Dickson and Poes (2019), [Evolving Justice Arrangements Post-Brexit](#) (IHREC/ NIHRC), p50.

<sup>43</sup> Kramer, Dickson and Poes (2019), [Evolving Justice Arrangements Post-Brexit](#) (IHREC/ NIHRC), p50.

<sup>44</sup> Minister Heather Humphreys, Dáil Éireann, [Questions on cross-border cooperation](#), Thursday 8 July 2021.

<sup>45</sup> Minister Heather Humphreys, Dáil Éireann, [Questions on cross-border cooperation](#), Thursday 8 July 2021.

Human Rights, and the *EU Charter of Fundamental Rights*,<sup>46</sup> and of ensuring that the breakdown of such cooperation does not occur as a result of Brexit.

**IHREC recommends that, in the context of Brexit, the State, in particular via the work of the Department of Taoiseach, Department of Justice and Department of Foreign Affairs, ensures that cross-border justice arrangements comprehensively preserve judicial and police cooperation, data sharing arrangements, prosecutorial cooperation, and continued alignment on commitments to human rights contained in EU law, such as the *EU Charter of Fundamental Rights* and the *Victim's Rights Directive*.<sup>47</sup>**

**IHREC recommends, in particular, that the State is proactive in ensuring that cross-border cooperation on combatting human trafficking is preserved, strengthened and adapted to any changes precipitated by the UK's departure from the European Union.**

## Recent Case Law

### *GRETA question: recent case law concerning trafficking of human beings (THB) for different forms of exploitation*

GRETA recommended in 2017 that the State review:

“the application of the Atypical Working Scheme in the fisheries industry with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen.”<sup>48</sup>

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<sup>46</sup> Kramer, Dickson and Pues (2019), *Evolving Justice Arrangements Post-Brexit* (IHREC/ NIHRC) P98.)

<sup>47</sup> Kramer, Dickson and Pues (2019), *Evolving Justice Arrangements Post-Brexit* (IHREC/ NIHRC., pp 7-8.)

<sup>48</sup> GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, para. 79. Similar concerns have been jointly raised by UN special rapporteurs in a joint letter to Ireland in February 2019, noting that the scheme 'does not provide for effectively preventing and combatting trafficking in people for the purpose of forced labour and labour exploitation in the fishing industry, nor does it provide for adequate protection of the rights of migrant fishermen. See Joint letter sent to the Irish government on 12 February 2019 by UN special rapporteurs on the human rights of migrants; contemporary forms of racism, racial discrimination, xenophobia, and related intolerance; contemporary forms of slavery, including its causes and consequences; and trafficking in people, especially women and children. The letter is available at: [www.spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qlid=24331](http://www.spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qlid=24331).

The International Transport Workers' Federation took action against the State on behalf of workers affected and potentially affected by the operation of the scheme, alleging that the scheme created a real and substantial risk of human trafficking and other forms of severe labour exploitation. In October 2018, the High Court granted IHREC leave to intervene as *amicus curiae* in the case.<sup>49</sup> In April 2019, a mediated settlement was agreed, the terms of which included several changes to the Atypical Working Scheme.<sup>50</sup>

In June 2021, the first conviction took place under the relevant human trafficking legislation,<sup>51</sup> with two women found guilty of trafficking women from Nigeria to Ireland for the purpose of sexual exploitation.<sup>52</sup> IHREC welcomes this conviction as it demonstrates the capacity of the system to penalise human trafficking crimes in Ireland.

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<sup>49</sup> IHREC (November 2018), [Amicus Curiae submission to the High Court between International Transport Workers' Federation \(Plaintiff\) and The Minister for Justice and Equality, Ireland and the Attorney general \(Defendants\)](#). 2018 No. 5398 P.

<sup>50</sup> Changes included: flexibility for non-EEA fishermen to move to another vessel within a defined time without risk of visa cancellation and deportation (such a move cannot be vetoed by employers); streamlining of inter-agency collaboration between the WRC, Marine Survey Office, and the Gardai to combat exploitation on board fishing vessels; and greater promotion of awareness among non-EEA fishermen of their rights and entitlements. See IHREC (30 April 2019), '[Changes to atypical work permit scheme for migrant fishers welcomed by human rights and equality commission](#)'. The US State Department has indicated that concerns remain as to the efficacy of the amended scheme, and the degree to which it is capable of identifying victims of trafficking. See US State Department. US State Department (June 2021), [Trafficking in Persons Report](#). P. 303.

<sup>51</sup> Criminal Law (Human Trafficking) Act 2008, as amended.

<sup>52</sup> Department of Justice (Press Release, 11 June 2021), '[Minister Naughton welcomes the first convictions for Human Trafficking handed down today](#)'. The women were also found guilty of money laundering and organisation of prostitution offences. The offences occurred between September 2016 and June 2018. The victims were recruited from Nigeria, and on arrival in Ireland were forced into prostitution. The victims testified to having been issued false IDs, having their earnings withheld, suffering threats, and being moved around the country. Seán McCárthaigh, '[Two women guilty of human trafficking in first conviction of its type](#)' *The Irish Times* (11 June 2021)

## Legislation and Regulation

*GRETA question: the legislation and regulations relevant to action against THB (e.g. criminalisation of THB, identification and assistance of victims of THB, recovery and reflection period, residence permit, supply chains, public procurement)*

### Legislation and administrative arrangements relevant to trafficking in human beings

Focusing in greater detail on the changes that have occurred since the second evaluation round, this section reviews relevant policy and law in the area of criminalisation, identification and residence permits, procurement, non-punishment and measures to discourage demand for trafficking in human beings.

#### Criminalisation

The operative legislation governing human trafficking remains largely unchanged since the completion of GRETA's second evaluation cycle.

The framework on human trafficking in Ireland is set out in sections one to four of the *Criminal Law (Human Trafficking) Act 2008 (as amended by the Criminal Law (Human Trafficking) (Amendment) Act 2013)*.<sup>53</sup>

Section three of the *Child Trafficking and Pornography Act 1998* also criminalises the trafficking of children for the purposes of sexual exploitation.

The focus of the legislative approach is on criminalising offences of trafficking in human beings and on providing for dissuasive penalties, up to and including life imprisonment.

#### Victim identification and residence permits

The identification of potential victims of trafficking in human beings and related issues regarding the assistance and supports provided upon identification continue to be delivered through the Department of Justice's *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (Administrative

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<sup>53</sup> Section 1 of the *Criminal Law (Human Trafficking) (Amendment) Act 2013* amended section 1 of the *Criminal Law (Human Trafficking) Act 2008*, by expanding the definition trafficking for the purposes of labour exploitation to include forced begging. It also provided for forced participation in criminal activity to be included as a form of exploitation, among other matters.

Arrangement).<sup>54</sup> This is despite widespread calls by the GRETA Committee,<sup>55</sup> IHREC<sup>56</sup> and others to place protection on a firm statutory basis. Proposals for reform in this area were recently announced, but have not yet been elaborated or implemented (see below for more detail).

The provision of temporary residence for victims of trafficking also remains governed by the Administrative Arrangements. Such provisions remain contingent upon cooperation with law enforcement, despite consistent analysis by IHREC,<sup>57</sup> the GRETA Committee and other bodies indicating that such conditionality is inappropriate and not in keeping with the State's obligations to trafficking victims.

**IHREC recommends the introduction of assistance and protection measures for victims of trafficking in primary legislation, which coupled with the upcoming legislation outlining a new national referral mechanism has the potential to provide a comprehensive framework for response to victims of trafficking.**

### **New legislation: The Criminal Law (Sexual Offences) Act 2017**

The *Criminal Law (Sexual Offences) Act 2017* decriminalised the selling of sexual services, and introduced a new offence of purchasing of sexual services.<sup>58</sup> The legislation also strengthened the national legal framework on trafficking in human beings with regard to online grooming of children for sexual exploitation and by strengthening the provisions penalising the use of sexual services from trafficked victims. This saw the shifting of the burden of 'knowledge' from the State to the accused person (the user). This means that the State does not have to prove that the user suspected human trafficking, it is now open to the user to prove in court that they did not.<sup>59</sup> Decriminalisation of the sale of sexual services has the potential to support

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54 Department of Justice (2011), [Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking](#)

55 GRETA (2017), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), GRETA (2017)28.

56 IHREC (2016), [IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland](#)

57 IHREC (2016), [IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland](#), Section 4.2.6.

58 Part 4, amending the Criminal Law (Sexual Offences) Act 1993 to make it an offence, liable for a class E or D fine, for a person to pay, offer or promise to pay a person for the purpose of engaging in sexual activity.

59 Part 2 of the 2017 Act.

the principle of non-punishment, protecting potential victims of trafficking against solicitation-related offences.

The law has been in operation for the last two years, and its provisions are currently undergoing evaluation to assess its “impact on the safety and well-being of persons who engage in sexual activity for payment, as well as consideration of whether further measures are needed to strengthen protection for persons who engage in sexual activity for payment.”<sup>60</sup> IHREC welcomes these evaluation measures.

**IHREC recommends that in developing supports and exit strategies for those engaged in the sale of sex, including victims of trafficking, the State should have regard to the support and assistance provisions outlined in Chapter III, Article 12 and 17 of the Convention and guaranteeing gender equality.**

### Principle of non-punishment and related measures

IHREC notes the importance of ensuring that the principle of non-punishment is vigorously and consistently applied in the enforcement of this and related legislation, including with regard to brothel-keeping and immigration related offences. Current Director of Public Prosecutions guidelines make reference to human trafficking victims as an example of where:

“the prosecutor should consider whether the public interest is served by a prosecution of the suspect.”<sup>61</sup>

However, this guidance does not go into further detail in this respect, or with respect to the non-punishment principle and Ireland’s international obligations.

**IHREC reiterates its recommendation that the non-punishment principle be placed on a statutory footing, and that detailed, updated guidance from the Director of**

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<sup>60</sup> Department of Justice (2020), *Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017*. The Commission has underlined the importance of such an evaluation of the legislation. See IHREC (2016), *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, Section 4.1; IHREC (2017), Ireland and the Convention on the Elimination of all forms of Discrimination against Women, section 7.3.

<sup>61</sup> Director of Public Prosecutions (2019), *Guidelines for Prosecutors: 5<sup>th</sup> Edition*. Section 4.7.

