



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

# Trafficking in Human Beings in Ireland

Second Evaluation of the Implementation  
of the EU Anti-Trafficking Directive



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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.

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## Foreword

The Commission, as independent Rapporteur on trafficking, is delighted to present the second Evaluation Report on the progress made and actions undertaken by the State to address and combat human trafficking, in all its forms.

The Commission's task as Rapporteur is to provide effective, independent and meaningful oversight of the State's actions to combat human trafficking and to protect victims. We do this by highlighting the strengths, gaps, and identifying trends in the overall response. The Commission's values are underpinned by a holistic, equality, human rights, victim-oriented, gender-specific and child-centred approach to human trafficking.

This report builds on the detailed analysis of the first national evaluation report through assessment of actions and outcomes undertaken during the reporting period (2022) with reference to each of the Directive articles. In addition to this analysis, this year's report goes further by examining the pressing and emerging trends in trafficking. Namely, how technology is facilitating trafficking, the increase in labour exploitation, and the impact of the war in Ukraine on increasing the risk of trafficking.

The Commission has been fulfilling the task of a National Rapporteur, since 2020 when it was designated this role. In addition to gathering data and measuring results, the Commission endeavours to contribute to the positive developments in the area aimed at achieving full compliance with modern human rights standards, as well as proactively responding to emerging and unforeseen issues. For this reason, we have supplemented the overview of the implementation of the Directive provisions with important thematic analysis.

With our targeted research and analysis in areas affecting human trafficking, the Commission aims to expand the knowledge base and to provide an informed response to the crime of human trafficking and its victims in Ireland. The Commission remains focused on the proactive prevention of trafficking. Which, in light of the increased use of the technology, must necessarily involve corporate partners alongside State structures and the wider public. The Commission hopes that this report will provide an impetus for debate and swift action to target the online technologies used in this heinous crime.

In parallel to this evaluation report, the European Union began its consultations on amending the EU Anti-trafficking Directive. Among the important issues raised was the need to include novel forms of exploitation (such as forced marriages, illegal adoption and related phenomena) in the definition of trafficking, the need for strengthened penalties for private users of services from trafficked victims as well as mandatory penalties against legal entities implicated in human trafficking. Owing to the importance of such proposed reforms we have included these in the relevant sections of our report.

The Commission's evaluation work captured in this report also coincided with a number of significant developments in Ireland. The drafting of a new anti-trafficking National Action Plan, the launch of the Third Domestic, Sexual and Gender-Based Violence Strategy - which recognises human trafficking as a form of gender-based violence - and, of course, the long-awaited publication of the General Scheme Criminal Justice (Sexual Offences and Trafficking) Bill establishing a new National Referral Mechanism (NRM). The Commission welcomes these undertakings of the State, and believes their combined action will greatly improve the State's overall anti-trafficking response.

The new NRM is an essential part of the anti-trafficking framework. Providing for a victim-centred identification pathway with clear assistance and supports to victims in statute is significant. In this regard, the Commission will continue to advocate for the equal treatment of victims, regardless of their nationality, immigration circumstances or international protection claims. The Commission calls for an end to the unhelpful and erroneous conflation between two distinct legal frameworks - International Protection and Human Trafficking.

This Evaluation Report would not have been possible without the unreserved support, commitment and open collaboration of survivor activists, support organisations, policy makers, researchers, and essential cooperation from State agencies. We, as a Commission, extend our sincere gratitude to all those who have worked with us to bring you this report. We would like to thank specifically: the Health Service Executive, the Workplace Relation Commission, the International Protection Accommodation Services (DCEDIY), and International Protection Office, the Child and Family Agency Tusla and the Legal Aid Board. Our gratitude goes also to the excellent independent organisations working in the field: Akidwa, Doras in Limerick, DRCC, Immigrant Council of Ireland, the International Transport Federation, MECPATHS, the Migrant Rights Centre of Ireland, Ruhama and Sexual Violence Centre in Cork. We would like to acknowledge the input of the International Organisation for Migration, and special thanks go to Ruhama and the International Transport Workers Federation (ITF) their valuable assistance to the Commission in consulting survivors.

The extraordinary resilience shown by survivors reaffirms the need to employ a trauma- and survivor-informed approach, and to involve survivors' voices in consultations on policy formation. Survivors' engagement continues to be a policy priority and central tenet of the Commission's work.

We hope this report acts as a catalyst for change and we look forward to bringing about that change. We must prevent trafficking. We must prosecute the perpetrators. We must protect and support victim/survivors. We can, and we must work together to combat the pervasive harm and violence of human trafficking.



**Sinéad Gibney**  
Chief Commissioner

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## Executive Summary



*“Trafficking in human beings is a gross human rights violation and a crime generating high returns that fuel organised criminal activities. Trafficking is highly gendered and highly racialised, and affects migrant women and girls disproportionately. Trafficking often targets people living in poverty, or those fleeing situations of armed conflict or persecution.”<sup>1</sup>*

Sinéad Gibney, Chief Commissioner

The 2023 Annual Evaluation Report of the National Rapporteur on Trafficking in Human Beings focuses on the period of January - December 2022, and is the second national report since the Commission was appointed in this role. In line with our role as the independent National Rapporteur, this report centres on the implementation of the European Union (EU) Anti-Trafficking Directive. Article 19 of the Directive obliges EU Member States to establish national rapporteurs (or equivalent mechanisms) to assess trends, measure results of anti-trafficking actions, gather statistics and report. The Directive itself provides a comprehensive legal framework covering all aspects of trafficking – criminalisation of the offences, prevention, as well as protection in the criminal justice process, assistance and support. It offers an advanced system of protection of victims that remains unmatched by other international legal instruments.

Following the approach from the First Evaluation Report, this document includes a detailed evaluation of the State’s implementation efforts, alongside updated recommendations and important priority areas for the States’ consideration. We provide an overview of human trafficking trends, supplemented by a collation of the available statistics to date. We also lay out thematic chapters dedicated to the use of technology for trafficking in sexual exploitation, the trends in trafficking for labour exploitation and the implications of the war in Ukraine.

By producing annual evaluation reports, we intend to provide a credible baseline for external evaluations. We expect that these reports would underpin effective monitoring and policy developments. The main purpose of this report is to provide a

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1 Chief Commissioner of the Irish Human Rights and Equality Commission, Sinéad Gibney, 2022



resource for national policy makers, practitioners and researchers, and to inform the general public about the human trafficking situation in Ireland.

## Trends

Multiannual data from the National Referral Mechanism for identification of victims of trafficking shows that trafficking for sexual exploitation (55%) is the most common form of exploitation that we encounter followed by trafficking for labour exploitation (38%) and to a lesser extent by trafficking for criminal activities (6%).

### — Victims of Human Trafficking 2013-2022

Trafficking for Sexual Exploitation (55%)



Trafficking for Labour Exploitation (38%)



Trafficking for Criminal Activities (6%)



Other types of Trafficking (1%)



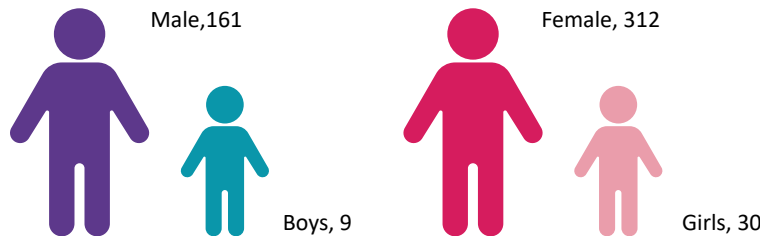
In 2022, trafficking for criminal activities ceased its declining trend and re-emerged with two new cases, both cases pertaining to exploitation in grow houses. In 2022, for the first time a suspected trafficking for organ removal was recorded, which mirrors the trends in the European Union where novel forms of exploitation are picking up.

Human trafficking in Ireland is highly gendered, which is a lasting trend in Ireland as well as in the EU. Overall, more women (67%) fall victims of human trafficking than men (33%). Over the years, there has been only one case of a transgender victim recorded. The gender dimension is particularly evident in trafficking for sexual exploitation, where over 96% of the victims are women. Trafficking for Labour Exploitation is also gendered but to a lesser extent and affects more men (60%).

Africa represents the prevalent source region for victims of trafficking in Ireland. Asia and countries from the European Economic Area are also notable regions of origin of victims. A few cases of trafficking of Irish nationals have also been identified.

### — Victims of Trafficking by Gender and age, 2013—2022

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Children represent 8% of all victims in Ireland. This is significantly less than the EU average (23%). Similar to gendered demographics in adults, data shows that more girls are trafficked than boys at 9% and 5% respectively. No child victims were identified in 2020 and 2021. In 2022, five child victims were identified as suspected victims of trafficking. The majority of these were trafficked for sexual exploitation.

### National Anti-Trafficking Response: Progress and Gaps

Following the examination and monitoring of the State's compliance with each of the EU Directive Articles in the First Evaluation Report, in Chapter 1, we adopt a systematic approach to build upon the First Report, providing updates and a detailed analysis of each Article. We note that significant efforts by the State are evident and progress has been made in important areas, namely:

- ▶ the publication of the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill (National Referral Mechanism), which has been highlighted in the EU Anti-Trafficking 4th Progress Report as a 'good practice' example for its proposal to formally include Civil Society Organisations;
- ▶ the (expected) publication of the Third National Action Plan to Combat Trafficking; and
- ▶ judicial guidance on sentencing in trafficking cases.

Other welcome developments with direct relevance to human trafficking include, but are not limited to the:

- ▶ Review of the Civil Legal Aid Scheme;
- ▶ Review of the Compensation for Victims of Crime;
- ▶ removal from the Trafficking in Persons Tier II Watch list; and
- ▶ inclusion of “trafficking” within the Third National Domestic, Sexual and Gender-Based Violence Strategy.

The increased levels of State funding to NGO’s providing assistance to victims from 2021 is also welcome, but with significant increases in the ‘cost of living’ this is still an area to be watched.

However, the need for further improvements remains. Chief among these is the failure to provide safe and appropriate accommodation for victims. This chronic weakness of the State’s response is predicated on the erroneous conflation of two distinct frameworks – International Protection and Human Trafficking. The current National Referral Mechanism (‘NRM’) breeds inconsistencies in the assistance and support victims receive based on, amongst other things, their immigration status. The training of frontline staff levels and the trauma-informed approaches to assistance remains problematic. It remains the case that there is no child-specific identification and assistance system, child trafficking is still absent from national child protection policies, and there is still no *age* estimation assessments procedure, all of which falls far below what is required. There is also no formal engagement forum for survivor input.

A number of legislative gaps also remain; including:

- ▶ the continued confusion around the classification of child sexual exploitation;
- ▶ no statutory protection from prosecution of victims; and
- ▶ the continued exclusion of sexual exploitation victims from the criminal justice protections measures for victims of sexual violence.

Despite increased operations and investigations, there were no successful trafficking convictions in 2022. The lack of access to adequate legal assistance also continued to be a serious issue with no victims receiving any form of compensation.

## Lifting the Lid on Tech-Facilitated Sex Trafficking

In this Chapter, we examine the significant roles technology plays in the crime of trafficking in persons, both challenges and opportunities created by such advancements. Traffickers use technology and the internet to recruit victims, advertise services, communicate with clients, and coordinate their operations. The need to keep pace with a constantly changing landscape of online platforms and technologies presents a significant challenge to law enforcement agencies, governments, and NGOs in their efforts to detect and investigate human trafficking activity. We examine how not only traffickers, but multiple actors are implicated in this criminal distribution chain, including recruiters, pimps, prostitution agencies, and websites advertising the ‘products’ to the consumers, who are profiting from the sexual exploitation of others. It also explores how the revolution in technology has enabled these profiteers to expand their business and maximise their profits, with fewer risks incurred in the virtual environment than in the offline market, which allows them to operate, for the most part, with impunity. Specific to Ireland, we examine how technology has facilitated the expansion of the indoor commercial sex trade, including via sex trafficking, and has created the opportunity for a variety of profiteers to co-operate in the chain of distribution. We show that commercial sex trade websites, also known as sexual exploitation advertising websites (‘SEAs’)<sup>2</sup> are deeply implicated in promoting the demand that fuels trafficking for sexual exploitation. Despite these challenges, the use of technology also provides opportunities to support the investigation and ultimately the successful prosecution of sex trafficking cases. We include case-study examples demonstrating the role technology plays in the online Irish sex trade. We conclude the chapter by outlining the States’ obligations under the various human rights and trafficking instruments that underpin the responsibility of the Irish State to address prostitution advertising websites, and outlines a number of recommendations to further meet these obligations.

Key findings include the need for:

- ▶ increased specialist knowledge and increased resourcing of the Garda National Protective Services Bureau to ensure that they can continue to tackle organised crime in the sex trade;
- ▶ greater monitoring of websites and platforms to identify indicators of vulnerability, control, organising and trafficking;
- ▶ targeted law enforcement measures to disrupt the business model and profits of exploiters;
- ▶ comprehensive research on the online dimension of human trafficking for sexual exploitation in Ireland;

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<sup>2</sup> Cross-Party Group on Commercial Sexual Exploitation (2021) [Online Pimping – An Inquiry into Sexual Exploitation Advertising Websites](#)

- ▶ guidance on how the current legislation is applicable to the online dimension of human trafficking for sexual exploitation;
- ▶ the establishment of a Forum to examine ways to disrupt demand and combat technology-facilitated trafficking;
- ▶ accession to the Budapest Convention on Cybercrime; and
- ▶ an examination of ways to use our unique position as EU host of headquarters of the biggest social media companies to enforce minimum standards to protect its users against exploitation.