## **Public Prosecutions on how its discretion not to prosecute is exercised in cases of suspected trafficking in human beings.<sup>62</sup>**

With a view to strengthening the implementation of the legal provisions that ended the criminalisation of individuals selling sex, the Minister for Justice has recently announced plans for legislation to retrospectively expunge over 600 convictions obtained for 'sale of sex' under the preceding 1993 legislation. In her statement, the Minister linked the measures explicitly with the plans to end the unnecessary criminalisation of potential victims of trafficking:

"Given what we know about the levels of exploitation and human trafficking in the sex trade, it is very likely that many of those convicted in the past fall into the exploited category for a number of reasons, including because they were victims of trafficking. These vulnerable victims should also benefit from the legislative change regarding the sale of sex and be able to move forward and rebuild their lives."<sup>63</sup>

This novel approach has been welcomed by IHREC. However, there has been no similar initiative with regard to victims of other forms of human trafficking present in Ireland who have been convicted for crimes in which they may have been forced to participate.<sup>64</sup>

**IHREC acknowledges the innovative approach to decriminalisation of victims of trafficking for sexual exploitation, and recommends that it be applied more broadly, to benefit all victims of human trafficking involved in forced criminal activity, in keeping with the principle of non-punishment.**

### **Procurement**

IHREC has recommended in its previous engagements with GRETA<sup>65</sup> that the State conduct a comprehensive human rights-led revision of the State's procurement practices in the wider context of the *UN Guiding Principles on Business and Human*

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<sup>62</sup> IHREC (2016), [IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland](#), Section 4.2.3.

<sup>63</sup> [Statement by Minister McEntee](#), Department of Justice, 25 of April 2021.

<sup>64</sup> See *P. v The Chief Superintendent of the Garda National Immigration Bureau* cited above.

<sup>65</sup> IHREC (2016), [IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland](#)

*Rights* and the State's *National Action Plan on Business and Human Rights*,<sup>66</sup> as well as in the context of its obligations under section 42 of the *Irish Human Rights and Equality Commission Act 2014*.<sup>67</sup> Elsewhere, at UN level, IHREC has consistently recommended that the State introduce human rights due diligence, and compliance with the *Public Sector Human Rights and Equality Duty*, in all its procurement processes and service level agreements.<sup>68</sup> GRETA has recommended that such measures be undertaken, in line with EU law, and that the grounds for excluding suppliers from contracts should include human trafficking.<sup>69</sup>

A National Public Procurement Policy Framework was published in November 2019,<sup>70</sup> outlining the overarching approach to public procurement in Ireland, as grounded in and provided for in national and EU legislation. This includes reference to EU standards that include human trafficking as grounds for exclusion of potential suppliers.<sup>71</sup> It does not include any specific reference to human rights, or human rights due diligence. It is not known the degree to which, in practice, notice is taken of human rights compliance by tenderers during the procurement process, including where links to human trafficking and forced labour are concerned. IHREC notes the publication in July 2021, of new EU guidance on due diligence to address the risk of forced labour in business operations and supply chains.<sup>72</sup>

**IHREC recommends that the Department of Public Expenditure and Reform's Office of Government Procurement update its National Public Procurement Policy Framework to clearly outline human rights due diligence requirements, including a**

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<sup>66</sup> Department of Foreign Affairs (2017), [National Plan on Business and Human Rights \(2017-2020\)](#)

<sup>67</sup> The Public Sector Human Rights and Equality Duty. Public bodies, in the performance of their functions, are required under this section to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights.

<sup>68</sup> See for example IHREC (2019), *Ireland and the Convention on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report*; IHREC (2015), *Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports*.

<sup>69</sup> GRETA (2017), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), GRETA (2017)28. Page 21.

<sup>70</sup> Office of Government Procurement (November 2019), [National Public Procurement Policy Framework](#)

<sup>71</sup> Office of Government Procurement (November 2019), [National Public Procurement Policy Framework](#), p. 5. Directive 2014/24/EU on public procurement (goods, services and works); Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; Directive 2014/23/EU on the award of Concession Contracts.

<sup>72</sup> European Commission (2021), [Guidance on Due Diligence for EU Businesses to Address the Risk of Forced Labour in Their Operations and Supply Chains](#).

**requirement for demonstrable engagement by businesses with the new EU guidance on addressing the risks of human trafficking and forced labour in business operations and supply chains.**

### Measures to discourage demand for trafficking in human beings

By introducing a new offence of purchasing of sexual services, through the *Criminal Law (Sexual Offences) Act 2017*, and strengthening the existing offence of purchasing of sexual services from a victim of trafficking as well as enhanced online child grooming provisions, the State has undertaken measures to discourage the demand that fosters sexual exploitation and leads to human trafficking. The active implementation of these provisions representing a strength of the legal framework is a current priority.

However, legislation to criminalise the use of services which are the object of labour exploitation and to disrupt the supply chains involving trafficking in persons has yet to be developed by Government. A Private Members' *Labour Exploitation and Trafficking (Audit of Supply Chains) Bill* has been recently introduced to the Oireachtas seeking:

"to provide for transparent reporting by undertakings in relation to the risk of labour exploitation and human trafficking occurring in their supply chains or in any part of their business and of the steps taken by them to ensure such activities do not take place; and to provide for connected matters."<sup>73</sup>

Under the bill, Irish business would be required to report annually on the measures taken to guarantee products free of human trafficking (including exploitation of children).

IHREC notes that the new EU Strategy for Combatting Trafficking in Human Beings 2021-2025 has identified such measures as a priority.<sup>74</sup>

**IHREC recommends that the State implement the relevant provisions of the *Criminal Law (Sexual Offences) Act 2017* to reduce the demand that fosters**

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<sup>73</sup> Deb Dáil, Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021: First Stage, April 2021 <<https://www.kildarestreet.com/debates/?id=2021-04-01a.279&s=trafficking+for+labour+exploitation#q280>> Accessed 2 June 2021

<sup>74</sup> European Commission (2021), *Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025*, COM(2021) 171 final. Page 7.

**trafficking for sexual exploitation and ensure that the planned evaluation of their impact and efficacy is carried out on schedule.**

**IHREC recommends that the State accompanies the implementation of the relevant legal provisions of the *Criminal Law (Sexual offences) Act 2017* aimed at demand reduction with the necessary auxiliary measures, in particular exit strategies and awareness among the communities nationwide.**

**IHREC recommends that the State urgently progress legislation criminalising the use of services which are the object of labour exploitation, as well as legislation to provide for transparent assessment and reporting of the risk of labour exploitation in supply chains.**

## Institutional and policy framework

*GRETA question: the institutional and policy framework for action against THB (bodies responsible for co-ordinating national action against THB, entities specialised in the fight against THB, national rapporteur or equivalent mechanism, involvement of civil society, public-private partnerships)*

### Restructuring of the Department of Justice

The Department of Justice has undergone a significant overhaul since the publication of GRETA's second report.

In 2019, following the recommendations of the independent Effectiveness and Renewal Group for the Department of Justice and Equality First Report,<sup>75</sup> the operational model of the Department was restructured into two main pillars: a Civil Justice and Equality Pillar, and a Criminal Justice Pillar. These two pillars cover Policy, Legislation, Governance, and Operations and Service Delivery.<sup>76</sup> In addition, certain functions of the Department of Justice relevant to human trafficking were transferred to the newly established Department of Children, Equality, Disability, Integration and Youth in 2020.<sup>77</sup>

Following the restructuring of the Department, the Anti-Human Trafficking Unit was abolished. The Department of Justice, however, retains its coordinating role on trafficking. The Criminal Justice pillar is responsible for funding specialised anti-

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<sup>75</sup> Pádraig Ó Ríordáin, et al., 'Effectiveness and Renewal Group for the Department of Justice and Equality First Report' (June 2018)

<<http://www.justice.ie/en/JELR/ERG%20Report.pdf/Files/ERG%20Report.pdf>> accessed 31 May 2021

<sup>76</sup> These pillars are supported by the three core enabling functions of the Department: Corporate, Transparency and European Affairs. Department of Justice, 'Our new operating model: Why is the Department moving to a new operating model?'

<[http://www.justice.ie/en/JELR/Pages/Our\\_new\\_operating\\_model](http://www.justice.ie/en/JELR/Pages/Our_new_operating_model)> accessed 31 May 2021. Prior to this transformation, the Department of Justice and Equality was organised in eight main Directorates, finding the Anti-Human Trafficking Unit within the past Crime and Security Directorate, directly managed by the Deputy Secretary. Department of Justice and Equality, 'Trafficking in Human Beings in Ireland: Annual Report 2017' (August 2017) <<https://www.blueblindfold.ie/wp-content/uploads/2020/11/2017-Annual-Report.pdf>> accessed 31 May 2021 (p24)

<sup>77</sup> Statute Book (2020), *S.I. No. 436/2020 - Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020*. Functions transferred include coordination of policy on integration; the procurement of accommodation for persons seeking international protection; giving permission to enter and remain in the State for temporary protection.

trafficking civil society organisations, awareness raising and data collection, managing the overall policy and inter-agency actions against trafficking and developing an annual report on Trafficking in Human Beings in Ireland.<sup>78</sup> Other recent steps to develop coordination include the establishment of a High-Level Working (HLWG) and a National Stakeholder Engagement Group.<sup>79</sup>

The Organization for Security and Co-Operation in Europe (OSCE) observed that recent restructuring has created a gap in the effective co-ordination of national responses to trafficking and fuelled concern among civil society about the level of attention the problem of human trafficking attracts.<sup>80</sup>

**IHREC recommends that the State publish, at the earliest available opportunity, a clear outline of the Department of Justice’s anti-human trafficking coordination structure and work programme, including setting out the planned activities of the High-Level Working Group and National Stakeholder Engagement Group, and the structure of multi-departmental/agency implementation of anti-trafficking actions in the State.**

### Designation of IHREC as Independent National Rapporteur on Trafficking

In October 2020, IHREC was designated as Ireland’s Independent National Rapporteur on the Trafficking of Human Beings.<sup>81</sup> The designation was made per Article 19 of the

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<sup>78</sup> US State Department, ‘2020 Trafficking in Persons Report: Ireland’ (United States State Department Publication Office to Monitor and Combat Trafficking in Persons, June 2020)

<https://www.state.gov/reports/2020-trafficking-in-persons-report/ireland/>

<sup>79</sup> OSCE (2020), *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey*. Comprised of the Department of Justice and Equality, DPP and An Garda Síochána, the HLWG intends to examine the statistics and data related to prosecution, study related policy issues and elaborate on the economic and profit dimensions of human trafficking. The National Stakeholder Engagement Group aims to fill the current gap in information flow and exchanges between the government agencies and NGOs, and to build a platform for structured dialogue between civil society organizations and the state agencies involved in anti-trafficking work with the overall aim of improving responses to the issue. See also Department of Justice, ‘Minister for Justice Helen McEntee marks World Day against Trafficking in Persons and pays tribute to first responders working in the field’ (July 2020) < <https://www.gov.ie/en/press-release/88f79-minister-for-justice-helen-mcentee-marks-world-day-against-trafficking-in-persons-and-pays-tribute-to-first-responders-working-in-the-field/>> Accessed 31 May 2021

<sup>80</sup> OSCE (2020), *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey*.