### **The Need to Know and Do more about Labour Exploitation**

In this chapter, we provide a better understanding of trafficking for the purposes of labour exploitation in Ireland by exploring several pertinent aspects of this phenomenon. We examine the prevalence, current processes of investigation, prosecution, and redress for victims of trafficking for labour exploitation in Ireland. We then analyse the interplay between the terms ‘forced labour’, ‘slavery’, ‘servitude’ and ‘trafficking for labour exploitation’ in the Irish judicial and administrative systems. We consider the lack of slavery, servitude and forced labour offences and the pressure this omission places on the human trafficking assistance and identification system as the sole avenue for support of individuals exploited through labour. For the purposes of this analysis, we have reviewed academic publications, court case reports, official publications and grey literature. We also provide case study analysis of high-risk environments for labour exploitation (nail/hair and beauty salons, agriculture, hospitality industry, fishing industry, domestic work and others), including the misuse of technology. Our case-study analysis includes labour inspections undertaken by the Workplace Relations Commission (‘WRC’) and An Garda Síochána (‘AGS’), highlighting the potential barriers to detection of potential victims of human trafficking of labour exploitation. We conclude by outlining a number of recommendations for effective legislative, administrative and other reforms to better combat trafficking for the purposes of labour exploitation, slavery, servitude and forced labour in Ireland. Key findings include the continued need for a standalone offence of holding a person in slavery, servitude or forced or compulsory labour. We highlight the need to develop a national ‘Anti-Trafficking Technology Strategy/Forum’ and a research strategy to help fill knowledge gaps related to human trafficking, including the experience of victims of trafficking, in the Irish context. Reinforcing the recommendations in Chapter 1, we call for opting in to the EU Employers Sanctions Directive, and for abandoning the plans for a domestic version of a seasonal permit. We argue that the State should follow international good practice and introduce a “migrant exploitation protection visa” to enable migrant victims to leave exploitative situations without delay.

## The War in Ukraine – Implications for Trafficking and Exploitation

In this chapter, we explore the risk and measures against trafficking and exploitation in the context of the war.

This includes the:

- ▶ implications of the war for children’s peace and security;
- ▶ EU response to the war, in particular the Common EU Anti-Trafficking Plan;
- ▶ national measures taken, including the quick activation of the Temporary Protection Directive;
- ▶ information spreading and reception strategies, also involving voluntarism on a significant scale;
- ▶ impressively quick consolidation and the active role played by civil society; and
- ▶ challenges that have been faced and suspected cases of trafficking of Ukrainian war refugees detected in Ireland.

The invasion of Ukraine by the Russian Federation on February 24th 2022 created a significant and ongoing humanitarian crisis. According to analysis by the UNODC,<sup>3</sup> the vulnerabilities of those exposed to human trafficking emanate from lack of income generation opportunities, interruption in provision of essential services, issues with rule of law, internal displacement and risk of exploitation in armed conflict. At European level, an estimated 90% of Ukrainians displaced are women and children.<sup>4</sup> Thus, the demographics of those who have sought refuge abroad, coupled with the sudden and traumatic nature of the invasion, creates a situation of high needs, high vulnerability and potential risks of exploitation and abuse for those who have fled. We conclude by detailing a number of practical actions to protect and respond to these risks.

These include the need for:

- ▶ a persistent nationwide targeted anti-trafficking campaign raising awareness of the specific risks for those fleeing Ukraine;

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3 United Nations Office on Drugs and Crime (UNODC) (2022) [Conflict in Ukraine: Key Findings on Risks of Trafficking in Persons and Smuggling of Migrants](#)

4 Ibid

- ▶ increased resources to Civil Society Organisations who provide support to Ukrainian war refugees;
- ▶ direct resources toward community-based services such as Family Resource Centres and local women groups;
- ▶ overall increase of long-term, stable and safe accommodation;
- ▶ psychological assistance; and
- ▶ development of a long term integration strategy.

In line with our statements in chapter 2, in this chapter, we echo the call for greater monitoring of the pornography, sex and ‘escort’ websites, where Ukrainian women have traditionally been objectified.

## Appendices

We conclude the report by providing comprehensive appendices detailing our specific recommendations concerning victims of human trafficking from our submissions to the:

- ▶ General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 (Appendix 1);
- ▶ Law Reform Commission on their project review *Compensating Victims of Crime*, as part of the Fifth Programme of Law Reform (Appendix 2); and
- ▶ Independent Review of Civil Legal Aid Scheme (Appendix 3).

Appendix 4 is comprised of four factsheets showing data and trends in human trafficking between 2013 and 2022.

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# Recommendations

## Recommendations: Introduction and Policy Context

### **Sustainable Development Goals Implementation (SDG)**

The Commission recommends that all recommendations detailed in this report be viewed as working towards the fulfilment of achieving SDG 5 and 8 and should be incorporated into the overall SDG framework.

## Recommendations Chapter 1: Implementation of the Anti-Trafficking Directive

### **National Coordination of the Anti-Trafficking Response**

The Commission recommends that the Department of Justice resumes its national consultation forums.

The Commission recommends that the State establishes a statutory National Referral Mechanism for the identification and assistance of victims of human trafficking without delay.

The Commission recommends that the Criminal Justice (Sexual Offences and Trafficking) Bill, once published, fully incorporates the recommendations of the Joint Committees Pre-Legislative Scrutiny Report and those made in the Commission's submission.

### **Gender Perspective (Article 1)**

The Commission reiterates its recommendation that the new National Action Plan on Trafficking in Human Beings, incorpo-



rates concrete actions to strengthen the gender-specific approach to services, in particular regarding the urgent need for safe, gender-specific accommodation.

The Commission reiterates its recommendation that the State provides sufficient funding to Gender-Based Violence organisations that enables them to participate in the delivery of trafficking-specific services to victims who have experienced domestic, sexual or gender-based violence, and particularly for victims of sexual exploitation.

### **Criminalisation of Human Trafficking (Article 2-10)**

The Commission recommends that the interplay between the offences contained in the Criminal Justice (Engagement of Children in Criminal Activity) 2023 Bill and the trafficking offences outlined in the 2008 Trafficking Act are recognised as forming part of a continuum of the exploitation of children for criminal gain and not as distinct and separate offences. Irrespective, the children must receive protection, assistance and non-punishment for the offences they were forced to commit.

The Commission recommends that the State continues to vigorously investigate and prosecute trafficking cases and that the judiciary takes note of the sentencing clarity provided by the Court of Appeal.

The Commission reiterates its recommendation that the State must increase its efforts to punish legal entities implicated in human trafficking by criminal and non-criminal sanctions.

The Commission recommends that at a minimum, statute should be introduced to include the full range of Directive sanctions:

- a. exclusion from entitlement to public benefits or aid;
- b. temporary or permanent disqualification from the practice of commercial activities;
- c. placing under judicial supervision;
- d. judicial winding-up;
- e. temporary or permanent closure of establishments which have been used for committing the offence must be included

The Commission calls on the State to re-examine the possibility of establishing a dedicated compensation fund for victims of trafficking, including a contribution from any proceeds confiscated in the course of criminal proceedings against perpetrators of human trafficking.

The Commission recommends that An Garda Síochána commit to a process whereby every member of An Garda Síochána involved in any aspect of an investigation relating to sexual exploitation is trained to a high and accredited standard, and that a sufficiently senior and trained Garda supervises and oversees all such operations.

The Commission recommends that specialist support workers accompany Gardaí on all organised prostitution raids to ensure a victim-centred approach.

The Commission reiterates its recommendation that to adhere fully to the non-punishment principle, the Criminal Justice (Sexual Offences and Trafficking) Bill should amend the Criminal Law (Human Trafficking) Act 2008 to include a specific statutory defence for victims of trafficking where they have committed crimes “as a direct consequence of them being trafficked.”

The Commission reiterates its recommendation that the State extends the expungement of criminal convictions to all victims of human trafficking where such crimes were committed as a direct consequence of them having had been trafficked.

The Commission recommends that victims and their experiences are at the centre of the Review of the Criminal Justice approach to trafficking.

The Commission supports the recommendation from the US State Department Trafficking in Persons Report that a family liaison officer is assigned to every trafficking victim cooperating with law enforcement to advocate for the victim and help prosecutors.

The Commission recommends that there is sufficient oversight by GNPSU or GNPSB members of *all* trafficking cases, given the potential negative impact that a lack of training may have on a trafficking investigation.

#### **Assistance and Support of Victims of Trafficking (Article 11)**

The Commission reiterates its recommendation that the HSE Anti-Human Trafficking Team plays a clear role in the National Referral Mechanism, due to its victim-centred approach, with increased importance and responsibilities given to the identification and assistance of victims of human trafficking.

The Commission recommends that the HSE Anti-Human Trafficking Team is appropriately staffed and that its expertise across all forms of human trafficking is maintained and expanded, where necessary.

The Commission recommends that as part of its role in the National Referral Mechanism, the HSE Anti-Human Trafficking Team is entrusted with maintaining clear disaggregated data.

The Commission reiterates its recommendation that a ‘road-map’<sup>5</sup> is established to track the support and integration needs of each victim and how these are met both by the State and NGOs services.

#### — Conditions of Assistance

The Commission reiterates its recommendation that the State ensures that all victims have access to the rights and assistance measures put in place for victims of human trafficking, regardless of their nationality/citizenship, or a pending International Protection claim.

The Commission reiterates its recommendation that the proposed new National Referral Mechanism incorporates explicit provisions to ensure that International Protection can be pursued at any moment in time – prior to, during, or after identification as a victim of trafficking.

The Commission reiterates its recommendation that the new National Referral Mechanism is urgently introduced in law and implemented, with a view to quickly relieving An Garda Síochána of the duty to act as a central reference point for early provision of assistance and support to victims.

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5 Similar to that of a Department of Justice’s ‘Supporting Victims Journey’, which tracked the support need of victims of sexual crimes. See Department of Justice and Equality (2021) [Supporting a Victim’s Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases](#)

The Commission reiterates its recommendation that the State ensures that all specialist support services, both statutory or non-governmental, are in a position to provide recommendations to the Irish Immigration Service relating to the extension (or continuation) of trafficking-specific supports, and that these recommendations be taken into consideration for the renewal of Temporary Resident Permits, where necessary.

The Commission recommends that the Department of Social Protection explicitly exempt all victims of human trafficking from the Habitual Residence condition to access statutory assistance.

The Commission recommends that Part 3 of the law providing for the National Referral Mechanism explicitly states that access to assistance and support, and the necessary immigration status for third country national victims that underpins it, are not conditional on cooperation with criminal investigations and proceedings.

The Commission recommends that Part 3 of the law providing for the National Referral Mechanism clearly sets out assistance and support for suspected victims of trafficking providing equity of care for all victims.

#### — Mechanism for Early Identification

The Commission reiterates its recommendation that the establishment of a new National Referral Mechanism is progressed as a matter of utmost priority for the State.

The Commission reiterates its recommendation that the identification procedure (that is the centre of the referral mechanism) is made applicable to all suspected victims of trafficking in

the State and that it involves transparent decision making with timely confirmation of victim status to the individual and their legal representative. Such a procedure must include an appeals process.

The Commission reiterates its recommendation that the new National Action Plan should include the development of a trafficking-specific screening tool that can be adapted and used by all relevant State agencies and frontline services.

The Commission reiterates its recommendation that the new National Action Plan should include a strategy for mandatory trafficking-specific training (including in cultural competency) to be systematically rolled out to all competent authorities and trusted partners likely to come into contact with victims of trafficking.

#### — Screening for Victims of Trafficking for Labour Exploitation

The Commission recommends that the State continues to resource the Workplace Relations Commission to enable it to reach the target levels <sup>6</sup> and to the extent necessary to allow it to fulfil its new role as a Competent Authority in the new National Referral Mechanism.

The Commission recommends that the Workplace Relations Commission continues to ensure all inspectors are trained on trafficking in human beings and identification of victims, to the level necessary to allow them to carry out their functions as a Competent Authority.

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6 For example in the [‘Towards 2016. Ten-Year Framework Social Partnership Agreement 2000-2016’](#), a total number of 90 labour inspectors were agreed, which probably requires an upwards revision corresponding to the improved economic climate and higher employment levels in 2020s in Ireland.

The Commission recommends that the Workplace Relations Commission uses special care and adopts innovations in maintaining firewalls between immigration enforcement and labour inspections, to ensure that potential victims of trafficking are empowered to report exploitation, remaining protected against immigration and/or employment related offences in line with Article 8 of the Anti-Trafficking Directive.

The Commission recommends that at a minimum, the Workplace Relations Commission keeps disaggregated data on the potential victims of trafficking that they uncover and report to An Garda Síochána; and keeps data regarding any efforts to provide redress and compensation to such victims of trafficking.

#### — Screening For Victims of Trafficking Within The International Protection System (Vulnerability Assessment)

The Commission reiterates its recommendation that IPAS ensures that the relevant staff involved in Vulnerability Assessments are specifically trained on human trafficking.

The Commission recommends that the DCEDIY designates sufficient resources to IPAS to allow them:

- ▶ to carry out quality Vulnerability Assessments with a sufficient spread as a meaningful screening strategy for the identification of potential victims;
- ▶ to organise an efficient referral of suspected victims to the specialised human trafficking framework; and
- ▶ to participate as a Competent Authority in the upcoming National Referral Mechanism reforms.

### — Proactive Child Victim Screening

The Commission reiterates its recommendation that Tusla must adopt a trafficking-specific systematic screening strategy to facilitate the detection of potential and at risk child victims of trafficking. Particular attention must focus on vulnerable populations, such as unaccompanied, separated children, children in the International Protection system, children in residential care as well as in resident (local) communities where the risk for child exploitation in all its forms is known to be high.

### — Informed Consent

The Commission reiterates its recommendation that the referring pathway within the new National Referral Mechanism is centred on health and support, rather than criminal justice. All referrals must be underpinned by the informed consent of the victim.

### — Safe and Appropriate Accommodation

The Commission recommends that the Department of Children, Education, Disability, Integration and Youth utilise the designated ring-fenced investment and establishes a gender-specific shelter for victims of trafficking without any delay.

The Commission recommends that the State designates resources for expansion/replication of the shelter for victims, as necessary, to meet the needs of victims of trafficking within the State (including providing spaces for women with children and in Domestic Abuse shelters for emergency periods).



The Commission recommends that the Department of Children, Education, Disability, Integration and Youth involves specialised and established NGOs in the provision of gender-specific accommodation for victims of trafficking.

The Commission reiterates its recommendation that the Department of Children, Education, Disability, Integration and Youth should treat the accommodation of victims of trafficking as an issue of utmost priority within the process to end Direct Provision, to ensure that victims of trafficking no longer reside under such arrangements.

The Commission reiterates its recommendation that all national (IPAS) and Local Authority housing policies be reviewed to ensuring the specific needs of victims of trafficking are recognised and that the interplay of such policies does not adversely impact on victims of trafficking.

The Commission reiterates its recommendation that all Local authorities cease the application of Circular 41/2012 to refuse housing assistance to victims of trafficking on short-term residence permits, with immediate effect.

The Commission reiterates its recommendation that the National Coordinator (the Department of Justice), foster regular exchanges between relevant State actors involved in the assistance of victims to ensure that any change in existing policies does not adversely affect them.

The Commission recommends that the National Coordinator establishes a mechanism for raising concerns of potentially incompatible policies between different State authorities.

The Commission recommends that the National Coordinator initiates consultation with relevant Departments on rapid policy directional change ensuring victims of trafficking are provided with accommodation assistance that is separate and distinct from the International Protection framework.

The Commission recommends that the State assigns the duty of providing refuge-type accommodation for victims of trafficking who have been subjected to gender-based violence to the Authority on Domestic, Sexual and Gender Based Violence. Once established, this Agency will oversee funding, determine standards and coordinate the provision of shelter-type services.

The Commission recommends that the new National Referral Mechanism explicitly exempts identified victims of trafficking from habitual residency and reckonable residence requirements for the purposes of accessing social housing supports.

The Commission recommends that the State strongly considers relieving the IPAS of the duty to provide accommodation services to all victims of trafficking. For as long as IPAS remain the primary housing assistance provider to victims of trafficking, and having reviewed its availability and use of capacity, the Commission issues the following recommendations, until an appropriate resolution for housing victims of trafficking is found:

- ▶ IPAS should review its capacity and devise a better strategy for accommodating victims of trafficking.
- ▶ IPAS should utilise its single gender accommodation for victims of trafficking who are recovering from sexual violence, giving consideration to geographical proximity of specialised Anti-Trafficking services.
- ▶ IPAS should use the resettlement teams of the contracted housing specialists (i.e. Peter McVerry Trust and De Paul Charity) to support all victims of trafficking moving on from Direct Provision, without conditions.

## — Material Assistance

The Commission recommends that the General Scheme Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 clearly sets out assistance and supports for suspected victims of trafficking. Particularly, to third country national and EEA national victims, through express provisions for:

- ▶ social welfare (free of any habitual residence condition tests, or pending applications, which must be irrelevant);
- ▶ housing assistance (that includes a specialised shelter and/or private arrangements);
- ▶ medical and psychological care; and
- ▶ immigration status, where necessary to facilitate the entitlement to the above listed assistance, before, during and after the formal identification process subject of this scheme.

The Commission reiterates its recommendation for a clear and transparent approach to material assistance of victims of trafficking that is independent from the International Protection system.

The Commission reiterates its recommendation regarding the equal treatment of victims regarding their nationality or whether or not they claim International Protection.

The Commission recommends that the Department of Justice (as the lead department on Domestic, Sexual and Gender-Based Violence) be tasked with integrating victims of trafficking who have suffered gender-based violence into their overall Domestic, Sexual and Gender-Based Violence response.

### — Medical and Psychological Assistance

The Commission recommends that victims of trafficking are prioritised for access to the public psychological support system.

The Commission recommends that everyone providing psychological support to victims should be suitably qualified in supporting trafficking victims and that there should be a geographical spread of medical and mental health assistance for all victims of trafficking.

The Commission reiterates its recommendation that increased funding is made available to frontline organisations who are providing psychological support to victims, including additional funding for clinical supervision of support staff.

The Commission recommends that the Drop-in Psychological support clinic offered on pilot-basis with the HSE Anti-Human Trafficking Team be established permanently.

### — Translation and Interpretation

The Commission reiterates its recommendation that the State should expand the translation and interpretation services to all specialist NGOs who support victims of trafficking.

The Commission reiterates its recommendation that as part of the reformed National Referral Mechanism, a Standard Operation Procedure be drawn up that will ensure effective and accessible access to translation, interpretation and cultural mediation services to all NGOs and victims.

— **Information on International Protection**

The Commission reiterates its recommendation that the International Protection Office database be used by other State agencies as an example of good practice of data keeping, as it allows easy extraction of relevant statistics, including on victims of trafficking seeking International Protection.

— **Attending To Victims With Special Needs**

The Commission reiterates its recommendation to establish a dedicated Survivor Council to ensure that survivor voices inform the overall Anti-Trafficking response, in particular, the new National Referral Mechanism and National Action Plan.

The Commission reiterates its recommendation that the HSE Anti-Human Trafficking Team retains its gender-specific expertise, in the provision of care for victims of trafficking with special needs, especially those arising as a result of trafficking exploitation involving gender-based violence.

The Commission recommends that funding and resources are made available to the HSE Anti-Human Trafficking Team to allow them to operate a 24/7 support services to victims. Increased funding must also be made available to NGO's who already provide this 'round the clock' assistance to further support this important work.

The Commission reiterates its recommendation to the State to develop trafficking and gender-specific pathways of care that are victim centred, ensuring that specialist NGOs with expertise of trafficking are fully supported and their role formalised within the reformed National Referral Mechanism.

The Commission recommends that the State explores avenues for providing family reunification to victims of trafficking.

#### **Protection of Victims in the Criminal Justice System (Article 12)**

The Commission reiterates its recommendation that the Legal Aid Board is adequately resourced to ensure that waiting times are reduced.

The Commission recommends that the State subsidises legal representation for victims of trafficking by providing dedicated expert services within the Legal Aid Board, and increasing funding for established independent law centres with trafficking expertise.

#### **— Improved Early Legal Assistance**

The Commission recommends that the Legal Aid Board offers legal assistance to potential and self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána. This must align fully with the new National Referral Mechanism.

The Commission recommends that the Civil Legal Aid Act be amended to provide separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences) be extended to victims of sexual exploitation offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008.

The Commission recommends that the necessary reforms of the compensation avenues available to victims, along with the

proposed expansion and reform of the Civil Legal Aid Scheme are fully incorporated into the reformed National Referral Mechanism, once enacted.

The Commission recommends that all potential victims of trafficking are proactively provided with adequate, early legal support. This is especially important in order to guard against criminal prosecution for offences that have been committed as a consequence of a person having been trafficked, and to ensure that victims can avail of an effective remedy and appropriate redress for any harm caused to them.

The Commission recommends that all State agencies working on trafficking maintain up to date websites with trauma-informed,<sup>7</sup> accurate information and working links, to assist and enable victims of trafficking to navigate the complex immigration process.

### **Child Victims of Trafficking (Articles 13-16)**

#### **— Prevalence of Child Trafficking**

The Commission reiterates its recommendation that the Department of Justice disaggregates data on child victims of trafficking by type of exploitation, in all future Annual Reports.

The Commission reiterates its recommendation that the State works with An Garda Síochána and Tusla to develop a methodology for collecting uniform and reliable data on the scale and different forms of exploitation of children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.

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<sup>7</sup> Including quick 'exit buttons', careful consideration of images (do not use stock images that portray violence and can be triggering), ensuring that safety alerts and support services are unmissable, design with mobile and touchscreen capabilities such as 'call' buttons.

The Commission reiterates its recommendation that the Department of Justice (as National Coordinator on Human Trafficking) achieves clarity on reporting of offences under Section 3(2) of the 1998 Act by distinguishing between cases that involve trafficking of children for sexual exploitation and those which involve sexual exploitation of children simpliciter (i.e. without any element of trafficking), as this is essential for allowing greater accuracy in recognising and reporting on child trafficking cases.

#### — Identification of Child Victims

The Commission recommends that the National Referral Mechanism include a child-specific identification and assistance process.

The Commission reiterates its recommendation that all ‘Competent Authorities’ and ‘Trusted Partners’ undertake mandatory child trafficking training and that this be explicitly included in the Procedural Guidelines.

#### — Operational Response to Child Trafficking

The Commission recommends that Tusla’s new case management system includes specific fields, outcomes and indicators that will allow for accurate reporting and case tracking on all forms of child trafficking, disaggregated by, at a minimum, age, nationality, and form/s of trafficking.

The Commission reiterates its recommendation to include human trafficking in the Child First Guidelines to ensure that those responsible for the care of children have the necessary understanding of trafficking.



The Commission recommends that the State urgently investigates the co-ordinated grooming of children, especially girls, under the care of Tusla.

The Commission reiterates its recommendation that Tusla is provided with adequate staffing and expertise to ensure it can fulfil its obligations to detect and prevent the trafficking of children, and to participate effectively in the new National Referral Mechanism.

The Commission reiterates its recommendation that a dedicated child-trafficking and exploitation team should be established by Tusla. This service should not only focus on third-country national children but all children who may be at risk.

#### — **Unconditional Assistance, Best Interest of The Child**

The Commission recommends that Tusla develop separate procedures for the provision of assistance, support and protection to child victims of trafficking, irrespective of their country of origin and/or application for International Protection, taking into account their gender and the type of exploitation they were subjected to.

The Commission reiterates its recommendation that the State considers the need for a legislative amendment to remove the reference to trafficking in section 3 of the 1998 Act, and the insertion into section 2 of the 2008 Act to include trafficking for sexual exploitation.

### — Age Assessment

The Commission reiterates its recommendation that the term ‘age estimation assessment’ is included and defined in the National Referral Mechanism Bill.

The Commission reiterates its recommendation that age estimation assessments are carried out by Tusla and supported by strict policy-guidelines that are child-centred and adapted to the person’s specific needs (cultural, gender, etc.). They should not be based on a medical test and should include an appeal process.

The Commission reiterates its recommendation that the presumption of minority (unless and until an age estimation assessment proves otherwise) should be included in statute.

### — Assistance and Support to Child Victims

The Commission reiterates its recommendation that Tusla develops an up-to-date child trafficking specific policy and procedures that capture the Directive’s obligations to child trafficking victims in sufficient detail, either in a stand-alone document or as clear and distinct part of the existing policies and procedures.

The Commission recommends that every child victim be appointed a ‘Children’s Legal Advisor’ at the earliest stage of the referral to the National Referral Mechanism to ensure that the identification, assistance and protection during the process respects the views and best interest of the child.

The Commission reiterates its recommendation that Tusla must ensure that any professionals (including guardian ad litem, social

workers, guardians, intermediaries, lawyers, judges) who come into contact with a child victim of trafficking are trained to work with child victims of trafficking.

The Commission reiterates its recommendation that child victims of trafficking are afforded the same access and supports to education, training and employment as Irish Nationals.

The Commission reiterates its recommendation that specific guidelines on the criterion officers use to determine when a person may be a child and when an adult is entitled to 'take responsibility' for a child are drawn up to provide clarity on sections 14 and 15 of the International Protection Act 2015. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training.

The Commission reiterates its recommendation that any appointed guardian to children who are potential victims of trafficking are specifically and regularly trained, as well as availing of professional supervision.

The Commission recommends that specific rights be extended to the family of child victims, as an integral part of child victim assistance.

#### — Protection of Child Victims in Criminal Proceedings

The Commission recommends that adequate resources are allocated for the full and prompt implementation of the Child Care (Amendment) Act 2022, to establish a child-centred, rights-based, independent, accessible and sustainable Guardian ad litem service and ensure that children's views and best interests are fully considered in child care proceedings.

The Commission reiterates its recommendation that Tusla amends its policies to ensure the engagement of legal professional for legal advice and representation in cases of suspected child victims *without delay*, as required in the Directive, including for the purposes of claiming compensation.

The Commission reiterates its recommendation that Tusla considers the mandatory appointment of a Children's Legal Advisor to every child suspected of being a victim of trafficking at the earliest stage.

The Commission reiterates its recommendation that all child trafficking victims, irrespective of the form of exploitation they were subjected, are included in the 'Barnahus model' already operating in the State.

#### — Measures for Unaccompanied Minors

The Commission recommends that the State ensures that vulnerability assessments for all unaccompanied children are conducted in a child-friendly manner by trained professionals, within 3-days of their arrival, and that applications for legal residency are promptly processed.

The Commission recommends that section 24 (2) (c) of the International Protection Act 2015 is amended to allow for multi-disciplinary assessments of unaccompanied persons' maturity and level of development to determine their age, and in cases of doubt ensures respect for the principle of the benefit of the doubt.

The Commission recommends that the State develops national guidelines on ensuring the rights of unaccompanied children.

The Commission recommends that the State reviews its system of family reunification involving unaccompanied children, with a view to broadening the definition of “family member”, simplifying application procedures to ensure that the best interests of the child are a primary consideration in all related decisions.

The Commission reiterates its recommendation that the new National Referral Mechanism removes the need for unaccompanied child victims of trafficking (15 years of age or younger) to wait three years prior to their application for a more durable residence status, in the spirit of the Directive.

The Commission reiterates its recommendation that Tusla ensures that any decision regarding application for International Protection on behalf of a minor unaccompanied trafficking victim is taken only after a consultation with a qualified lawyer/ Children’s Legal Advisor.

#### **Prevention of Human Trafficking (Article 18)**

The Commission recommends that the Government explores the feasibility of establishing a dedicated 24/7 hotline to report all forms of human trafficking crimes, including seeking information and support. One such way may be through expanding and resourcing an existing 24/7 services to meet this need.

The Commission recommends that the Department of Justice develops annual, nationwide campaigns that are directed to hard-to-reach sectors and vulnerable groups such as children, young people and migrants.