<sup>81</sup> [S.I. No. 432/2020](#) - European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020.

*EU's Anti-Trafficking Directive*, which includes a legally binding requirement for all EU Member States to establish National Rapporteurs or equivalent mechanisms. Independent reports of State action will be prepared by IHREC to align with international monitoring in this area, with a view to providing a meaningful baseline for external evaluations. The National Rapporteur will also contribute the development of the research and evidence base required to underpin effective monitoring and policy development.

IHREC is of the view that, in order to effectively carry out its role as National Rapporteur, appropriate access to information and data will be necessary, and that placement of such access on a statutory basis is recommended. The Department has agreed to advance this matter and discussions are ongoing.

**IHREC recommends that, in order to assist it in its new role as National Rapporteur, it be given a statutory remit to request and receive appropriate information from relevant actors.**

## National Action Plan to Prevent and Combat Human Trafficking

*GRETA question: the current national strategy and/or action plan for combating trafficking in human beings (objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results)*

The 2016 *National Action Plan to Prevent and Combat Human Trafficking in Ireland* was not bound by any specific timeline and it remains the current strategy in operation, by default.<sup>82</sup> The OSCE has identified this plan as one of the key policy papers requiring a thorough review, noting that the important strategic objectives outlined in it are yet to be achieved.<sup>83</sup>

The Department of Justice has begun initial discussions regarding the development of a new National Action Plan, however IHREC understands that such discussions remain at very early stage.

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<sup>82</sup> Department of Justice (2016), [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#)

<sup>83</sup> OSCE (2020), *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey*.

IHREC is of the view that, while a new National Action Plan is required, this should be without prejudice to meeting the urgent targets of the current plan, and prioritising their completion in the interim.

### Other policy developments relevant to the National Action Plan on THB

IHREC notes that a number of other policy frameworks are currently in preparation which have a direct relevance to human trafficking, and to the development of a new National Action Plan.

Consultation is currently underway for the development of a new National Action Plan against Racism under the aegis of the Anti-Racism Committee.<sup>84</sup> As part of its engagement with this consultation<sup>85</sup> IHREC has highlighted the highly gendered and racialized nature of human trafficking,<sup>86</sup> and has recommended that that the new plan directly address core priorities to combat human trafficking.<sup>87</sup> In this regard, IHREC notes the importance of ensuring that the integration of anti-trafficking priorities in a new National Action Plan against Racism is done with due regard to the need to address racial profiling in policing.

A public consultation is also currently underway as part of the development of a new *National Strategy to Combat Sexual, Domestic and Gender-based Violence*, to replace the current one expiring this year.<sup>88</sup> Human trafficking is a specific form of gender-based violence,<sup>89</sup> and in the view of IHREC, this provides an opportunity to guarantee

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<sup>84</sup> An independent Anti-Racism Committee was established in 2020, chaired by Professor Caroline Fennell (also a Commissioner in IHREC). It is tasked with developing a new National Action Plan Against Racism, a public consultation on which was held between 21 April and 14 July. For its terms of reference and for detail of its earlier work see Anti-Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2020.

<sup>85</sup> IHREC (2021), Developing a National Action Plan Against Racism: *Submission to the Anti-Racism Committee*.

<sup>86</sup> Trafficking victims are predominantly of migrant background. Irish citizen victims are rarely encountered, and primarily number among those recorded as child victims of trafficking. Note the reclassified statistical data in the annual State report in 2017, available at: <https://www.blueblindfold.ie/wp-content/uploads/2020/11/2017-Annual-Report.pdf>

<sup>87</sup> Minority ethnic communities in Ireland can be under-protected and over-policed, including due to racial profiling, and the Commission has called for profiling to be addressed, including via its prohibition in statute. See IHREC (2019), *Ireland and the Convention on the Elimination of Racial Discrimination*, pp137-138.

<sup>88</sup> Department of Justice (31 May 2021), '[Public urged to contribute to development of a new strategy to combat Domestic, Sexual and Gender Based Violence](#)'. Current strategy available at: Department of Justice and Equality, *Second National Strategy on Domestic, Sexual and Gender-based Violence*.

<sup>89</sup> According to 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, Recital 17, page L 315/59.

that a holistic and intersectional approach is adopted between action on human trafficking and on gender-based violence, to ensure that the renewed strategies complement and reinforce each other. This would be in keeping with European guidance on gender-specific anti-trafficking measures.<sup>90</sup>

**IHREC recommends that the State ensure that the Department of Justice, Department of Children, Equality, Disability, Integration and Youth and other responsible departments and agencies adopt a twin-track approach to the *National Action Plan to Prevent and Combat Human Trafficking in Ireland* which ensures that unaddressed urgent actions in the current plan are prioritised, while planning for an updated/ renewed plan is also accelerated.**

**IHREC recommends that the new National Action Plan identify and commit to the implementation of the recurring recommendations of GRETA, IHREC and other monitoring and oversight bodies, and incorporate clear timelines and progress indicators, in line with best practice for strategic action documents. This should, in particular, include commitment to placement of core provisions for identification, assistance, protection and support on a statutory basis.**

**IHREC recommends that the new National Action Plan aims at alignment with, and includes references to, other relevant strategic plans adopted in Ireland. This should include the upcoming new *Strategy on Domestic, Sexual and Gender Based Violence* and the new *National Action Plan against Racism*.**

**IHREC recommends that the new *National Action Plan against Racism* directly incorporates key actions relevant to combatting human trafficking and that it works to directly compliment and reinforce wider action on human trafficking.**

**IHREC recommends that the new National Strategy on gender-based violence clearly recognises trafficking in human beings as a form of gender-based violence, in line with the EU position.**

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<sup>90</sup>Yonkova, et al. (2017), [Protecting Victims: An Analysis of the Anti-trafficking Directive from the Perspective of a Victim of Gender-Based Violence](#) (EIGE/2017/OPER/02), p81

# Measures for Victims of Trafficking

## Victim identification and referral

*GRETA question: Review the victim identification procedure and decision-making process, including through the promotion of multi-agency involvement in the identification of victims of trafficking. Has the review of the procedure for identification of victims of trafficking foreseen in the Second National Action Plan been completed or has a timeline for completion been established?*

GRETA's concerns regarding the victim identification procedure and decision-making process have been long standing. The years since GRETA's second evaluation have been marked by inertia in the anti-trafficking response. IHREC has noted with particular concern what has appeared to be the limited scope and lack of discernible progress on the review of the current victim identification procedure.<sup>91</sup>

The US State Department has mirrored these ongoing concerns regarding shortcomings in its identification mechanism. Procedures for formal victim identification continue to apply only to victims lacking legal residency in Ireland while EEA-nationals, Irish nationals, and asylum-seekers with pending applications fall outside these procedures.<sup>92</sup>

The OSCE in 2020 has also pointed to the lack of a proactive approach in victim identification and the absence of a clear National Referral Mechanism (NRM).<sup>93</sup>

There appears to have been progress made in 2021, with the May announcement of Government approval for a new National Referral Mechanism for victims of trafficking, to identify victims and facilitate their access to advice, accommodation and support.<sup>94</sup>

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<sup>91</sup> IHREC (2019), *Ireland and the Convention for the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5<sup>th</sup> to 9<sup>th</sup> Report*. P. 11. See also IHREC (2019), *Comments on Ireland's 16<sup>th</sup> National Report on the implementation of the European Social Charter*, p. 7.

<sup>92</sup> See US State Department Report (June 2020): Trafficking in Persons Report 20th Edition p. 271

<sup>93</sup> OSCE (2020), *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey*.

<sup>94</sup> Department of Justice (Press Release 11 May 2023), '[Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports](#)'.

The proposed new mechanism would expand the role of 'competent authority' for the identification of victims of trafficking beyond An Garda Síochána, to also include several other state agencies.<sup>95</sup> In addition, it is proposed that certain non-governmental organisations will be designated as 'trusted partners' for the referral of victims, and that the new mechanism will be overseen by an operational committee made up of representatives from the competent authorities. Approval has also been given for the drafting of legislation to place this new mechanism on a statutory footing.

IHREC welcomes these proposals, which, if delivered upon, have the potential to significantly enhance the State's ability to identify and support victims of trafficking. IHREC is of the view that implementation of these proposals is a matter of urgency. IHREC also notes that during its own summer 2021 informal engagement with some of the State agencies proposed to make up the Mechanism, there was a lack of clarity regarding their respective obligations under the proposed Mechanism. Timely progress on these matters therefore remains a high priority on IHREC's monitoring agenda.

**IHREC recommends that the establishment of a new National Referral Mechanism is progressed as a matter of utmost priority in 2021.**

**IHREC recommends that the identification procedure at the centre of the referral mechanism be made applicable to all suspected victims in the State, regardless of their nationality and immigration status. The procedure should ensure transparent decision making, and the provision of timely confirmation of victim status to the individual and their legal representative.**

**IHREC recommends that appropriate clarity, training (including in cultural competency), staffing and capacity building are provided to the agencies and departments tasked with responsibility under the new National Referral Mechanism.**

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<sup>95</sup> These include: the Department of Justice Immigration Service; Department of Social Protection; the HSE; Tusla; Department of Children, Equality, Disability, Integration and Youth; International Protection Accommodation Services (IPAS), Workplace Relations Commission.