The Commission recommends that dedicated multi-annual funding is made available to Civil Society Organisations to develop

awareness raising campaigns in their areas of expertise and/or encourage the utilisation of their expertise in the development of such campaigns.

The Commission reiterates its recommendation that the State must proactively implement the relevant provisions of the Criminal Law (Sexual Offences) Act 2017 to reduce the demand that fosters trafficking for sexual exploitation, alongside increased support for exit pathways for people affected, including potential victims of trafficking. This must include as a minimum:

- ▶ Legal, psychological and medical support;
- ▶ Access to exit programmes;
- ▶ Emergency and social housing;
- ▶ Financial assistance;
- ▶ Regularised immigration status with the right to work;
- ▶ Access to training and employment.

The Commission reiterates its recommendation that accredited trafficking training must be embedded into professional education programmes of relevant courses such as medicine, social work, and law.

The Commission recommends that the actions that correspond to the SPHE and RSE programmes proposed in the Third National Action Plan are urgently progressed and implemented.

The Commission reiterates its recommendation that awareness raising campaigns aimed at younger audiences within educational institutions are developed and rolled out nationwide.

The Commission recommends that law enforcement, prosecutors, and judges are trained on a victim-centred, trauma-informed approach to law enforcement efforts and trials, including the sensitization of judges to the severity of human trafficking crimes, as called for by the US State Department.

The Commission reiterates its recommendation that all members of the new National Referral Mechanism Operational Committee receive mandatory Anti-Trafficking training.

The Commission reiterates its recommendation that all statutory bodies with responsibilities towards victims and survivors of human trafficking adopt a formal, coordinated, systematic and mandatory approach to training their staff.

The Commission recommends that the Joint Committee on Enterprise, Trade and Employment Pre-Legislative Scrutiny Report Recommendations are included in the Employment Permits Bill.

The Commission recommends that the State considers all avenues to disrupt, criminalise and target the demand that fuels trafficking, including the measures to address all aspects of technology-facilitated trafficking.

### **Recommendations Chapter 2: Technologically Facilitated Trafficking for Sexual Exploitation**

The Commission recommends that the proposal of the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons and on reducing the demand that fosters trafficking for sexual exploitation is considered by the State. Specifically, the OSCE has identified the following measures:

1. Criminalising the creation and dissemination of explicit material from trafficking victims.
2. Establishing civil and criminal liability for online platforms<sup>8</sup>, including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims- when such platforms knew or had reason to know about the exploitation.
3. Mandating online platforms to:
  - a. Implement age and consent verification mechanisms for individuals depicted in sexually explicit content;
  - b. Create content-removal request mechanisms for non-consensual, sexually-explicit materials;
  - c. Conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks;
  - d. Report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.

The Commission recommends that the State develops extensive public awareness and educational programmes for young people, especially girls, to highlight the risks on social platforms of being groomed and recruited into the sex trade.

The Commission recommends the development of national State-led campaigns targeted at demand, in particular, addressing young men as potential buyers.

The Commission recommends that An Garda Síochána are resourced to allow for the monitoring of prostitution adver-

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8 As defined by Art 2(h) of the Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC



tising websites to identify vulnerability, control, organising and trafficking.

The Commission recommends that An Garda Síochána develops specific law enforcement measures to disrupt the business model and profits of prostitution advertising websites.

The Commission recommends that the Department of Justice develops a long-term legal and enforcement framework for prosecuting sites such as Escort Ireland for advertising the sale of controlled and trafficked women and minors and for profiting from the prostitution of others.

The Commission recommends that in the light of the war on Ukraine, trends in the marketplace are monitored, paying particular attention to increases in advertisements for Ukrainian, east European/Slavic or 'new' persons selling sex; increases of content related to Ukrainian/Eastern European/Slavic women on pornographic websites; and increases in online searches for Ukrainian pornography or 'escorts', and Ukrainian women or girls for sex/marriage/dates.

The Commission recommends that sex buyers' review forums are monitored by law enforcement, NGOs, and academics in order to identify trends related to sexual exploitation.

The Commission recommends that specialist services are resourced to meet the needs of women and provide pathways and support for exiting the sex trade.

The Commission recommends that the Garda National Protective Services Bureau is resourced to ensure that they can continue to

tackle organised crime in the sex trade, to prosecute buyers and to protect women and girls who are being sexually exploited.

The Commission recommends that the Department of Justice, as National Coordinator, develops, in collaboration with other experts, detailed guidance on how the current legislation is applicable to the online dimension of human trafficking for sexual exploitation.

The Commission recommends that the Government procures wide and comprehensive research on the online dimension of human trafficking for sexual exploitation in Ireland, including an extensive analysis of data contained in online environments available for traffickers, from prostitution advertising websites such as Escort Ireland to social media platforms.

The Commission recommends that the capacity and knowledge of those responsible for investigating cases of prostitution and trafficking for sexual exploitation is increased, through the inclusion of the latest technologies.

The Commission recommends that the National Coordinator develops and chairs a Forum to examine ways to disrupt demand and combat technology facilitated trafficking. This Forum must be multi-disciplinary, bringing together technology experts, law enforcement, legal experts, data analysts, social scientists, health professionals and NGO's.

The Commission reiterates its recommendation that Ireland accede and become party to the Budapest Convention on Cyber-crime to facilitate collaboration with relevant countries on tackling technology facilitated trafficking for sexual exploitation.

The Commission recommends that Ireland examines ways to use its unique position as EU headquarters for the biggest social media companies to enforce minimum standards to protect users against exploitation and human trafficking.

The Commission recommends that legislative reforms that have been effective in disrupting the operations of prostitution advertising websites in other jurisdictions – E.g. France, US, Sweden are examined to see how they are disrupting the market.

### **Recommendations Chapter 3: Human Trafficking for the Purposes of Labour Exploitation**

The Commission reiterates the recommendations proposed by the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons through reducing the demand fostering trafficking for labour exploitation be considered by the State. Measures such as, establishing civil and criminal liability for online platforms and mandating online platforms to conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks; report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.

The Commission recommends that the State opts into the EU Employers Sanctions Directive.

The Commission recommends that Seasonal Work permits are not introduced, or at the very least that such permits are used on a limited basis, while the standards are on par with those agreed by the EU Member States.

The Commission reiterates its recommendations that a standalone offence is introduced in Irish law for holding a person in slavery, servitude or forced or compulsory labour.

The Commission recommends that the Employment Permit system is reformed to enable worker mobility, progression and access to redress by issuing occupation-specific work permits.

The Commission recommends that the State considers the introduction of a specific “migrant exploitation protection permit” to enable migrant victims of exploitative employment situations to leave those situations quickly.

The Commission recommends that the State develops a research strategy to help fill knowledge gaps related to human trafficking, specifically the experiences of victims of human trafficking for the purpose of labour exploitation, in the Irish context.

The Commission recommends that a National Strategy/Forum on Technology and Human Trafficking is developed.

The Commission recommends that this Strategy/Forum should contain a roadmap to tackle the abuse of technology by traffickers for the purposes of labour exploitation, including the staffing, training and resources that will be required, the areas of online activity that will be initially targeted for attention, the research agenda that will be conducted and the legislative gaps that will be addressed.

## **Recommendations Chapter 4: The War in Ukraine – Implications for Shared Resources, Human Trafficking and Exploitation**

The Commission reiterates its recommendation that the Department of Justice launches and coordinates a nationwide, targeted Anti-Trafficking campaign raising awareness of the specific risks for those fleeing Ukraine.

The Commission recommends that as part of that campaign, every Ukrainian arriving in Ireland, as well as those already accommodated throughout the state, should be given an information leaflet on Human Trafficking in Ukrainian (and other relevant languages) in simple, easy to understand format with relevant contact points through various modes of communication (telephone, email, online texting etc.).

The Commission recommends that civil society organisations are resourced to provide outreach into accommodation settings where Ukrainians are located to provide information and build trust with Ukrainians on the issue.

The Commission recommends that resources are provided to community based settings such as Family Resource Centres and local women's groups to provide welcoming, family orientated spaces which can be utilised to link with Ukrainians regionally. These settings can then in turn be utilised as information provision settings where talks, leaflets and referrals to support from expert services may be provided.

The Commission recommends that further investment is made available to IPAS and the Department of Housing to increase the provision of long-term, stable and safe accommodation options beyond the use of hotels, hostels, and congregated settings,

with extra attention paid to the gender-specific, age-specific and trauma oriented needs of refugees.

The Commission reiterates its recommendation that material and psychological assistance is offered to eliminate the potential involvement of bogus and exploitative assistance to refugees in Ireland.

The Commission reiterates its recommendation to centralise and coordinate the response by means of national registers, coordination of existing hotlines and central points of contact in appropriate languages through the involvement of resident Ukrainian community and representative groups with deep communication networks such as Ukrainian Action as much as possible.

The Commission reiterates its recommendation that to avoid compounding hardship and trauma, the State ensure Ukrainian families are not separated due to different nationalities.

The Commission reiterates its recommendation that awareness is raised on the employment rights of refugees on temporary permits and to alert the labour inspectors to be vigilant to high-risk sectors, loopholes and all forms of exploitation.

The Commission reiterates its recommendation that pornography, sex and escort websites, where Ukrainian women have traditionally been objectified should be monitored.

The Commission recommends that situations of exploitation (taking advantage) that can leave people, especially women and children, vulnerable to trafficking due to the enhanced vulnerabilities are proactively investigated.

The Commission recommends that a long term and sufficiently resourced integration strategy for Ukrainians in Ireland is developed, paying attention to issues such as English language, education, employment, children's needs, health and mental health and specific issues such as gender based violence and human trafficking.

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## Introduction and Policy Context

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014. In accordance with our founding legislation, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report its views on any implications for human rights or equality.

In October 2020, we were designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. This accords with the obligation set forth in Article 19 of the EU's Anti-Trafficking Directive that introduced a legally binding requirement for all EU Member States to establish National Rapporteurs or Equivalent Mechanisms.

This is our second national report since we were appointed the role as National Rapporteur on the Trafficking in Human Beings and covers the period of January-December 2022.

The report was made possible through engagement and contributions by Civil Society Organisations, Government Departments, State agencies and bodies, and, perhaps most importantly the survivors who participated in our consultations. The continued war against Ukraine, the 'cost of living crisis', the pandemic, climate change, increased use of technology are but some of the significant social, health, technological and political events that have impacted on both the driving factors that foster trafficking and challenge the response to combat it during the reporting period.

In line with our role as the independent National Rapporteur, this report centres on the implementation of the European Union (EU) Anti-Trafficking Directive.<sup>9</sup> Article 19 of the Directive obliges EU Member States to establish national rapporteurs (or equivalent mechanisms) to assess trends, measure results of anti-trafficking actions, gather statistics and report. Following the tradition (or approach) from the First Evaluation Report, Chapter 1 includes a detailed evaluation of the State's implementation efforts and progress in respect of the EU Anti-Trafficking Directive Articles obligations during the reporting period, alongside updated recommendations and important priority areas for the States' consideration. Recognising the importance of the increased role played by technology, Chapter 2 embarks on analysis and a demonstration of how technology is facilitating trafficking for the purposes of sexual exploitation in Ireland and what measures need to be taken to address this. Chapter 3 undertakes an in-depth

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9 [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](#)



analysis and examination of trafficking for the purposes of labour exploitation in Ireland and the legal and policy reforms necessary to better combat and tackle this ever-growing form of trafficking. The war against Ukraine continues to increase the risk of trafficking, particularly of women and girls. Given this persistent and terrible reality, Chapter 4 details how the war in Ukraine has increased the risk of trafficking and the measures that must be taken to prevent and respond to this threat. Several standalone pieces presented in Appendices complement the annual report. Appendix 3 presents our specific recommendations and analysis on the national review of Civil Legal Aid 2022 as it concerns victims of human trafficking. The second Appendix contains extracts from our submission to the Law Reform Commission in relation to their project review *Compensating Victims of Crime*, as part of the Fifth Programme of Law Reform. The first Appendix contains our complete opinion on the proposed General Scheme for Sexual Offences and Human Trafficking Bill 2022, which is a seminal development in the anti-trafficking area in Ireland.

The report is complemented with data analysis presented in Appendix 4, which provides the comprehensive data for 2022 from official and non-official sources and the trends in human trafficking over the period 2013-2022.

Each chapter contains a number of new recommendations; while we also reiterate our calls for the State to reform and strengthen the anti-trafficking response by implementing our outstanding recommendations in full.

## **Developments in the International and Regional Anti-Trafficking Response**

The report first outlines the developments at international and regional level, providing an overview of how Ireland has been evaluated by international and regional human rights bodies along with updates at the EU level in the reporting period.

### **Council of Europe GRETA – Third Evaluation Report of Ireland**

Following our submission by the Commission, in our role as Rapporteur in 2021, we welcomed the Third-Round Evaluation Report that was published in September 2022.<sup>10</sup> The Group of Experts on Action against Trafficking in Human Beings (GRETA) welcomed Ireland's improved legislative and policy to better combat trafficking, but called for strengthened implementation - in particular, in terms of victims' access to justice and effective remedies.<sup>11</sup> Chapter 1 further details the specific recommendations and evaluates the progress made, areas that have remained unchanged, and the necessary reforms that are still required to ensure a comprehensive anti-trafficking

10 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)

11 *Ibid*, pp. 12-14

response. There are considerable overlaps between our recommendations and the recommendations of the Group of Experts on the Council of Europe Convention on Action against Trafficking in Human Beings ('GRETA').<sup>12</sup> The recommendations of GRETA are considered through the lens of the EU Trafficking Directive articles.

### Council of Europe GREVIO

In January 2023, we submitted a parallel report to monitoring body of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence - GREVIO, the group of Experts on Action against Violence against Women and Domestic Violence. Our submission made, a number of recommendations to better combat trafficking, as a recognised form of Gender-Based Violence. Together with the longstanding recommendations around the need for gender-specific accommodation and effective disaggregated data gathering, we called for mandatory requirement for human rights due diligence for all businesses, which includes a focus on preventing and combating Domestic, Sexual and Gender-Based Violence ('DSGBV'), including human trafficking. Further, we called for sufficient resources to be made available to ensure that national Helplines can proactively recognise, respond to and refer potential or suspected victims of human trafficking. Chief amongst these was the call for the State to align Anti-Trafficking National Action Plan to the Third National Strategy on Domestic, Sexual and Gender-Based Violence so as to ensure a coherent and coordinated response. We await the Concluding Observation of GREVIO due to be published in 2023.

### Committee on the Rights of the Child

In September 2022, we welcomed the opportunity to submit to the Committee on the Rights of the Child ('the Committee') on Ireland's combined fifth and sixth periodic reports.<sup>13</sup> In December 2022, we provided an additional submission to the Committee in advance of the review during the 92nd session in January 2023.<sup>14</sup>

In February 2023 the Committee issued a number of Concluding Observations, which included important trafficking-specific recommendations on the need to:

- a. establish a national referral mechanism for the identification and referral of children who are victims of trafficking and ensure their access to psychological support, legal assistance and other support services, in line with the recommendations of the national rapporteur on the trafficking of human beings;

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12 The Warsaw Convention

13 IHREC (2022) [Submission to the Committee on the Rights of the Child on Ireland's combined Fifth and Sixth Periodic Report](#)

14 IHREC (2022) [Additional Submission to the Committee on the Rights of the Child](#)

- b. Ensure that guardians ad litem, social workers and other relevant professionals receive training on trafficking;
- c. Investigate and prosecute cases of trafficking of children and ensure appropriate convictions for perpetrators".<sup>15</sup>

This, and other recommendations relating to child victims is considered in greater detail in Chapter 1 section 1.6 on child victims of trafficking.

### US Trafficking in Person's Report

In December 2022 we completed the annual US Department of State Trafficking in Persons Report (TIP) questionnaire for the reporting period of 2022. The resulting evaluation of Ireland retained its Tier 2 status in 2023 TIP Report.<sup>16</sup> This rating means that although progress has been made, Ireland is still failing to meet the minimum standards in combatting human trafficking and in supporting victims. Many, if not all, of the 2023 TIP commentary has been raised by us in our First Evaluation Report.

Observing the continuous chronic deficiencies in victims assistance, the TIP Report recommends that the State, amongst other things, increases efforts to proactively identify and protect all victims, especially Irish citizens from all forms of trafficking; a revision of the National Referral Mechanism that is trauma informed; systematic assignment of a family liaison officer; vigorously investigate and prosecute suspects and convict traffickers; offer specialized accommodations to trafficking; systematic training; protections against inappropriately penalization of victims; update and adopt a NAP; improvements in the criminal justice system; establishment of a national hotline; increase access to damages; prosecute labor trafficking rather than labor code violations where there is evidence.

### Sustainable Development Goals Implementation (SDG)

As a National Rapporteur on Human Trafficking, we are including a brief overview of the implementation of the relevant Sustainable Development Goals (SDGs) in Ireland. SDG-5, the 'gender goal' exclusively deals with achieving gender equality and empowering women and girls. Its target is to eliminate all forms of violence against women and girls including trafficking and sexual and other forms of exploitation (target 5.2), and harmful practices such as child, early and forced marriages and female genital mutilation (target 5.3). The recognition of trafficking (especially for sexual exploitation) as a form of gender-based violence in the Third National Strategy on DVGBV is significant and essential in ensuring that appropriate resources are made available and directed towards victims of trafficking subjected to gender-based violence.

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15 Committee on the Rights of the Child (2023) [Concluding Observations on the Combined Fifth and Sixth Periodic reports of Ireland](#)

16 US State Department (2023) [Trafficking in Persons Report](#)

The report details the gender-based nature of trafficking and applies a gendered analysis throughout.

SDG 8.7 requires the State to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms. The report details a number of recommendations that work towards eradicating forced labour, slavery, child labour and, of course trafficking.

**The Commission recommends that all recommendations detailed in this report be viewed as working towards the fulfilment of achieving SDG 5 and 8 and should be incorporated into the overall SDG framework.**

## Developments at EU Level

### EU Fourth Progress Report

In February 2022, we submitted our first Contribution to the Fourth Progress Report on the Fight against Trafficking in Human Beings in the European Union, as National Rapporteur.<sup>17</sup> We welcomed the increased funding by the State to frontline support organisations, investments in awareness raising, and the first successful human trafficking convictions, however, we emphasised our continuing serious concerns regarding victim assistance. The detailed assessment of trends during the reporting period 2019-2021 presented the prevalence of migrants and women among identified victims of trafficking in Ireland and trafficking for the purpose of sexual exploitation as being the most often encountered form of exploitation. We raised the absence of gender-specific shelter for victims of human trafficking and their unsuitable accommodation within the Direct Provision system, as well as the concerning gaps in the identification of child victims of trafficking, with no child victim identified in 2020 and 2021, as our main overarching concerns.

In the resulting all-EU 4th Progress Report of the European Commission, published in December 2022, Ireland was flagged as a country that intends to involve civil society organisations in the proposed draft legislation outlining a new National Referral Mechanism (NRM) for victims identification and assistance.<sup>18</sup> Advancing this legislation would bring reputational benefits for Ireland and above all will represent a much-

<sup>17</sup> IHREC (2022) [Contribution to the 4th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#).

<sup>18</sup> European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 15

needed move to an inclusive and equal approach to assisting victims of trafficking in Ireland.

We will be producing similar contributions every two years, as required by the EU Directive.<sup>19</sup>

### Proposed Reform of EU Anti-Trafficking Directive

We have engaged extensively with the EC consultation on the review of the EU Anti-Trafficking Directive and were pleased to welcome Government's approval to join the proposed EU Directive that is aimed at amending the EU Anti-Trafficking Directive to strengthen the ability to combat crimes related to human trafficking and to harmonise human trafficking rules across EU Member States. Following extensive engagement, we are pleased to see its recommendations included in the proposal.

In brief, the proposal includes:

- ▶ Expanded definition of trafficking to include other forms of trafficking. Namely, forced marriages (TFM) and trafficking for illegal adoption under article 2(3). Emerging evidence suggest that the sexual and reproductive capacity of women is being exploited through behaviour that amounts to human trafficking. Significant potential exists for exploitation of women's reproductive capacity, and for child trafficking through illegal adoptions, requiring careful regulation for assisted human reproduction and surrogacy.
- ▶ Strengthened sanctions against legal person. The EC Strategy (2021-2025) prioritises actions to disrupt the business model of the trafficking chain, and to cease the impunity of both traffickers and users. In this context, the Commission supports the proposed inclusion of mandatory penalties against legal persons under article 6.
- ▶ Increased focus on tackling online and technology facilitated trafficking. The Commission welcomes the proposed inclusion of new article 2(a) providing for acts committed by means of information & communication technologies.
- ▶ Criminalising the knowing use of services provided by victims of trafficking - reducing the demand that fosters trafficking.<sup>20</sup> The Commission supports the inclusion of unambiguous penalties against users who knowingly use services from trafficked victims (new article 18.a), however it recommends that the burden of proof of knowledge is placed squarely with the accused and that the State is relieved of it.

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19 IHREC (2022) [Contribution to the 4th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#)

20 Hosford P. (2023) ['Ireland to apply to be part of EU measures combating human trafficking'](#) *Irish Examiner* (6 April)

- ▶ The establishment of a National Referral Mechanism has been a focus for the Commission for the last number of years. In this context, the Commission supports the proposal for amendment of article 11.4 to require Member States to establish a NRM through law or an administrative system. The requirement of a concrete national focal point is an essential feature of a well operating mechanism.

All of the proposed changes are flagged in the analysis of the implementation of the Anti-Trafficking Directive included in [Chapter 1](#).

### **EU Common Anti-Trafficking Plan on Ukraine**

As National Rapporteur, we engaged with the EU Common Anti-Trafficking Plan to address the risks of trafficking and support those fleeing the war in Ukraine. The Common Plan was developed as a response to the invasion of Ukraine by Russia in early 2022.<sup>21</sup> The Common Plan, led by the EU Anti-Trafficking Coordinator, was developed with EU Member States, EU Agencies and the Solidarity Platform. We reported on emerging challenges and good practices found in Ireland as a result of the invasion of Ukraine. Prescient issues raised included, the lack of information provided to those arriving to the country; the lack of helplines, and; the lack of anti-trafficking training of frontline officials in the immediate months following the invasion. The creation of a Civil Society Forum on Ukraine and the wide State response, are addressed in detail in [Chapter 4](#).

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21 [Common Anti-Trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine](#)

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# Chapter 1: Implementation of the Anti-Trafficking Directive

In our First National Evaluation Report, we made a comprehensive examination of the States' actions in respect of the obligations set forth in the EU Anti-Trafficking Directive, considered article by article. Primarily, we detailed specific recommendations urging the State to consider and progress to ensure the rights of trafficked victims are protected and realised, not simply as a matter of compliance with EU law, but to better adhere to the State's international human rights obligations.

## National Developments

We are encouraged by the range of advancements made at national level throughout 2022. In regards to trafficking-specific measures, we are aware of the extensive work on the National Action Plan and the release of the General Scheme of the Criminal Justice (Sexual Offences and Trafficking) Bill. There have also been a number of developments in areas that go beyond trafficking but are, nonetheless relevant to trafficking in human beings and have the potential to greatly improve the overall response.

In trafficking-related developments, we particularly welcome:

- ▶ review of Civil Legal Aid;
- ▶ review of the Compensation for Victims of Crime;
- ▶ publication of the General Scheme of the Criminal Justice (Engagement of Children in Criminal Activity) Bill; and
- ▶ publication of the third National DSGBV Strategy referencing human trafficking and the proposed innovative expungement of the criminal records of some prostitution-related offences.

Despite these positive developments, we echo and share the particular concerns of international human rights bodies especially concerning the:

- ▶ lack of safe and gender-specific shelter;
- ▶ use of Direct provision for victims;
- ▶ delays in establishing the statutory NRM;
- ▶ continued low numbers of prosecution; and
- ▶ lack of child-specific measures and protections.

These are just some of the perennial and systematic issues that continue to impede the overall anti-trafficking response.

We analyse each of these developments in detail below, in accordance with the respective EU Directive Article. We also include a number of thematic chapters and appendices that contain detailed in-depth examination and analysis of individual areas. As such, we recommend that each chapter is read in conjunction with the relevant accompanying material to gain a full understanding of the relevant area.

Before considering each of the EU Directive articles, we discuss our observations on the overarching coordination of the trafficking response, especially the Third National Action Plan and the seminal legislative measures to establish a National Referral Mechanism. All stakeholders recognise that to tackle trafficking and to support victims a coordinated response is required. We echo the Group of Experts on Action against Trafficking in Human Beings ('GRETA') concerns that the status of the Department of Justices' stakeholder forum remains unclear and there is a need to take steps to strengthen the work of the stakeholders' forum, clarify its status, and ensure the subgroups are enabled to make progress.<sup>22</sup>

## **National Coordination of the Anti-Trafficking Response**

The Department of Justice national anti-trafficking stakeholder's forum is comprised of interagency and Civil Society stakeholders; however, the forum did not meet in 2021 or 2022.<sup>23</sup> A special forum's subgroup met six times in 2022 to review the anti-trafficking National Action Plan ('NAP').

We welcome the consultations and the advances made in the draft Third National Plan to Prevent and Combat Human Trafficking 2023 -2027 ('Third NAP') in 2022 . The release of which, would be a crucial and strategic step towards enhancing and strengthening the response to combat and address the heinous crime that is human trafficking.<sup>24</sup>

We have previously called for the NAP to include key performance indicators to measure outcomes.<sup>25</sup>

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22 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), para. 20

23 US State Department (2023) [Trafficking in Persons Report](#)

24 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 22; 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*

25 The 2023 TIP also called on the State to update and adopt a NAP that includes a clear timeline for implementation, responsible ministries, and resources for implementation US State Department (2023) [Trafficking in Persons Report](#)



**The Commission recommends that the Department of Justice resumes its national consultation forums.**

### **Establishment of a new National Referral Mechanism**

We welcomed the publication of the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 and engaged fully in the process of consultation to inform the future direction of the legislation by making a written submission and appearing before the Joint Oireachtas Committee on Justice. We stressed that this Bill represents an important move to bring into balance the anti-trafficking legal framework, which previously solely consisted of criminalisation provisions and lacked any measures for identification, assistance and support of victims. The proposed Bill represents a chance to establish a National Referral Mechanism that will apply to all victims of trafficking, regardless of their nationality and immigration status. It must allow for a structured and formal process of identification, separate from the law enforcement process, and one that concludes with a swift and clearly communicated decision. The absence of a child-specific identification mechanism is also a missed opportunity. We recommended that the Bill is used as an opportunity to establish the right to assistance in law to avoid inconsistencies in responses to victims. In our submission, we highlighted important steps to strengthen the non-punishment of victims and the legal aid offered during criminal investigations. Our submission is provided in [Appendix 1](#).

We welcomed the pre-legislative recommendations of the Justice Committee,<sup>26</sup> which reflected our observations, and we are expecting the imminent publication of the draft legislation. We commend the prioritising of this Bill in the legislative programme for 2023.

**The Commission recommends that the State establishes a statutory National Referral Mechanism for the identification and assistance of victims of human trafficking without delay.**

**The Commission recommends that the Criminal Justice (Sexual Offences and Trafficking) Bill, once published, fully incorporates the recommendations of the Joint Committees Pre-Legislative Scrutiny Report and those made in the Commission's submission.**

<sup>26</sup> Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

## Multiannual Trends

Multiannual data from the National Referral Mechanism for identification of victims of trafficking shows that most often encountered form of exploitation is trafficking for sexual exploitation (55%), followed by trafficking for labour exploitation (38%) and to a lesser extent, trafficking for criminal activities (6%).