## Statutory rights to assistance for victims and potential victims

*GRETA: Enact statutory rights to assistance for potential victims and victims of trafficking, including with respect to the provision of a reflection and recovery period.*

*Ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit, without prejudice for the right to seek and enjoy asylum, and provide for the possibility to grant renewable temporary residence permits to victims of trafficking where their stay is necessary owing to their personal situation.*

The State's approach to the provision of assistance remains on non-statutory basis, underpinned by the Administrative Immigration Arrangements. IHREC is concerned that, as with victim identification, progress in reforming the State's approach to recovery, reflection and residence has been marked by inertia and stagnation. In 2018, officials the Department of Justice and Equality indicated to IHREC that there are currently no plans to introduce primary legislation regarding the provision of assistance to victims.<sup>96</sup> Rather, it was indicated to IHREC that the Department's intention was to address issues with provision of assistance to victims through amendment of the current Administrative Immigration Arrangements, in particular through addressing the distinctions currently operating between EU, EEA and non-EEA nationals. The recent announcement of a new National Referral Mechanism is silent on this. IHREC has made clear that, while it would welcome any initiatives to improve the existing administrative scheme, that this does not address the long-standing recommendations of GRETA and others to place the provision of effective, transparent and accessible assistance measures on a statutory basis, in order to give effect to the provisions contained in Chapter III of the Convention.<sup>97</sup> IHREC also notes the direct

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<sup>96</sup> The Commission highlighted this in a letter sent to GRETA in November 2018, as part of its one-year follow-up procedure. Correspondence between IHREC Chief Commissioner Emily Logan and Ms Petya Nestorova, Executive Secretary, Council of Europe Convention on Action against Trafficking in Human Beings, 1 November 2018.

<sup>97</sup> The necessary measures to protect and promote the rights of victims, guaranteeing gender equality, in Chapter III of the Convention, include concrete assistance such as: appropriate and secure accommodation; psychological and material assistance; translation and interpretation; counselling and

relevance of Chapter IV of the *Istanbul Convention* to the provision of assistance and support for women victims of trafficking, who are often also victims of gender-based violence.<sup>98</sup>

Provisions for recovery and reflection, and access to residency for third-country national victims also continue to be governed by the Administrative Immigration Arrangements, and remain unchanged from GRETA's Second Round Evaluation. This includes the continued conditionality of temporary residence, on cooperation with law enforcement agencies.

**While the detail of the current proposals for the creation of a new National Referral Mechanism remain to be clarified, IHREC is of the view that any such an initiative should take the opportunity to create a new statutory framework on assistance for victims that is expansive in its scope, and includes third-country nationals and citizens of the EEA.**

**IHREC recommends that such a framework for victim assistance should:**

- **actively respond to the long standing recommendations of the GRETA committee and other oversight bodies;**
- **include the placement of all aspects of victim support and assistance (in addition to identification) on a statutory footing, in line with the recommendations of the GRETA committee;**
- **include clear provision for assistance to all third country national victims of trafficking, including to those who are undocumented, through issuing, where necessary, temporary residence permits that take account of their personal circumstances and that are not contingent on cooperation with the authorities;**

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information, in particular as regards their legal rights; assistance in criminal proceedings against offenders; education and legal guardianship for child victims; right to work and training/education for legally resident victims. This outlined assistance is in addition to measures to protect the identity of victims, to uphold the principle of non-prosecution and the right to compensation and legal redress as well as safe repatriation.

<sup>98</sup> [Council of Europe Convention on preventing and combating violence against women and domestic violence](#). Chapter IV – Protection and support. This includes provision for: information (Article 19); general support services (Article 20); assistance in complaints (Article 21); specialist support (Article 22); shelters (Article 23); helplines (Article 24); support for victims of sexual violence (Article 25); protection and support for child witnesses (Article 26); reporting (Articles 26 and 27).

- **secure a recovery and reflection period for all victims of trafficking, including, where necessary, through issuing of appropriate short-term residence permit where the victim is a third-country national with no other authorisation to be in the State; and**
- **ensure that the habitual residence condition does not impede the ability of victims of trafficking from the EEA to access assistance.**

**As outlined above, these actions should be clearly cross-referenced in other relevant policy processes, including the new *National Action Plan against Racism*, and the new *National Strategy on Domestic, Sexual and Gender-based Violence***

### Separation of the international protection and victim identification process

*GRETA: Monitor the relationship between asylum and trafficking, with a view to ensuring that the right to seek and enjoy asylum does not impede identification as a victim of trafficking*

It remains the case that Ireland does not permit a person to be formally identified as a victim of trafficking while they are seeking international protection.<sup>99</sup> This leads to the differential treatment of victims of trafficking within the international protection system, and those formally recognised as victims by An Garda Síochána, including with respect to residency entitlements and access to the labour market.<sup>100</sup>

Most recently, the OSCE urged a critical review of the Administrative Immigration Arrangement for the Protection of Victim of Human Trafficking to ensure that victim status and entitlements are not linked to immigration status, while victims who wish to claim asylum are free to do so.<sup>101</sup>

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<sup>99</sup> Ireland is not yet party to the recast Directives on Qualification for International Protection or Asylum Procedures, (Directive 2011/95/EU), which would require this.

<sup>100</sup> Since GRETA's last evaluation of Ireland, there has been some reform with respect to access to labour for asylum seekers, with initial temporary measures adopted in June 2018. As of January 2021, applicants for international protection can now apply for permission to access the labour market 6 months from the date of their first application for international protection, and permissions are subject to renewal every 12 months. These measures would benefit some victims of trafficking but the divergence of rights based on whether or not a victim seeks asylum remains in place. See Department of Justice (Press Release, 28 January 2021), '[Minister McEntee announces reduced 6 month waiting period for international protection applicants to access work](#)'.

<sup>101</sup> OSCE (2020), Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey.

IHREC notes GRETA's 2020 guidance note on trafficking and international protection.<sup>102</sup> IHREC further notes that in other jurisdictions, effective systems have been put in place to facilitate the identification of international protection applicants as victims of trafficking. In Italy, for example, guidelines jointly developed with the UNHCR are now in formal use in both the international protection claims system, and in the Italian national referral mechanism, to ensure victims of trafficking and potential asylum applicants are identified.<sup>103</sup> Since the formal adoption of these guidelines, 10,400 asylum seekers in Italy have been identified as trafficking victims, meaning that the Italian international protection system complements the national referral body.<sup>104</sup>

Various measures to reform the international protection and reception system were outlined in February 2021 in a Government *White Paper on Ending Direct Provision*.<sup>105</sup> IHREC notes that measures on vulnerability assessment outlined in the White Paper have the potential to assist in identifying victims of trafficking who find themselves in the international protection system.<sup>106</sup> IHREC understands that there is currently a pilot vulnerability assessment scheme in operation.<sup>107</sup>

**IHREC recommends that the proposed new National Referral Mechanism incorporate explicit provisions to ensure that international protection can be pursued at any moment in time – whether prior to, during, or after identification as a victim of trafficking – and that formally identified victims have access to the rights**

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<sup>102</sup> GRETA (2020), [Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection](#). GRETA (2020)06.

<sup>103</sup> UNHCR/ Commissione Nazionale per il Diritto d'Asilo, [L'Identificazione delle Vittime de Tratta Tra i Richiedenti Protezione Internazionale e Procedure di Referral](#).

<sup>104</sup> Presentation by Ms Chiara Scipioni, UNHCR Italy, Expert Seminar hosted by 'TRIPS' (Identification of Trafficked International Protection Beneficiaries' Special Needs), 23 June 2021.

<sup>105</sup> Government of Ireland, [White Paper on Ending Direct Provision](#). The Commission made a submission in advance of the publication of the White Paper, in which it placed an emphasis on the need for a new reception system to be guided by a trauma-informed approach, and by the underpinning assumption that all asylum seekers may have experienced trauma. See IHREC (2020), [White Paper Submission \(Direct Provision\)](#).

<sup>106</sup> The Advisory Group report stressed the importance of vulnerability assessment. See [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#). Chapter 4, recommendation 4.1.s.

<sup>107</sup> Oireachtas (28 April 2021). Minister Roderic O'Gorman, Written Answers (Department of Children, Equality, Disability, Integration and Youth). See <https://www.kildarestreet.com/wrans/?id=2021-04-28a.1822>. The Pilot commenced in December 2020, and since February 2021 it has been extended to all new applicants for protection. As of 21 April 2021, 306 applicants have entered the vulnerability assessment process. 165 assessments have been completed and 129 are ongoing, with 97 applicants identified to date as having some form of vulnerability as defined in the EU Reception Conditions Directive (Recast).

**and assistance measures put in place for victims of human trafficking, regardless of any pending international protection claim.**

## Safeguards against labour exploitation

*GRETA question: Make further efforts to prevent trafficking for the purpose of labour exploitation and pursue a proactive approach in the identification of victims by encouraging regular and co-ordinated multi-agency inspections in sectors considered most at risk. Are firewalls between labour and immigration authorities in place?*

In addition to what was already outlined above under 'emerging trends', IHREC makes some further observations and recommendations here regarding safeguards against trafficking for labour exploitation within the wider areas of labour regulation and forced labour.

In 2020, the inspectorate division of the Workplace Relations Commission (WRC) carried out over 7,000 inspections.<sup>108</sup> It found 1,760 employers in breach, and recovered €1.66 million in wages. It also conducted 147 joint inspections with An Garda Síochána and other regulatory bodies, and secured the conviction of 81 employers in the District Courts.<sup>109</sup>

As joint inspections with representatives of An Garda Síochána are routinely organised, the exposure of undocumented workers is possible. The WRC is tasked with enforcing employment permit law, governing the situation of third country national workers, which involves taking actions regarding irregularly employed undocumented migrants. IHREC is not aware of specific firewalls between labour and immigration authorities to ensure that the principle of non-punishment of suspected victims of trafficking is upheld.

IHREC notes that the absence of such firewalls between immigration enforcement and other public services has a relevance beyond the arena of human-trafficking. More broadly, the lack of appropriate firewalls can raise questions of access to justice, and can deter irregular migrants from coming forward when they have been the victims of

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<sup>108</sup> Deb Dáil, Workplace Relations Commission, March 2021

<<https://www.kildarestreet.com/debates/?id=2021-03-25a.410&s=labour+inspectors#g414>>

Accessed 2 June 2021

<sup>109</sup> Workplace Relations Commission, [Workplace Relations Commission 2020 Annual Report](#), p5 – 17.

crime or violations of their rights, or when they are seeking services to which they are entitled.<sup>110</sup>

IHREC is also concerned that the lack of effective recourse to mechanisms for recovery of unpaid wages in cases of undocumented workers could create an unintended and anomalous situation whereby the law incentivises exploitative employment of undocumented workers.<sup>111</sup>

During GRETA's second evaluation of Ireland, the WRC employed a total of 56 inspectors organised in five offices around Ireland.<sup>112</sup> In 2006, the Department of Taoiseach agreed to increase the number of labour inspectors from 31 to 90 by the end of 2007.<sup>113</sup> Currently, WRC has 53 labour inspectors, which translates into a shortage of 37 labour inspectors from those recommended and agreed in 2006<sup>114</sup> and three fewer inspectors since Greta's last visit to Ireland.

IHREC also notes that the WRC is listed as one of the agencies taking part in the proposed new National Referral Mechanism.

**IHREC recommends that the Workplace Relations Commission is adequately staffed to enable it to effectively conduct inspections, and to contribute effectively to the new National Referral Mechanism. Such staff should have the requisite sectoral expertise, language skills, and cultural competence to carry out their roles effectively.**

**IHREC recommends that inspections targeting high-risk sectors for human trafficking in Ireland are planned and carried out in a way that facilitates pro-active**

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<sup>110</sup> Timmerman, R. I., Leerkes, A., Staring, R., & Delvino, N. (2020). 'Free In, Free Out': Exploring Dutch Firewall Protections for Irregular Migrant Victims of Crime, *European Journal of Migration and Law*, 22(3), 427-455. doi: <https://doi.org/10.1163/15718166-12340082>

<sup>111</sup> Employment Permit (Amendment) Act 2014, Section 2b. Available at:

<http://www.irishstatutebook.ie/eli/2014/act/26/section/4/enacted/en/html>

<sup>112</sup> GRETA, 'Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Ireland. Second Evaluation Round' (September 2017) p18

<sup>113</sup> Department of the Taoiseach, 'Towards 2016. Ten-Year Framework Social Partnership Agreement 2000-2016' (June 2006) <[https://www.ictu.ie/download/pdf/towards\\_2016\\_26june06.pdf](https://www.ictu.ie/download/pdf/towards_2016_26june06.pdf)> Accessed 2 June 2021

<sup>114</sup> Deb Dáil, Workplace Relations Commission, March 2021

<<https://www.kildarestreet.com/debates/?id=2021-03-25a.410&s=labour+inspectors#g414>> Accessed 2 June 2021

**screening for instances of human trafficking, and the disclosure of exploitation by potential victims.**

**IHREC recommends that robust firewalls are put in place between immigration enforcement and the broader provision of public services, including labour inspections, policing and victim support.**

**IHREC recommends that the State reviews the lack of effective recourse to mechanisms for recovery of unpaid wages in cases of undocumented workers as this could potentially incentivise exploitative employment.**

## Accommodation for Victims of Trafficking

*GRETA: Review the policy of accommodating victims of trafficking in accommodation centres for asylum seekers. Has a pilot specialised shelter with dedicated, trained personnel been set up?*

While formal commitments to end the practice have been made more recently,<sup>115</sup> victims of trafficking continue to be accommodated in Direct Provision centres. This matter has been consistently raised by GRETA, civil society and IHREC, as well as in the recent reports by the OSCE and the US State Department, which noted that no concrete steps had been taken to address the issue.<sup>116</sup>

In 2020, the State indicated its intention to begin a pilot accommodation service for victims of trafficking under the aegis of civil society organisations Ruhama and DePaul Ireland. However, there have since been further delays owing both to the Covid-19 pandemic and restructuring in the Department of Justice. A new tender was issued in May 2021 by the Department of Children, Equality, Disability, Integration and Youth to seek an organisation to run an accommodation centre for eight to ten persons on a pilot basis. The State indicated that it intends for this service to be operational by autumn 2021.<sup>117</sup> IHREC emphasises that in tendering for such services, the financial considerations have to be balanced with the relevant expertise of the provider in a way that ensures the accommodation is safe, gender-specific and conducive to recovery from extensive trauma.

While focussed on the international protection system, the recent work of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process reiterated the long-standing concerns regarding the

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<sup>115</sup> Government of Ireland, *White Paper on Ending Direct Provision*, p43.

<sup>116</sup> The US State Department's 2020 TIP report noted a lack of specialised services in the centres for all victims, but especially for female victims who had been traumatized due to psychological, physical, or sexual violence. It also noted that victims who were in the asylum process remained in direct provision accommodation while a determination was being made in relation to their claim for international protection, which could continue for years. It noted that while the government, including a parliamentary committee, acknowledged the lack of adequate accommodation and planned to develop alternative government-funded accommodation, officials took no concrete steps during the reporting period. See US State Department Report (June 2020): [Trafficking in Persons Report 20<sup>th</sup> Edition](#) p. 271

<sup>117</sup> Sorcha Pollack (31 May 2021), '[Dedicated housing unit for trafficking victims to open in autumn](#)', *Irish Times*.

accommodation of victims of trafficking in Direct Provision, and, in keeping with the recommendations of GRETA and other observers, recommended:

“Appropriate accommodation, with additional supports and services, should be provided for those identified as victims of trafficking and gender based violence. In the interim, priority should be given to designating private, non-shared rooms to trafficked people and those who have been abused.”<sup>118</sup>

Measures to implement these recommendations have been outlined by a Government White Paper,<sup>119</sup> published in February 2021. IHREC is concerned, however, that the commitments in the White Paper do not address in sufficient detail the needs of victims of trafficking, who can be victims of crime committed against them within the State and, as such, experience different safety needs.

The White Paper also commits to the provision of

“Specific accommodation ... for both female and male victims of trafficking”.<sup>120</sup>

IHREC would stress the urgent need for such accommodation, and the importance of a gender-specific approach to its provision. IHREC further emphasises that the accommodation of victims of trafficking should not be viewed as a secondary problem within the White paper implementation process and recommends that the Programme Board overseeing the end of Direct Provision as set out in the White Paper, should include at least one with specific expertise on human trafficking .

**IHREC reiterates its long-standing recommendation that victims of trafficking be accommodated in gender-specific facilities with access to the necessary support**

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<sup>118</sup> Government of Ireland (2020), [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#). Chapter 4, recommendation 4.1.1. It was requested to: advise on the development of a long-term approach to the provision of supports including accommodation to persons in the international protection process; identify good practice in European countries in the provision of supports to persons within the international protection process, particularly dealing with variations in demand; set out a process for achieving the long-term approach to support persons in the international protection process.

<sup>119</sup> Government of Ireland, [White Paper on Ending Direct Provision](#). The Commission made a submission in advance of the publication of the White Paper, in which it placed an emphasis on the need for a new reception system to be guided by a trauma-informed approach, and by the underpinning assumption that all asylum seekers may have experienced trauma. See IHREC (2020), [White Paper Submission \(Direct Provision\)](#).

<sup>120</sup> Government of Ireland, [White Paper on Ending Direct Provision](#), p. 43.

**services, in keeping with the State's obligations of prevention and obligations to provide support services to victims under the Convention.**

**IHREC urges the swift establishment of the proposed pilot accommodation service for victims of trafficking, and its expansion/replication as necessary to meet the needs of victims of trafficking within the State.**

**IHREC recommends that provision of specific accommodation for victims of trafficking be underpinned by a gender-specific and trauma informed approach, in particular with respect to victims of sexual violence and exploitation.**

**IHREC recommends that the Programme Board overseeing the end of Direct Provision as set out in the White Paper, should include at least one with specific expertise on human trafficking.**

## Identification of and provision for child victims of trafficking

*GRETA: Improve the identification of child victims of trafficking and provide services adapted to the needs of child victims, including appropriate accommodation, education and vocational training*

As reported by a number of monitoring bodies, Ireland is both a destination and source country for child victims of sex trafficking and forced labour.<sup>121</sup> According to the Anti-Human Trafficking Unit in the Department of Justice and Equality, the authorities identified 20 child victims of trafficking from 2013-2017 (out of a total 283 victims). There were three reports of child trafficking in 2017, five in 2018, nine in 2019, and none in 2020.

In addition to its commitment to carry out a fundamental review of the formal identification process for victims of trafficking in its 2016 *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*, the Government committed to 'addressing the possibility' of establishing a specific identification mechanism for child victims of trafficking, informed by a review of the data collection systems in place.<sup>122</sup> IHREC has criticised the use of such prospective and exploratory language, regarding it as representing a weak commitment on the part of the State to implement GRETA's recommendation.<sup>123</sup> While the recent proposal for a new NRM, outlined in earlier sections, does not explicitly address establishing a specific identification mechanism for child victims of trafficking, it is to be noted that TUSLA, the Child and Family Agency, is listed as one of the prospective 'competent authorities' that would make up the new mechanism.

Since GRETA's second round evaluation of Ireland, there has been further scrutiny of the gaps in the identification and protection of child victims of trafficking.

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<sup>121</sup> ECPAT, *Country Overview: Ireland – A report on the scale, scope and context of the sexual exploitation of children* (November 2018) and US State Department, *2018 Trafficking in Persons Report* (June 2018) at p. 237. See also Europol (2018), *Criminal Networks involved in the Trafficking and Exploitation of Underage Victims in the EU*.

<sup>122</sup> Department of Justice and Equality, *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* (2016) at p. 72.

<sup>123</sup> Irish Human Rights and Equality Commission, *IHREC submission to GRETA in advance of its Second Evaluation Round of Ireland* (September 2016) at p. 18.

The OSCE has noted the lack of information and clarity around child trafficking in Ireland.<sup>124</sup>

IHREC, in its engagements with civil society has learned of a more general gap in knowledge and expertise amongst social workers in how to identify and appropriately respond to evidence of child trafficking encountered during the course of their work.<sup>125</sup>

Recent years in Ireland have seen the exacerbation of a housing and homelessness crisis, which has had a significant impact on families and children. The Government-appointed Special Rapporteur on Child Protection has highlighted the link between homelessness and child neglect, abuse, exploitation and trafficking.<sup>126</sup>

The UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material visited Ireland in May 2018, publishing a report on her visit in November 2019.<sup>127</sup> In her conclusions, the Rapporteur pointed to a:

“lack of a dedicated and integrated strategy to respond to sexual violence against children.”

She further noted gaps in data gathering, barriers within the criminal justice system and the:

“need for care and recovery services to be bolstered around the country so that the services available to child victims are timely and continuous.”<sup>128</sup>

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<sup>124</sup> OSCE (2020), *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey*.