### — Victims of Human Trafficking 2013-2022

Trafficking for Sexual Exploitation (55%)



Trafficking for Labour Exploitation (38%)



Trafficking for Criminal Activities (6%)



Other types of Trafficking (1%)



In 2022, trafficking for criminal activities ceased its declining trend and re-emerged with two new cases, both pertaining to exploitation in grow houses. In 2022, for the first time a suspected trafficking for organ removal was recorded, which mirrors the trends in the European Union where novel forms of exploitation are picking up.

Human trafficking in Ireland is highly gendered, which is a lasting trend in Ireland as well as in the EU. Overall, more women (67%) become victims of human trafficking than men (33%). There has been only one case of a transgender victim recorded.

### — Victims of Trafficking by Gender 2013—2022

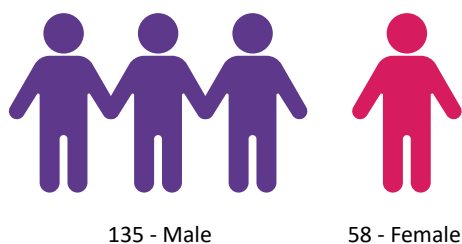
Male, 170, 33%

Female, 342, 67%



The gender dimension is particularly evident in trafficking for sexual exploitation, where over 96% of the victims are women. Trafficking for Labour Exploitation ('TLE') is also gendered towards men, but to a lesser extent (60%).

— **Trafficking for labour exploitation 2013—2022, by Gender**

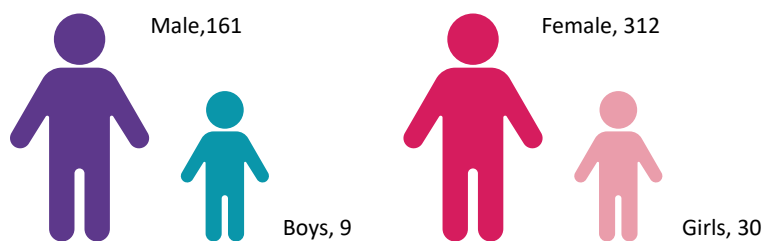


— **Trafficking for sexual exploitation 2013—2022, by Gender**



Children represent 8% of all victims in Ireland. This is significantly less than the EU average (23%).<sup>27</sup> Similar to gendered demographics in adults, data shows that more girls are trafficked than boys, at 9% and 5% respectively. No child victims were identified in 2020 and 2021. However, in 2022, five child victims were identified, as suspected victims of trafficking, with the majority of victims being trafficked for sexual exploitation.

— **Victims of Trafficking by Gender and age, 2013—2022**



Data shows that prostitution is a high-risk environment for sexual exploitation in Ireland. This is similar to the EU-wide report which identifies prostitution, escort agencies, the pornography industry, massage parlours, bars and nightclubs as high-risk environments for sexual exploitation.<sup>28</sup> Agriculture, construction, seasonal work, food processing, hospitality, carwashes, and cleaning and domestic work are some high-risk sectors identified for trafficking for labour exploitation, which also mirrors the EU-wide picture.<sup>29</sup> Further information on trends and statistics is provided in [Appendix 4](#).

27 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 6

28 Ibid, p. 4

29 Ibid

## Gender Perspective (Article 1)

### Article 1 Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

Human trafficking is influenced by factors underpinned by the general societal disparity between men and women, such as the feminisation of poverty, different access to education and resources, medical and health inequalities, and the wider pervasiveness of gender-based violence worldwide.<sup>30</sup> Article 1 summarises the aim and purpose of the Directive, while establishing the principle that all anti-trafficking measures relating to assistance and prevention be undertaken from a gendered perspective.<sup>31</sup>

According to the European Economic and Social Committee's recent opinion, the gender dimension in the content and implementation of the EU Anti-Trafficking Directive should be further strengthened, given that the vast majority of victims are women and girls.<sup>32</sup>

In its 4th progress report, the EC concluded that human trafficking:

*“remains a crime with a significant gender dimension.”<sup>33</sup>*

The EU Anti-Trafficking Directive provides in Recital 3:

*“This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes.”*

Recital 11 states:

*“The definition also covers ...other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.”*

30 European Economic and Social Committee (2023) [Opinion on the Anti-Trafficking Directive](#), p. 2

31 Article 1 of the EU Anti-Human Trafficking Directive establishes that ‘This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof’.

32 European Economic and Social Committee (2023) [Opinion on the Anti-Trafficking Directive](#), p. 5

33 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 3

In the reporting period, the implementation of Article 1 has received an important impetus at national and international level. Nationally, a new strategy on DSGBV has been published that recognises human trafficking (in particular trafficking for the purposes of sexual exploitation) as a form of gender-based violence;<sup>34</sup> paving the path for synchronicity between actions to eliminate trafficking and actions directed and ending other forms of GBV. We have recommended that human trafficking is recognised as a form of GBV for many years. The DSGBV Strategy recognises that the response owed to victims of this form of GBV must take account of the relevant environment of prostitution,<sup>35</sup> and highlights that victims of trafficking belong to the category requiring special inclusion measures.<sup>36</sup> Importantly, the Strategy also references the necessary contribution these actions have to the fulfilment of the SDG 5: Achieving Gender Equality and Empowering All Women and Girls.<sup>37</sup>

At an EU level, there has been a formal recognition of the need to explicitly include forms of exploitation that centre on the sexual and reproductive capacity of women in the anti-trafficking framework.<sup>38</sup> We have raised this in our consultation process on the proposed reform of the Directive.

In our First Evaluation as National Rapporteur, we demonstrated that human trafficking is highly gendered, which manifests itself in several ways. First, in the overall trafficking statistics, where female victims are detected more often than male victims. Second, in the exploitation specific statistics showing that different forms of trafficking affect almost exclusively women and girls. Third, in the degree of harms inflicted on female victims – both adults and children. This report establishes a fourth dimension of the gendered character of human trafficking – the emergence of recognition of new forms of exploitation in the EU that are linked to the sexual and reproductive rights of women. This fourth dimension is further examined below.

### Gendered Statistics

Overall statistics show that human trafficking affects mostly women. Research by the EC continues to show the gendered effects of trafficking. In December 2022, the EC reported that 63% of all victims are women and girls, although the proportion of male victims is a rising trend.<sup>39</sup> In Ireland, the ratio of female victims is even higher at around

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34 Government of Ireland (2022) [Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026](#), p. 12

35 Government of Ireland (2022) [Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026](#), p. 29

36 Ibid, p. 20

37 For more information, see <https://sdgs.un.org/goals/goal5>

38 European Commission (2023) [Commission Staff Working Document: 2023 Report on Gender Equality in the EU](#), p. 9

39 European Commission (2022) [Combating Trafficking in Human Beings Factsheet](#)

67%-71%.<sup>40</sup> These findings are corroborated by an independent data-oriented study for the period of 2014-2019, which revealed that the unofficial data available shows that the vast majority of the uncovered cases involved female victims.<sup>41</sup>

### Gendered Exploitation

Sex trafficking is highly gendered, but so too are other forms of exploitation. Trafficking for sexual exploitation persistently remains the most widely reported form of exploitation in the EU (51% of all cases vs. 28% in trafficking for labour and 11% of other forms of exploitation).<sup>42</sup> The same study shows that over 87% of all victims trafficked for sexual exploitation are female.<sup>43</sup> In Ireland, 95% of victims of this form of exploitation are female victims.<sup>44</sup> Trafficking for labour exploitation in the EU is also gendered, where 66% of victims are men.<sup>45</sup> The newer forms of exploitation that are in the focus of the EU at present are exclusively female, as explained further below.

### Gendered Harms of Trafficking

In our First Evaluation Report, we noted the gendered harm associated with human trafficking that manifests itself, in particular, in trafficking for sexual exploitation:

*“due, in part, to the very particular way in which the human body is used in the process of exploitation.”<sup>46</sup>*

A 2021 EC study found that the economic, social and individual cost of trafficking of women, children and of trafficking for sexual exploitation are markedly higher, due to the fact that:

*“victims of trafficking tend to have higher utilisation of health and welfare services for many years.”<sup>47</sup>*

In its 4th Progress report on Human Trafficking, the EC reports that the harms inflicted were exacerbated during the pandemic, stating:

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40 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 179; Department of Justice and Equality (2018) [Trafficking in Human Beings in Ireland Annual Report 2017](#), p. 6

41 Breen J. M., et al. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland. Limerick: Mary Immaculate College](#), p. 83

42 European Commission (2022) [Combatting Trafficking in Human Beings Factsheet](#)

43 Ibid

44 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 179

45 European Commission (2022) [Combatting Trafficking in Human Beings Factsheet](#)

46 Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#), p. 34

47 Walby S., et al., (2020) [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#), p. 21

*“States observed a rise in violence against women and girls during the pandemic.”<sup>48</sup>*

An EC Study specifically exploring the gender dimension of the crime established that:

*“Traffickers and pimps perpetrate sex crimes against their victims...The effects of sustained coercion, trauma and violence include PTSD (Hossain et al. 2010; Hammond and McGlone 2012), anxiety, panic attacks and depression (McGuinness and Newby 2012), obsessive-compulsive disorder (Hossain et al. 2010), attachment disorder, self-harm, suicide and dis-associative Identity Disorder (DID) (Dahlenberg et al. 2012). Like other forms of violence against women, the harms of trafficking for sexual exploitation are exacerbated when women attempt to exit.”<sup>49</sup>*

### **Violence against Women: Emerging Forms of Exploitation**

In 2022, the EC undertook a review of the EU Anti-Trafficking Directive, which resulted in a proposal for amendment of the Directive to include newer forms of exploitation. The inclusion of these forms that are centred on the sexual and reproductive capacity of women is necessary due to their increased prevalence in human trafficking statistics.<sup>50</sup> The EC recognises that ‘forced marriage’ is yet another form of violence against women,<sup>51</sup> while illegal adoption linked to sale of babies and illegal surrogacy are forms of reproductive exploitation; all of which are undoubtedly gendered harms. The current definition of exploitation in human trafficking is:

*“the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.”<sup>52</sup>*

The EU proposes to extend this definition to include ‘forced marriage’ and ‘illegal adoption’.

In the 4th Progress report, published in December 2022, the EC observes that cases of illegal adoption, forced and sham marriages, illegal surrogacy and forced pregnancy

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48 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 4

49 Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#), p. 35

50 European Commission (2022) [Proposal For a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims](#), p. 6

51 Ibid, p. 12

52 [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](#), Article 2.3

have been detected amongst the lesser known forms of exploitation.<sup>53</sup> Forced and sham marriages mainly affect vulnerable migrant women, as well as ethnic minorities such as Roma. Such victims are often additionally trafficked for sexual exploitation, labour exploitation or forced begging.<sup>54</sup> EUROJUST has raised concerns that women coming from Roma communities in EU Member States are particularly vulnerable to being trafficked and exploited for sham marriages, to facilitate movement of third-country nationals in the EU.<sup>55</sup>

According to the European Institute for Gender Equality contribution to the EC progress report:

*“women and girl victims of forced marriage are often hidden within private households and in the sector of prostitution, which makes their detection and identification more difficult.”<sup>56</sup>*

Some countries in the EU report cases of trafficking for the purposes of illegal surrogacy and forced pregnancy, where:

*“women are recruited to give away their new-borns upon the promise of compensation or to participate in illegal surrogacy programmes.”<sup>57</sup>*

### Aligning National Plans of Mutual Relevance

The Implementation Plan for the 3rd Strategy on DSGBV aligns with our recommendations for establishing a synchronicity and linkages between national strategic documents to achieve a mutual reinforcement and multiplying effect.

For instance, the DSGBV strategy implementation plan includes the following action:

*“3.4.1. Establish clear links and support greater engagement between this Strategy and the new National Trafficking Action Plan.”<sup>58</sup>*

We welcome this and anticipate that a similar reciprocal approach will be included in the forthcoming National Anti-trafficking Plan.

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53 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), pp. 5-6

54 Ibid, p. 6

55 EUROJUST (2020) [Report on National Legislation and Eurojust Casework Analysis on Sham Marriages](#), p. 25

56 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 6

57 Ibid, p. 6

58 Government of Ireland (2022) *Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan*, p. 38



## Gender-Specific Assistance and Support

The need for gender-specific assistance, as per Article 1, has been examined by the European Institute for Gender Equality<sup>59</sup> as well as by a team of Irish researchers in 2017.<sup>60</sup> Practical recommendations have been issued that potentially facilitate the fulfilment of the obligations of the EU Member States. As formally noted, Ireland represents a mixture of insufficient and promising practices. However, we recognise that some of the positive practices have been further strengthened in the reporting period. For example, the retention the role of the HSE Anti-Human Trafficking Team ('AHTT') with expertise in GBV, in developing individual care planning for victims, has been flagged as a positive example and commended by national stakeholders and survivors of human trafficking. However, the present National Referral Mechanism for identification of victims that centrally positions the Gardaí does not fully amount to a gender-specific, trauma-informed model for identification. Yet there are expected developments that could see the involvement of assistance-oriented services with gender expertise that could bring Ireland closer into compliance with the Directive.

**The Commission reiterates its recommendation that the new National Action Plan on Trafficking in Human Beings, incorporates concrete actions to strengthen the gender-specific approach to services, in particular regarding the urgent need for safe, gender-specific accommodation.**

## Shelter

Over the years, the human trafficking response has developed separately from the established GBV support infrastructure, such as women's shelters and rape crises networks. This differs from the practise in other EU countries where existing GBV expertise is utilised and expanded to include victims of trafficking. The current approach to the accommodation for victims of trafficking is extremely problematic and in urgent need of reform. There remains a complete absence of any gender-specific shelter for victims, which is discussed in detail in [Section 11.5 Safe Accommodation](#) of this chapter.

**The Commission reiterates its recommendation that the State provides sufficient funding to Gender-Based Violence organisations that enables them to participate in the delivery of trafficking-specific services to victims who have experienced domestic, sexual or gender-based violence, and particularly for victims of sexual exploitation.**

59 European Institute for Gender Equality (2018) [Gender-Specific Measures in Anti-Trafficking Actions](#)

60 Yonkova N., Gillan S., Keegan E., Charlton D., O'Connor M., Zobnina A., (2017) [Protecting Victims: An Analysis of the Anti-Trafficking Directive from the Perspective of a Victim of Gender-Based Violence](#)

## Definition of Human Trafficking (Article 2)

### Definition of Human Trafficking in the EU

#### **ACTION**

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons,

#### **MEANS**

by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,

#### **EXPLOITATION**

for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

**Article 2** Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

There has been no change to the substantive laws criminalising trafficking in persons in Ireland during the reporting period.<sup>61</sup> While these laws are what can be termed 'trafficking-specific', there are a number of other laws and regulations that can, given

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61 What constitutes human trafficking is provided for in the *Criminal Law (Human Trafficking) Act 2008*, supplemented by the *Child Trafficking and Pornography Act 1998* and refers to trafficking for the purposes of sexual exploitation, forced labour and organ removal. This Human Trafficking Act has been amended through the *Criminal Law (Human Trafficking) (Amendment) Act 2013* which, *inter alia*, broadened the scope of the definition of 'exploitation' to include forcing a person to engage in criminal activity for financial gain, and expands the definition of 'labour exploitation' to include forcing a person to beg. See [Criminal Law \(Human Trafficking\) \(Amendment\) Act 2013](#), s.1(a): "'Beg' has the same meaning as in section 1(2) of the Criminal Justice (Public Order) Act 2011". Furthermore, the Act defines 'forced labour' as "work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily", this accords with the definition set out in the International Labour Organization (ILO) *Convention No. 29 of 1930 on Forced or Compulsory Labour*.

their nature, be referred to as trafficking-related offences.<sup>62</sup> In that regard, in 2022 the Government brought forward a Bill, the Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023, that, if passed would contain ‘trafficking-related’ offences.<sup>63</sup>

The General Scheme of the Criminal Justice (Exploitation of children in the commission of offences) Bill 2020 was published by the Department of Justice in January 2021,<sup>64</sup> pre-legislative scrutiny concluded in May 2021,<sup>65</sup> and the re-titled Criminal Justice (Engagement of Children in Criminal Activity) Bill was published in January 2023.<sup>66</sup>

In October 2021 we provided detailed observations and recommendations on the General Scheme of the Criminal Justice (Exploitation of Children in the Commission of Offences) Bill 2020.<sup>67</sup> The Bill seeks to address, discourage and protect against the grooming, recruiting and exploitation of children into criminal activity by adults.<sup>68</sup> According to the Department of Justice, the new legislation will give An Garda Síochána the power to intervene locally to prevent offences taking place. It will also break the link between gangs and youths they try to recruit. The sentences available under this Bill are up to five years in prison for grooming children into crime.

In addition to our recommendations, it is important to raise particular concerns that relate to the interplay between this proposed law and the overall aim of combatting child trafficking. It must always be considered that there are a number of distinct protections, assistance and supports owed to identified child trafficking victims that are not, *prime facie*, available or owed to child victims of other crimes – especially when they are themselves involved in criminality.

The distinction between the two categories of offences is not clear-cut. On one hand, the 2023 Bill proposes to criminalise adults who compel, coerce, induce, invite or direct

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62 Other examples of trafficking-related offences might include: *Criminal Justice (Smuggling of Persons) Act 2021*, soliciting s. 7 *Criminal Law (Sexual Offences) Act 1993*; organisation of prostitution s. 9 *Criminal Law (Sexual Offences) Act 1993*; Living on earnings of prostitution s. 10 *Criminal Law (Sexual Offences) Act 1993*; Brothel keeping s. 11 *Criminal Law (Sexual Offences) Act 1993*; Begging s. 2 *Criminal Justice (Public Order) Act 2011*; Directing or organizing begging s. 5 *Criminal Justice (Public Order) Act 2011*; Living off the proceeds of begging s. 6 *Criminal Justice (Public Order) Act 2011*. Also, there are a number of administrative laws that may be directly (or indirectly) related to trafficking but which are not criminal offences such as Employment Rights legislation.

63 [Criminal Justice \(Engagement of Children in Criminal Activity\) Bill 2023](#)

64 Department of Justice (2021) [Bill to outlaw the grooming of children into crime announced by Ministers McEntee and Browne](#) (15 January)

65 Joint Committee on Justice (2021) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Exploitation of children in the commission of offences\) Bill 2020](#)

66 Department of Justice (2023) [Minister Harris Secures Cabinet approval for new Bill criminalising the grooming of children into crime](#) (18 January 2023)

67 IHREC (2021) [Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill 2020](#)

68 The purpose of the proposed legislation, according to the press release which accompanied its publication, is to outlaw the grooming of children into crime. See Department of Justice (2021) [Bill to outlaw the grooming of children into crime announced by Ministers McEntee and Browne](#) (15 January)

a child to commit an offence, or offences. On the other, the Criminal Law (Human Trafficking) Act 2008 criminalises any person:

*“who trafficks<sup>69</sup> a child for the purposes of the exploitation.”<sup>70</sup>*

Deciding whether to prosecute under either the 2023 Bill (if enacted) or the 2008 Act will have very different impacts on any children concerned. If charges are brought under the 2023 Bill (if enacted) this would potentially deprive the child of the trafficking-specific assistance and protection supports. Furthermore, the disparity between the penalties available between the two categories of offences is also stark. For the 2023 offences, the penalty is a maximum of five years on indictment but under the 2008 Act, it is up to life imprisonment for child trafficking.

There is a concerning lack of protections available to prevent the criminalisation of children who have been compelled, coerced, directed or deceived by an adult to engage in criminal activity in either the proposed 2023 Bill or in the 2008 Act. Additionally, there are no specific supports to children who are coerced into crime, particularly when compared to the assistance and supports available where a child is identified as a victim of trafficking for the purposes of criminal exploitation.

The 2023 Bill arose from concern surrounding the influence of criminal networks on children in Ireland.<sup>71</sup> According to Europol, since 2016 there has been increased recognition of the potential links between trafficking in human beings and the drugs trade, for example, the exploitation of victims, including children, at cannabis cultivation sites.<sup>72</sup> It does not appear evident that this 2023 Bill seeks to address, or even contemplate, the relationship between the offences of coercing children into criminal activity and, the already criminal offence of trafficking children for the purposes of criminal exploitation in the 2008 Act.<sup>73</sup>

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69 “Trafficks” means, in relation to a person (including a child)— (a) procures, recruits, transports or harbours the person, or (i) transfers the person to, (ii) places the person in the custody, care or charge, or under the control, of, or (iii) otherwise delivers the person to, another person, (b) causes a person to enter or leave the State or to travel within the State, (c) takes custody of a person or takes a person— (i) into one’s care or charge, or (ii) under one’s control, or (d) provides the person with accommodation or employment.

70 ‘Exploitation’ means— (d) exploitation consisting of forcing a person to engage in—(i) an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain, or ... (II) is engaged in for financial gain or that by implication is engaged in for financial gain...’

71 Department of Children and Young Affairs (2016) *Lifting the Lid on Greentown – Why we should be concerned about the influence criminal networks have on children’s offending behaviour in Ireland*

72 European Monitoring Centre for Drugs and Europol (2019) [EU Drug Markets Report 2019](#), pp. 37-38

73 According to the 2008 Act: ‘exploitation’ means— (d) exploitation consisting of forcing a person to engage in—(i) an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain, or ... (II) is engaged in for financial gain or that by implication is engaged in for financial gain...’

## Conclusion on Trafficking Related Offences

We have broadly taken the view that legislating for trafficking-related (or lesser) offences may assist in bringing about human trafficking convictions.<sup>74</sup> This is based on the understanding that having such offences available may make investigations easier to start and maintain, and could provide a measure of confidence to police and prosecutors. Even if the trafficking prosecution fails, the accused may still be convicted of the lesser/different offences.<sup>75</sup> Trafficking-related offences are of course not a substitute for a charge of human trafficking, although they may be an important ingredient in a comprehensive investigative and prosecutorial strategy, where the investigation might lead to a wider investigation into human trafficking. Importantly, this reasoning assumes that where evidence of trafficking is available that investigating Gardaí have both the knowledge and resolve to pursue such charges and, not instead opt for (or limit the investigation to) the lesser (and often easier to prove) trafficking-related offence. Nonetheless, and under all circumstances, the risks and harms of involving children in investigating potential crimes that involve them, has to remain a paramount consideration in the legislative process, and must trigger the necessary protection, assistance and non-prosecution of child victims.

Taking account of the caveats outlined we welcome the introduction of the Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023, but is strongly of the view that children must receive protection, assistance and not punished for the offences they were forced to commit.

**The Commission recommends that the interplay between the offences contained in the Criminal Justice (Engagement of Children in Criminal Activity) 2023 Bill and the trafficking offences outlined in the 2008 Trafficking Act are recognised as forming part of a continuum of the exploitation of children for criminal gain and not as distinct and separate offences. Irrespective, the children must receive protection, assistance and non-punishment for the offences they were forced to commit.**

## Incitement, Aiding and Abetting, and Attempt (Article 3)

### Article 3 Incitement, aiding and abetting, and attempt

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

74 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 34, 52, 55, 63, 66

75 Ibid

Article 3 of the Directive provides that the intention to traffic a person is sufficient for the commission of the offence of human trafficking, even in cases where the exploitation has not yet taken place. The national legislative framework criminalises the specific offence of attempting to traffic a person. This applies to both adult and child victims<sup>76</sup> in respect of the offences set out in s.2, 3 and 4 of the 2008 Act.<sup>77</sup> To our knowledge, there have been no further developments nor have there been any prosecution of these offences during the reporting period.

## Penalties (Article 4)

### Article 4 Penalties

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.
2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:
  - a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;
  - b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24/08/2008 on the fight against organised crime ( 1 );
  - c) deliberately or by gross negligence endangered the life of the victim; or
  - d) was committed by use of serious violence or has caused particularly serious harm to the victim.

76 S.2(4); S.3(4); S.4(6) *Criminal Law (Human Trafficking) Act 2008 (amended)*

77 Aiding, abetting, counselling and procuring such acts are also criminalised by s.7 (1) *Criminal Law Act 1997*. Such offences are known as secondary liability offences, which are distinguished from Inchoate Liability offences, see Law Reform Commission (2010) [Report Inchoate Offences](#). The inchoate liability offences of incitement and conspiracy to trafficking is covered by the common law general inchoate offences. Additionally, the 2008 Act specifically allows for extra-jurisdictional application to these offences in addition to attempts to commit trafficking offences. S.7 *Criminal Law (Human Trafficking) Act 2008 (amended)* provides that where an Irish citizen, or a person (or company or body corporate) ordinarily resident in Ireland conspires with, or incites, in the State, another person to do an act in a place other than the State that, if done in the State, would constitute an offence under section 2 or 4 of the 2008 Act, or section 3 (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both. Similarly, such acts committed outside the State against Irish citizens or a person ordinarily resident in the State are also criminalised. Further, where an Irish citizen or a person ordinarily resident in Ireland conspires with or incites, outside the State, another person to commit such acts outside the State they are guilty of an offence. Where a person conspires with or incites another person, whether or not they are inside or outside Ireland, to commit such acts against an Irish citizen outside the State, they are guilty of an offence. Additionally, where a person conspires with or incites, outside the State, an Irish national or person who is ordinarily resident in Ireland, to commit such acts outside the State, they are guilty of an offence. The section also criminalises attempts to commit any of these offences.

3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

We welcomed the clarity provided by the Court of Appeal in regard to sentencing guidance for trafficking offences and the recognition by the Court of the seriousness of both trafficking and the offence of organising prostitution.

In the cases of the DPP -v-Alicia Edosa and the DPP -v- Edith Enoghaghase, the Court ruled that in the most serious and egregious trafficking cases, the maximum headline sentence should be set in the range of 18-20 years, and no less than 10 years.

The case concerned the appeals of the first successful human trafficking convictions in Ireland, whereas both of the appeals by the respondents (Alicia Edosa and Edith Enoghaghase) were dismissed, while the DPP's appeal on the basis of undue leniency was upheld.

On the facts of this case, the Court did not find that this case fell into the higher sentencing range, although, importantly they recognised that they:

*“could easily imagine cases where such sentences would be fully justifiable.”*

Once mitigation was taken into account, the court imposed sentences of seven years and five months for Edosa and seven years and one month for Enoghaghase. This is an increase of nearly two years for each defendant.

### Conclusion

The insidious and heinous nature of trafficking is reflected in the considerable sentences available to sentencing judges. While we welcomed the much-needed clarity provided by the Court of Appeal, the persistently low numbers of prosecutions for trafficking offences, coupled with the absence of any convictions for labour (and other forms) exploitation renders it next to impossible to assess whether there are trends in sentencing and penalties against traffickers. What is clear is that although the penalties for trafficking offences are at the severe end of the spectrum, without prosecutions the penalties remain largely conjectural.