<sup>125</sup> This is a gap that organisations such as MECPATHS are seeking to address through the provision of training in collaboration with Maynooth University and University College Cork, to educate undergraduate and post-graduate students in the fields of Social Work and Social Policy on Child Trafficking. See <https://mecpaths.com/our-work/>

<sup>126</sup> Geoffrey Shannon (2020), *Annual Report of the Special Rapporteur on Child Protection 2020. A Report Submitted to the Oireachtas*. The Commission has also raised concerns regarding the particular impact of the homelessness crisis on children, as well as the potential harm caused to children’s wellbeing by emergency accommodation measures. See IHREC (2017), *The provision of emergency accommodation to families experiencing homelessness*.

<sup>127</sup> UN Human Rights Council (15 November 2019), *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*. UN Doc: A/HRC/40/51/Add.2.

<sup>128</sup> UN Human Rights Council (15 November 2019), *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*. UN Doc: A/HRC/40/51/Add.2. Para. 75.

With regard to mapping the scope and scale of the sale and exploitation of children, the rapporteur made a number of recommendations, including to:

“develop a methodology for collecting uniform and reliable data on the scale and different forms of sexual abuse and exploitation of children, including data on the outcome of efforts to combat them.”<sup>129</sup>

With respect to recovery and reintegration, the Rapporteur recommended that expertise and resourcing in TUSLA be enhanced:

“so that it can effectively fulfil its role as the primary provider of child protection and child welfare services.”<sup>130</sup>

IHREC has had recent positive engagement with TUSLA with regard to its role in identifying and assisting suspected victims of child trafficking. IHREC is of the view that there is strong commitment in TUSLA to addressing child trafficking, but that the agency remains in the early stages of developing specific systems, manuals and expertise in this area. IHREC is of the view that TUSLA, like all other agencies with proposed roles in the new National Referral Mechanism, will require adequate staffing, funding and capacity building to ensure that they can contribute effectively to the new mechanism.

**IHREC recommends that any new or renewed National Action Plan to Prevent and Combat Human Trafficking include, as an aim, the urgent adoption of special guidelines for identification and referral of child victims of trafficking.**

**IHREC recommends that the new National Referral Mechanism explicitly address the special identification and referral needs of child victims of trafficking, including within the broader system of protection of separated and unaccompanied minors.**

**IHREC recommends the mandatory appointment of a legal advisor with respect to every child suspected of being a victim of trafficking.**

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<sup>129</sup> UN Human Rights Council (15 November 2019), [Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#). UN Doc: A/HRC/40/51/Add.2. Para. 78.

<sup>130</sup> UN Human Rights Council (15 November 2019), [Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#). UN Doc: A/HRC/40/51/Add.2. Para. 81.

**IHREC recommends that TUSLA is provided with adequate funding, staffing and expertise to ensure that it can fulfil its obligations to detect and prevent the trafficking of children, and to participate effectively in the new National Referral Mechanism.**

**IHREC recommends that the State work with the Central Statistics Office to develop a methodology for collecting uniform and reliable data on the scale and different forms of sexual abuse and exploitation of children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.**

## Prevention measures

IHREC notes and welcomes the State's funding of initiatives to prevent and raise awareness of human trafficking by a range of civil society organisations. Funding is being provided in the areas of specialist services, advice and support; awareness raising; and frontline training.<sup>131</sup>

IHREC welcomes the commitment to continued provision of this funding and support made by government ministers in recent months, particularly in the context of proposals for a new NRM, which will incorporate several State agencies as well as involving civil society organisations as trusted partners.<sup>132</sup> This will, according to recent statements, include funding for a range of supports, including:

“accommodation, medical care, care planning, legal advice and aid, immigration permission, police services, employment and vocational training, translation and interpretation services and voluntary return home”.<sup>133</sup>

It has also been indicated that the Department of Justice is working with the International Organisation for Migration on a cultural mediation project.

This project will, according to the Department:

“build the capacity of State professionals who work with or for migrants, to identify and address the needs of victims or potential victims of gender based violence and trafficking more effectively and to provide culturally sensitive support to them. It will also provide victims of gender based violence and trafficking better access to information and allow them to effectively engage with support and referral services. It will also promote a culturally sensitive approach to victims, through the use of cultural mediators.”<sup>134</sup>

Increased and sustained investment of this kind to ensure organisational preparedness for new functions within the NRM will, in the view of IHREC, be central to the mechanism's success. Of particular importance will be adequate investment in

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<sup>131</sup> Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#). Funding recipients include Ruhama, the Migrant Rights Centre Ireland, the International Organisation for Migration, Dublin Rape Crisis Centre, Doras Luimní, and MECPATHS.

<sup>132</sup> Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#).

<sup>133</sup> Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#).

<sup>134</sup> Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#).

organisational capacity through upskilling, as well as through recruitment of suitable personnel.

IHREC would also stress the need for capacity and organisational infrastructure for prevention and identification to maintain a nationwide focus, with appropriate investment made in regional capacity outside the Dublin metropolitan area, particularly in Cork and Limerick.

**IHREC recommends that a framework for sustained long-term support and investment in organisational capacity in prevention, service provision, awareness raising and victim identification – both for State and civil society bodies – be elaborated in conjunction with planning for a new National Referral Mechanism.**

**IHREC recommends that this framework should have an explicitly national focus, enjoying regional parity.**

**IHREC recommends that the awareness raising efforts aimed at residents of Direct Provision centres continue during the process of restructuring of the system.**

## Summary of recommendations

### Trafficking for sexual exploitation

**IHREC recommends that a gender-specific and exploitation-specific approach is taken to implementation of anti-trafficking measures, in order to ensure early identification and assistance. This is especially relevant to trafficking for sexual exploitation, which leads to the highest cost to the society and the individual involved.**

**IHREC recommends that the State consider what concrete action can be taken to more effectively prevent human trafficking, including through strengthening the regulation of online platforms and internet providers.**

### Trafficking for labour exploitation

**IHREC recommends that the State steps up its identification efforts in high-risk sectors for forced labour where trafficking for such exploitation can occur. It should also deploy resources to the Workplace Relations Commission and other relevant agencies for a targeted and proactive labour inspection programme in such sectors.**

### Trafficking for forced criminal activities

**IHREC recommends that the principle of non-punishment assume a central role in suspected cases of trafficking for the purposes of criminal activities, especially in the context of cannabis production which is of relevance to Ireland.**

### Trafficking of children

**IHREC recommends that the data on child victims of trafficking is disaggregated by type of exploitation in future State's annual reports.**

### Potential forms of exploitation

**IHREC recommends that the State ensures that the *Assisted Human Reproduction Bill* contains adequate safeguards against the risk of child trafficking and exploitation of women and girls, in line with the recommendations of the Special**

**Rapporteur on Child Protection and the UN Special Rapporteur on the Sale and Sexual Exploitation of Children.**

### **Cross-border criminal justice cooperation post-Brexit**

**IHREC recommends that, in the context of Brexit, the State, in particular via the work of the Department of Taoiseach, Department of Justice and Department of Foreign Affairs, ensures that cross-border justice arrangements comprehensively preserve judicial and police cooperation, data sharing arrangements, prosecutorial cooperation, and continued alignment on commitments to human rights contained in EU law, such as the *EU Charter of Fundamental Rights* and the *Victim's Rights Directive*.**

**IHREC recommends, in particular, that the State is proactive in ensuring that cross-border cooperation on combatting human trafficking is preserved, strengthened and adapted to any changes precipitated by the UK's departure from the European Union.**

### **Victim identification and residence permits**

**IHREC recommends the introduction of assistance and protection measures for victims of trafficking in primary legislation, which coupled with the upcoming legislation outlining a new national referral mechanism has the potential to provide a comprehensive framework for response to victims of trafficking.**

### **New legislation: The Criminal Law (Sexual Offences) Act 2017**

**IHREC recommends that in developing supports and exit strategies for those engaged in the sale of sex, including victims of trafficking, the State should have regard to the support and assistance provisions outlined in Chapter III, Article 12 and 17 of the Convention and guaranteeing gender equality.**

### **Principle of non-punishment and related measures**

**IHREC reiterates its recommendation that the non-punishment principle be placed on a statutory footing, and that detailed, updated guidance from the Director of**

**Public Prosecutions on how its discretion not to prosecute is exercised in cases of suspected trafficking in human beings.**

**IHREC acknowledges the innovative approach to decriminalisation of victims of trafficking for sexual exploitation, and recommends that it be applied more broadly, to benefit all victims of human trafficking involved in forced criminal activity, in keeping with the principle of non-punishment.**

## **Procurement**

**IHREC recommends that the Department of Public Expenditure and Reform's Office of Government Procurement update its National Public Procurement Policy Framework to clearly outline human rights due diligence requirements, including a requirement for demonstrable engagement by businesses with the new EU guidance on addressing the risks of human trafficking and forced labour in business operations and supply chains.**

## **Measures to discourage demand for trafficking in human beings**

**IHREC recommends that the State implement the relevant provisions of the *Criminal Law (Sexual Offences) Act 2017* to reduce the demand that fosters trafficking for sexual exploitation and ensure that the planned evaluation of their impact and efficacy is carried out on schedule.**

**IHREC recommends that the State accompanies the implementation of the relevant legal provisions of the *Criminal Law (Sexual offences) Act 2017* aimed at demand reduction with the necessary auxiliary measures, in particular exit strategies and awareness among the communities nationwide.**

**IHREC recommends that the State urgently progress legislation criminalising the use of services which are the object of labour exploitation, as well as legislation to provide for transparent assessment and reporting of the risk of labour exploitation in supply chains.**

## Restructuring of the Department of Justice

IHREC recommends that the State publish, at the earliest available opportunity, a clear outline of the Department of Justice's anti-human trafficking coordination structure and work programme, including setting out the planned activities of the High-Level Working Group and National Stakeholder Engagement Group, and the structure of multi-departmental/agency implementation of anti-trafficking actions in the State.

## Designation of IHREC as Independent National Rapporteur on Trafficking

IHREC recommends that, in order to assist it in its new role as National Rapporteur, it be given a statutory remit to request and receive appropriate information from relevant actors.

## Other policy developments relevant to the National Action Plan on THB

IHREC recommends that the State ensure that the Department of Justice, Department of Children, Equality, Disability, Integration and Youth and other responsible departments and agencies adopt a twin-track approach to the *National Action Plan to Prevent and Combat Human Trafficking in Ireland* which ensures that unaddressed urgent actions in the current plan are prioritised, while planning for an updated/ renewed plan is also accelerated.

IHREC recommends that the new National Action Plan identify and commit to the implementation of the recurring recommendations of GRETA, IHREC and other monitoring and oversight bodies, and incorporate clear timelines and progress indicators, in line with best practice for strategic action documents. This should, in particular, include commitment to placement of core provisions for identification, assistance, protection and support on a statutory basis.

IHREC recommends that the new National Action Plan aims at alignment with, and includes references to, other relevant strategic plans adopted in Ireland. This should include the upcoming new *Strategy on Domestic, Sexual and Gender Based Violence* and the new *National Action Plan against Racism*.

**IHREC recommends that the new *National Action Plan against Racism* directly incorporates key actions relevant to combatting human trafficking and that it works to directly compliment and reinforce wider action on human trafficking.**

**IHREC recommends that the new National Strategy on gender-based violence clearly recognises trafficking in human beings as a form of gender-based violence, in line with the EU position.**

### **Victim identification and referral**

**IHREC recommends that the establishment of a new National Referral Mechanism is progressed as a matter of utmost priority in 2021.**

**IHREC recommends that the identification procedure at the centre of the referral mechanism be made applicable to all suspected victims in the State, regardless of their nationality and immigration status. The procedure should ensure transparent decision making, and the provision of timely confirmation of victim status to the individual and their legal representative.**

**IHREC recommends that appropriate clarity, training (including in cultural competency), staffing and capacity building are provided to the agencies and departments tasked with responsibility under the new National Referral Mechanism.**

### **Statutory rights to assistance for victims and potential victims**

**While the detail of the current proposals for the creation of a new National Referral Mechanism remain to be clarified, IHREC is of the view that any such an initiative should take the opportunity to create a new statutory framework on assistance for victims that is expansive in its scope, and includes third-country nationals and citizens of the EEA.**

**IHREC recommends that such a framework for victim assistance should:**

- actively respond to the long standing recommendations of the GRETA committee and other oversight bodies;**

- include the placement of all aspects of victim support and assistance (in addition to identification) on a statutory footing, in line with the recommendations of the GRETA committee;
- include clear provision for assistance to all third country national victims of trafficking, including to those who are undocumented, through issuing, where necessary, temporary residence permits that take account of their personal circumstances and that are not contingent on cooperation with the authorities;
- secure a recovery and reflection period for all victims of trafficking, including, where necessary, through issuing of appropriate short-term residence permit where the victim is a third-country national with no other authorisation to be in the State; and
- ensure that the habitual residence condition does not impede the ability of victims of trafficking from the EEA to access assistance.

As outlined above, these actions should be clearly cross-referenced in other relevant policy processes, including the new *National Action Plan against Racism*, and the new *National Strategy on Domestic, Sexual and Gender-based Violence*

### Separation of the international protection and victim identification process

IHREC recommends that the proposed new National Referral Mechanism incorporate explicit provisions to ensure that international protection can be pursued at any moment in time – whether prior to, during, or after identification as a victim of trafficking – and that formally identified victims have access to the rights and assistance measures put in place for victims of human trafficking, regardless of any pending international protection claim.

### Safeguards against labour exploitation

IHREC recommends that the Workplace Relations Commission is adequately staffed to enable it to effectively conduct inspections, and to contribute effectively to the new National Referral Mechanism. Such staff should have the requisite sectoral

**expertise, language skills, and cultural competence to carry out their roles effectively.**

**IHREC recommends that inspections targeting high-risk sectors for human trafficking in Ireland are planned and carried out in a way that facilitates pro-active screening for instances of human trafficking, and the disclosure of exploitation by potential victims.**

**IHREC recommends that robust firewalls are put in place between immigration enforcement and the broader provision of public services, including labour inspections, policing and victim support.**

**IHREC recommends that the State reviews the lack of effective recourse to mechanisms for recovery of unpaid wages in cases of undocumented workers as this could potentially incentivise exploitative employment.**

### **Accommodation for Victims of Trafficking**

**IHREC reiterates its long-standing recommendation that victims of trafficking be accommodated in gender-specific facilities with access to the necessary support services, in keeping with the State's obligations of prevention and obligations to provide support services to victims under the Convention.**

**IHREC urges the swift establishment of the proposed pilot accommodation service for victims of trafficking, and its expansion/replication as necessary to meet the needs of victims of trafficking within the State.**

**IHREC recommends that provision of specific accommodation for victims of trafficking be underpinned by a gender-specific and trauma informed approach, in particular with respect to victims of sexual violence and exploitation.**

**IHREC recommends that the Programme Board overseeing the end of Direct Provision as set out in the White Paper, should include at least one with specific expertise on human trafficking.**

## Identification of and provision for child victims of trafficking

**IHREC recommends that any new or renewed National Action Plan to Prevent and Combat Human Trafficking include, as an aim, the urgent adoption of special guidelines for identification and referral of child victims of trafficking.**

**IHREC recommends that the new National Referral Mechanism explicitly address the special identification and referral needs of child victims of trafficking, including within the broader system of protection of separated and unaccompanied minors.**

**IHREC recommends the mandatory appointment of a legal advisor with respect to every child suspected of being a victim of trafficking.**

**IHREC recommends that TUSLA is provided with adequate funding, staffing and expertise to ensure that it can fulfil its obligations to detect and prevent the trafficking of children, and to participate effectively in the new National Referral Mechanism.**

**IHREC recommends that the State work with the Central Statistics Office to develop a methodology for collecting uniform and reliable data on the scale and different forms of sexual abuse and exploitation of children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.**

## Prevention measures

**IHREC recommends that a framework for sustained long-term support and investment in organisational capacity in prevention, service provision, awareness raising and victim identification – both for State and civil society bodies – be elaborated in conjunction with planning for a new National Referral Mechanism.**

**IHREC recommends that this framework should have an explicitly national focus, enjoying regional parity.**

**IHREC recommends that the awareness raising efforts aimed at residents of Direct Provision centres continue during the process of restructuring of the system.**

## ANNEX 1: Quality of the available data

The Commission observes that the available data is of insufficient quality. The data from the main sources, namely the Department of Justice annual reports on trafficking in human beings and the US State Department annual Trafficking in Persons reports does not tally. For instance, the Trafficking in Persons Reports published in 2020 (evaluating 2019), contains a combined total number of suspected victims of human trafficking in Ireland that differs from the combined total number contained in the latest Department of Justice annual report for 2019. The former refers to 471 victims of trafficking for the period 2013 to 2019, while the latter presents a tabulated data showing a total number of 389 victims for the same period. Overall, the annual data contained in the US Trafficking in Persons report has an indicative value. The Department of Justice last published an annual report in 2019.

The Department of Justice data has undergone a major reclassification in 2017 and the annual report published in that year contains a retrospectively amended (reclassified data), which the Commission uses for the purposes of the current document. This data excludes minor victims of crimes and prosecutions under Section 3(2) of the *Child Trafficking and Pornography Act 1998*. The Department of Justice provides the following justification for the reclassification:

“Generally, the offence has been committed against an Irish child, without the involvement of a 3rd party and without any commercial element. Furthermore, the offender is usually somebody known to the victim, and the offence has occurred without any significant movement or ‘Act’ as outlined above. As international evaluations have consistently queried the inclusion of child sexual exploitation statistics, not generally deeming them to amount to trafficking, we have decided to exclude these cases. This is intended to provide a more accurate picture of the extent of trafficking in Ireland, while making our data more comparable to that of other jurisdictions.”<sup>135</sup>

The divergence of data referred to above could be attributed to the reclassification event.

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<sup>135</sup> Department of Justice, 2019, Trafficking in Human Beings: Annual Statistical Report, p.5

A further obstacle to meaningful data is limited data disaggregation. For instance, it is unclear what type of exploitation were the suspected cases of child trafficking over the years covered in the annual reports. There is also scarce information on the sectors of exploitation within the trafficking for forced labour and the trafficking for sexual exploitation. Disability as a potentially relevant intersectional category is not considered in the data collection. The Department of Justice annual reports published over the years change in style and offer different disaggregation of data, hence the comparability of data between the years precludes a more thorough data analysis. For instance, the 2019 report does not show the type of exploitation disaggregated by regions of origin as previous such reports do.

All of the above complicates the analysis of data and it has to be acknowledged.

## ANNEX 2: Investigations and Prosecutions, TIP reports

Data on investigations, prosecutions and victim identification as presented in the US State Department Trafficking in Persons Reports 2020 and 2021.\*

Table 3: Investigations by An Garda Síochána

	2018	2019	2020
<b>Investigations by An Garda Síochána into human trafficking</b>	64	39	22
<b>Of which Labour trafficking</b>		1	7
<b>Of which sex trafficking</b>		36	15
<b>Of which forced criminality</b>		2	-

Table 4: Prosecutions initiated

	2018	2019	2020
<b>Trafficking prosecutions initiated</b>	0	5	3
<b>Of which Labour trafficking</b>	-	3	-
<b>Of which sex trafficking</b>	-	2	3
<b>Of which forced criminality</b>	-	-	-

Table 5: Running total of victims identified according to US TIP

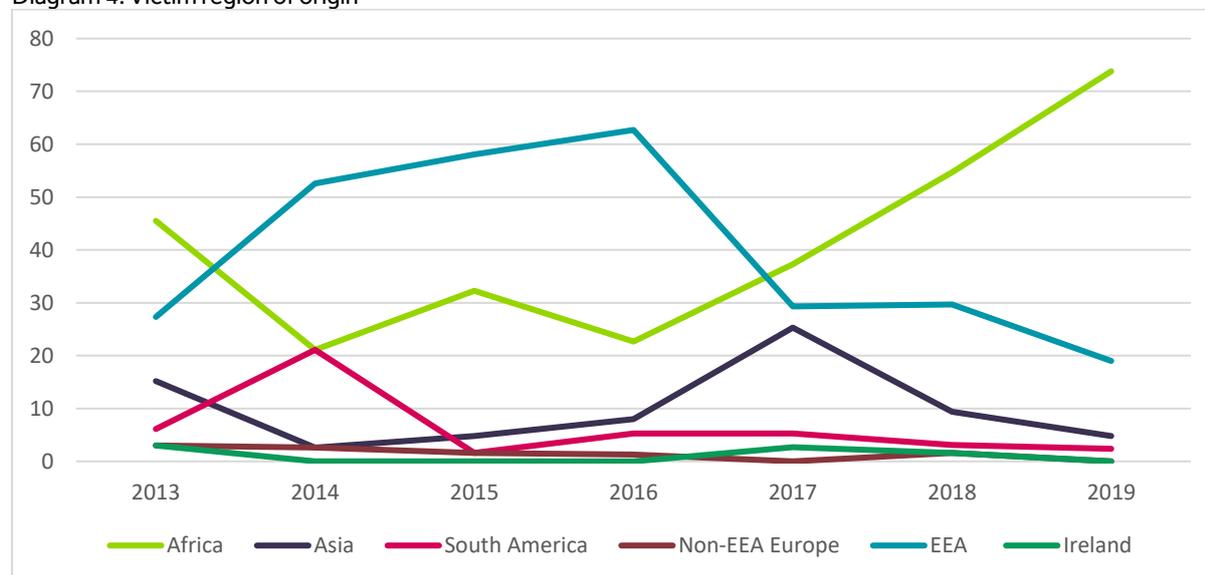
Year span	Number of victims identified in period
<b>2013-2019</b>	471
<b>2013-2020</b>	508

\* Sources: US State Department (June 2020): [Trafficking in Persons Report 20<sup>th</sup> Edition](#); p. 270; US State Department (June 2021), Trafficking in Persons Report. P. 302

## ANNEX 3: Victims Regions of Origin

The Annex presents the available data regarding the regions of origin of victims in a diagram and in a tabulated form, where some field are blank due to lack of data.

Diagram 4: Victim region of origin\*



\* Percentile representation of victims regions of origin by year.

Table 6: Victims by Region and Form of Exploitation\*

Year	Region of Origin	Sexual	Labour	Other	Total	%
2013	Africa	10	4	1	15	45.5
	EEA	6	1	2	9	27.3
	Asia	-	2	3	5	15.2
	South America	2	-	-	2	6.1
	Non-EEA Europe	-	-	1	1	3
	Ireland	-	1	-	1	3
	<b>Total</b>	<b>18</b>	<b>8</b>	<b>7</b>	<b>33</b>	<b>100</b>
2014	EEA	11	5	4	20	52.6
	Africa	5	2	1	8	21.1
	South America	8	-	-	8	21.1
	Asia	-	-	1	1	2.6
	Non-EEA Europe	-	-	1	1	2.6
	<b>Total</b>	<b>24</b>	<b>7</b>	<b>7</b>	<b>38</b>	<b>100</b>
2015	EEA	16	14	6	36	58.1

	Africa	14	5	1	20	32.3
	Asia	-	3	-	3	4.8
	South America	1	-	-	1	1.6
	Non-EEA Europe	1	-	-	1	1.6
	Other	-	1	-	1	1.6
	<b>Total</b>	<b>32</b>	<b>23</b>	<b>7</b>	<b>62</b>	<b>100</b>
2016	EEA	11	31	5	47	62.7
	Africa	13	4	-	17	22.7
	Asia	3	3	-	6	8
	South America	4	-	-	4	5.3
	Non-EEA Europe	1	-	-	1	1.3
	<b>Total</b>	<b>32</b>	<b>38</b>	<b>5</b>	<b>75</b>	<b>100</b>
2017	Africa	16	12	-	28	37.3
	EEA	5	8	9	22	29.3
	Asia	5	14	-	19	25.3
	South America	4	-	-	4	5.3
	Ireland	1	1	-	2	2.7
	<b>Total</b>	<b>31</b>	<b>35</b>	<b>9</b>	<b>75</b>	<b>100</b>
2018	Africa	18	16	1	35	54.7
	EEA	4	14	1	19	29.7
	South America	2	-	-	2	3.1
	Asia	2	4	-	6	9.4
	Non-EEA Europe	-	1	-	1	1.6
	Ireland	1	-	-	1	1.6
	<b>Total</b>	<b>27</b>	<b>35</b>	<b>2</b>	<b>64</b>	<b>100</b>
2019	Africa	-	-	-	31	73.8
	EEA	-	-	-	8	19
	South America	-	-	-	1	2.4
	Asia	-	-	-	2	4.8
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>42</b>	<b>100</b>

\*Where available in absolute numbers

Sources used for the tabulated data:

- 2013 – 2017 data: Department of Justice and Equality, Trafficking in Human Beings in Ireland Annual Report 2017 (August 2018), p.9;
- 2018 data: Department of Justice and Equality, Trafficking in Human Beings in Ireland Annual Report 2018 (August 2019), p.10;
- 2019 data: Department of Justice and Equality, Trafficking in Human Beings in Ireland Annual Report 2019 (May 2020), p.10

Regarding the regions of origin in 2020, the US State Department, Trafficking in Persons Report (June 2021), p.305 states:

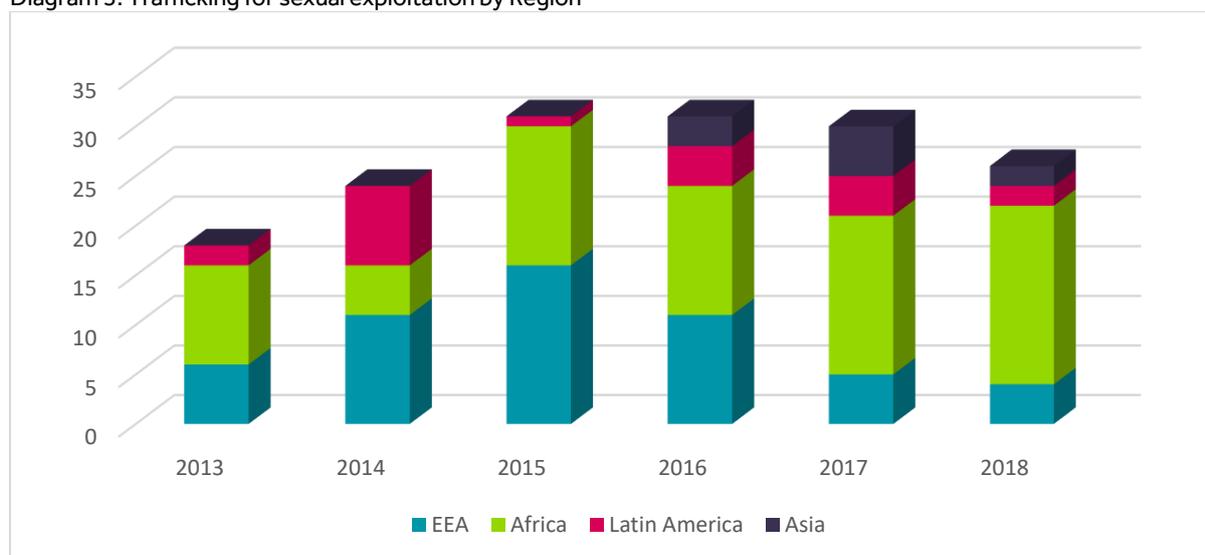
“As reported over the past five years, human traffickers exploit domestic and foreign victims in Ireland, and traffickers exploit victims from Ireland abroad. Traffickers subject Irish children to sex trafficking within the country’. [...] ‘Foreign trafficking victims identified in Ireland are from Africa, Asia, Eastern Europe, and South America. In recent years, authorities and media have reported an increase in suspected victims from Brazil, Indonesia, Nigeria, Pakistan, and Romania.”

## ANNEX 4: Types of exploitation by regions of origin<sup>136</sup>

The diagrams below are based on combined data from the Department of Justice annual statistical report of 2017 and 2018. The diagrams present the regions of origin for victims trafficked for sexual exploitation and for forced labour in Diagram 5 and Diagram 6 respectively. No such information is available since 2018.

The data in Diagram 5 indicates that the proportion of victims of trafficking for sexual exploitation from the African continent is on the rise.

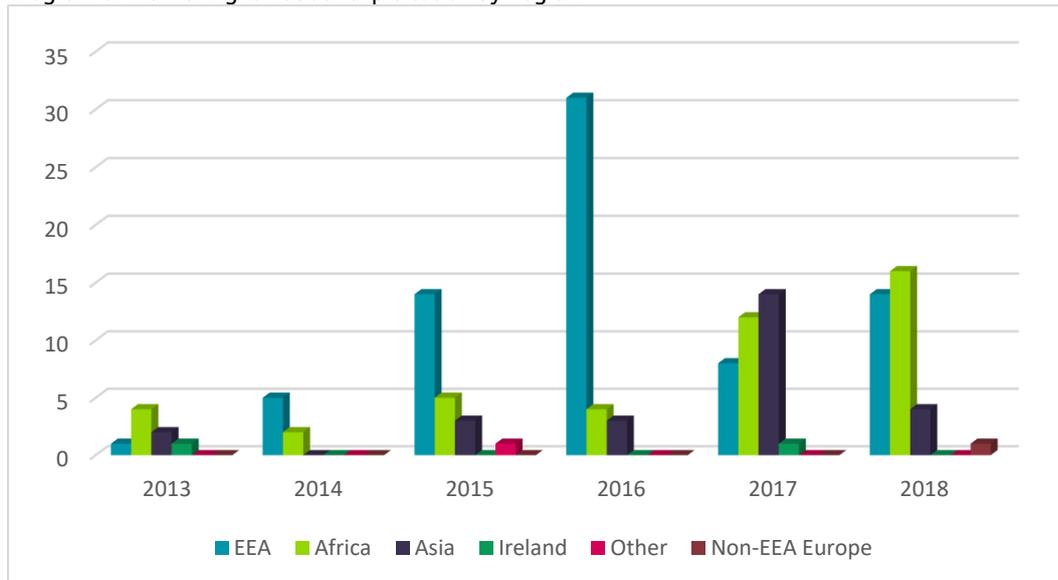
Diagram 5: Trafficking for sexual exploitation by Region



The data in Diagram 6 indicates the existence of marked surges in victims of trafficking for labour exploitation from the EEA in certain years. The trend, however, may indicate that the proportion of victims of trafficking from the African continent is rising. Unlike with trafficking for sexual exploitation, the Asian continent is clearly presented as a region of origin for victims of trafficking for labour exploitation.

<sup>136</sup> The diagrams in this annex are based on absolute numbers. There have been 4 Irish citizens identified as victims over the years: 1 for trafficking for sexual exploitation in 2017 and 3 for trafficking for labour exploitation in 2013, 2017 and 2018 respectively.

Diagram 6: Trafficking for labour exploitation by Region







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