**The Commission recommends that the State continues to vigorously investigate and prosecute trafficking cases and that the judiciary takes note of the sentencing clarity provided by the Court of Appeal.**



## **Liability and Sanctions against Legal Persons (Article 5 and 6)**

### **Article 5** Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

### **Article 6** Sanctions on legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

To reinforce the criminal justice response to trafficking in human beings, the European Commission proposes the introduction of two mandatory regimes of sanctions on legal persons, one to sanction standard offences and one to sanction aggravated

offences.<sup>78</sup> As part of the current review of the Anti-Trafficking Directive, the European Commission proposes to amend Article 6 of the EU Directive by establishing that the effective, proportionate and dissuasive sanction shall, if appropriate, include the exclusion from entitlement to public benefits, aid or subsidies; and the temporary or permanent closure of establishments used for committing the offence. The addition of preclusion from ‘subsidies’ complements and expands the current discretionary list of sanctions, with a view to preventing legal persons convicted for trafficking offences receiving public assistance.<sup>79</sup>

At present, the situation regarding the holding of legal persons liable for their part in human trafficking remains unchanged, and arguably insufficient in Ireland. Article 5 of the Directive provides for human trafficking offences perpetrated by, for the benefit of, or under the supervision (or negligence) of legal entities (for example companies), distinct and in addition to possible criminal proceedings against individual traffickers. If it is proven that an offence has been committed by the consent, connivance and attributable to any neglect on the part of any person, such as a director, manager, secretary, officer or ‘a person holding themselves out as person acting in any of those capacities’ that person will also be guilty of an offence. The maximum penalty is life imprisonment and/or a fine. Of course, a custodial sentence has no effect on a body corporate and so a monetary fine is the criminal sanction available under Irish law. Article 5(2) of the Directive sets out the possibility of what is essentially vicarious liability of the employer. As such, the Irish legislation creates the possibility of secondary liability for an officer of the body corporate where there has been ‘neglect on the part of any person’, and if the body corporate is convicted of an offence.

Article 6 of the Directive sets out the available penalties that may apply against legal persons. In Ireland, offences by legal persons or bodies corporate are provided for in section 6 of the Criminal Justice (Human Trafficking) 2008 Act.<sup>80</sup> The body corporate is capable of being convicted of any of the offences set out in the 2008 Act and section 6 of the Act creates what is, in effect, a secondary liability offence.

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78 As defined by the EU Anti-Trafficking Directive Article 4(2) 2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence: (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims; (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (1); (c) deliberately or by gross negligence endangered the life of the victim; or (d) was committed by use of serious violence or has caused particularly serious harm to the victim.

79 European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#)

80 Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.” The maximum penalty is life imprisonment and, at the discretion of the court, a fine.

Article 6 of the Directive requires criminal and non-criminal sanctions for legal persons as against section 6 of the 2008 Act, which only sets out a criminal offence. There is no express provision in the 2008 Act for the winding up of the establishments/companies that have been used for committing the offence. However, such acts may fall to be considered within the ‘circumstances in which company may be wound up by the court’ set out in Section 569 of the Companies Act 2014.<sup>81</sup>

It remains the case that there is no provision in Irish law for ‘judicial supervision’ or temporary or permanent disqualification from the practice of commercial activities - save in the context of a winding up, where a director can be disqualified in certain circumstances. On the ‘exclusion from entitlement to public benefits or aid’, according to the Trafficking in Persons (‘TIP’) 2023 Report:

*“the government prohibited convicted traffickers from being selected for public contracts.”<sup>82</sup>*

Importantly the report also states:

*“the Irish authorities have [previously] indicated that as part of recent investigations into human trafficking for the purpose of labour exploitation, An Garda Síochána has interviewed corporate office holders connected to recruitment processes and those involved with procurement of services to establish the level of awareness, if any, of exploitative practices taking place within supply chains”.<sup>83</sup>*

In response, Council of Europe’s monitoring body GRETA urged Ireland to keep:

*“under review the application of the legal provisions concerning corporate liability for THB [trafficking in human beings] with a view to ensuring that the sanctions or measures are effective, proportionate and dissuasive”.<sup>84</sup>*

The responsibilities owed by companies and businesses as legal persons in the prevention and reduction of demand for human trafficking within their activities and supply chains is being considered by the European Commission as part of the Proposal to amend the EU Anti-Trafficking Directive. The European Commission’s proposal for a Directive on Corporate Sustainability Due Diligence and the proposal for a Regulation

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81 Companies Act 2014, s. 569 (1) (e) and (g)

82 US State Department (2023) [Trafficking in Persons Report](#)

83 GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#). Strasbourg: Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA and Committee of the Parties), para. 198

84 Ibid, para. 199

prohibiting products of forced labour in the EU <sup>85</sup> have the potential to significantly bolster the anti-trafficking response.

Additionally, the European Commission has proposed actions to strengthen the Employers' Sanctions Directive, which prohibits the employment of irregularly staying third-country nationals, including victims of trafficking. The Directive sets out criminal sanctions to serious cases of illegal employment such as employing workers in particularly exploitative working conditions, employing victims of human trafficking or employing minors.<sup>86</sup> For a full discussion on all relevant EU Directives see [Chapter 3](#), which also includes detailed recommendations and analysis on the measures necessary to address trafficking for the purposes of labour exploitation.

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 in Ireland. A Private Members' Labour Exploitation and Trafficking (Audit of Supply Chains) Bill has been 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>87</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). Under the proposed Section 3 (transparency in supply chains), the Minister can make regulations requiring businesses with a prescribed turnover to publish a labour exploitation and trafficking statement. We consider this development an area of particular interest. We note that the new EU Strategy for Combatting Trafficking in Human Beings 2021-2025 has identified such measures as a priority.<sup>88</sup>

We have previously recommended <sup>89</sup> that the State conducts a comprehensive human rights-led revision of the State's procurement practices in the wider context of the

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85 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 10

86 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 Application of Directive 2009/52/EC of 18 June 2009 Providing for Minimum Standards on Sanctions and Measures against Employers of Illegality Staying Third-Country Nationals](#), p. 6

87 Houses of the Oireachtas Dáil Éireann Debates (2021) *Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021: First Stage* (1 April 2021)

88 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](#), p. 7.

89 IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#), p. 16

UN Guiding Principles on Business and Human Rights and the State's National Action Plan on Business and Human Rights,<sup>90</sup> as well as in the context of its obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014.<sup>91</sup>

In strengthening prevention of human trafficking, Articles 5 and 6 of the Directive may apply to the online space, where companies are sometimes complicit in the exploitation and trafficking of persons. In this regard, we welcome the enactment of the Media Regulation Act 2022<sup>92</sup> and emphasise the importance of the Safety Codes.

The issues raised above are analysed and further discussed in the section pertaining to prevention of human trafficking by reduction of demand under [Article 18](#) and detailed recommendations are made and in [Chapter 2](#) and [Chapter 3](#), which deal specifically with different aspects of cooperate involvement in sexual and labour exploitation respectively.

**The Commission reiterates its recommendation that the State must increase its efforts to punish legal entities implicated in human trafficking by criminal and non-criminal sanctions.**

**The Commission recommends that at a minimum, statute should be introduced to include the full range of Directive sanctions:**

- ▶ **exclusion from entitlement to public benefits or aid;**
- ▶ **temporary or permanent disqualification from the practice of commercial activities;**
- ▶ **placing under judicial supervision;**
- ▶ **judicial winding-up;**

90 Department of Foreign Affairs (2017) [National Plan on Business and Human Rights 2017-2020](#)

91 *Irish Human Rights and Equality Commission Act 2014*, s.42 (1) establishes that 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. For further information, see [IHREC Public Sector Equality and Human Rights Duty](#)

92 The Online Safety and Media Regulation Act 2022 (the "OSMRA" and the "Act") was signed into law by President Higgins on 10 December 2022. The Act is yet another example of an opportunity to better detect, investigate, prosecute and counteract trafficking in persons both within Ireland and, potentially across the EU. The Act establishes a new regulator, *Coimisiún na Meán* (the Media Commission) and an Online Safety Commissioner has been appointed. The Media Commission is responsible for overseeing updated regulations for broadcasting and video on-demand services and the new regulatory framework for online safety created by the Act. The Media Commissioner governs this new framework through binding online safety codes and robust compliance, enforcement and sanction powers. Online safety codes will deal with several issues, including measures to be taken by online services to tackle the availability of illegal and harmful online content on their services. See IHREC (2021) [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and Gaeltacht on the General Scheme of the Online Safety Regulation Bill](#)

► **temporary or permanent closure of establishments which have been used for committing the offence must be included**

Global data indicates that technology has provided an unprecedented opportunity for traffickers to profit from the recruitment and supply of victims to be exploited. By proxy (or directly) internet and web-based companies are themselves profiting from this expansion into the online space. Plainly, prostitution advertising websites have become the main conduit for advertising to meet the diverse demands of buyers of sex with no regard for the levels of vulnerability, coercion, exploitation and trafficking these women have been subjected to. Chapter 3 of this report demonstrates that Ireland reflects this global reality, as technology is used to facilitate the market in women, including victims of pimping and trafficking. While the increased use of technology is not confined to sexual exploitation, it is perhaps the most advanced and blatant example of the role played by technology. For a detailed examination of technology-facilitated trafficking of sexual and labour exploitation please see Chapters 3 and 4 below for specific analysis and recommendations.

## Seizure and Confiscation (Article 7)

### Article 7 Seizure and confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

To our knowledge, there has been no change to the operating laws governing the confiscation and seizure of instruments and proceeds acquired from trafficking offences.<sup>93</sup> Ireland continues to have a robust mechanism to freeze and seize assets where these can be shown to be the proceeds of criminal conduct. As noted in the First Evaluation Report and in the compensation paper in [Appendix 2](#), Section 9 confiscation orders<sup>94</sup> may also be seen as coming within the remit of Article 7 ‘confiscation and

93 In accordance with the provisions of the Proceeds of Crime Acts 1996-2016, the *Criminal Justice Act 1994*, as amended, and related statutes, all confiscations relating to the proceeds of crime are transferred to the Minister for Finance to be paid into, or disposed of, for the benefit of the Exchequer. The Criminal Assets Bureau (CAB) is a multi-disciplinary body, made up of members of An Garda Síochána, officials from the Office of the Revenue Commissioners (Taxes and Customs), officials of the Department of Social Protection, together with staff from the Department of Justice, including the Bureau Legal Officer, Forensic Accountants, Financial Crime Analysts, IT experts and Administrative Staff. The Court of Justice of the EU held in ‘Komisia za protivodeystvie na koruptsiyata i za ot-nemane na nezakonno pridobitoto imushtestvo v, BP and others’ [2019] Case no. C-234/18 that civil proceedings for confiscation (that are unrelated to a finding of a criminal offence) are compatible with EU law

94 *Criminal Justice Act 1994*

seizure'. Such Orders allow a Court to order a convicted person to pay such sum as the court thinks fit to the Exchequer (to be used at the discretion of the Minister for Finance).

According to public available data, €3,000 euro and \$500 was seized from a male in the south eastern region who is suspected of being involved in organised prostitution<sup>95</sup>. While this is welcomed, it must be noted that this is a significantly small amount considering the tremendous profits associated with commercial sexual exploitation industry. We are not aware of the seizure of proceeds from other forms of exploitation beyond the sex industry.

**The Commission calls on the State to re-examine the possibility of establishing a dedicated compensation fund for victims of trafficking, including a contribution from any proceeds confiscated in the course of criminal proceedings against perpetrators of human trafficking.**



*“At first [AGS] asked her if she was comfortable to give this information, she was so she gave them all the evidence, she gave them the phone. They scanned the phone and they copied all of the data from the smartphone, they also checked the email, and got all the information they could find on the email. She also provided them with other evidence, pictures, bank statements, any evidence she could find to prove the crime of trafficking. When it was close to the sentence, they asked once again for the phone but this time she did not give it to them because she was not feeling comfortable. She preferred to keep the phone”.*

Survivor Quote

A particular challenge arises where Gardaí seize evidence such as phones as part of a criminal investigation. This can cause major difficulties and distress - particularly for

<sup>95</sup> McCurry C. (2022) [‘Dublin premises among properties raided in human trafficking sting’](#) *Dublin Live* (1 December)

those exploited in prostitution, the majority of whom are women. The Garda National Protective Service Bureau (‘GNPSB’) have continued to stress that the women found in brothels are not the target of criminal investigations, rather their focus is on identifying the organisers that are profiting from the prostitution of others.<sup>96</sup>

We echo and support the GNPSB belief that, with targeted training, the capacity to distinguish between an individual occupying a brothel and an organiser will improve, and that explaining to women what is happening during and in the aftermath of a raid, including when any property seized will be returned to them, should be part of enhanced Garda practice in the future.<sup>97</sup> Given the profound impact that such investigations have on victim/survivors, it is essential that every sexual exploitation investigation or operation be survivor-centred and trauma informed.

**The Commission recommends that An Garda Síochána commit to a process whereby every member of An Garda Síochána involved in any aspect of an investigation relating to sexual exploitation is trained to a high and accredited standard, and that a sufficiently senior and trained Garda supervises and oversees all such operations.**

**The Commission recommends that specialist support workers accompany Gardaí on all organised prostitution raids to ensure a victim-centred approach.**

## Non-Prosecution of Victims (Article 8)

### Article 8 Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

<sup>96</sup> O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform.](#) Dublin: SERP

<sup>97</sup> Ibid



### THE CASE STUDY OF DANIEL (IOM)

Daniel's case shows the importance of the non-prosecution principle (no punishment of victims of trafficking for the crimes they have committed as a direct consequence of being trafficked) and the need to include a statutory protection from prosecution for these victims.

Daniel was brought to Ireland on the promise of a job in the construction industry. Upon arrival in Ireland, he found himself being transferred to different locations around the country and forced to sell drugs. Daniel was also forced to regularly take such drugs and was told that he had accumulated a significant amount of debt. An Garda Síochána Human Trafficking Investigation and Coordination Unit referred Daniel to IOM following his arrest for a number of crimes. IOM referred Daniel to medical services through the National Referral Mechanism. Eventually Daniel decided to stay in Ireland and IOM referred him to other NGOs to assist with his immigration status in the country.

[The Commission has no further information on the outcome of the investigation/prosecution of Daniel's alleged offences.]

*(Case Study courtesy of IOM)*

The importance of the non-prosecution principle received considerable attention in our First Evaluation Report and in our submission on the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill in 2022. The General Scheme contains a very limited non-punishment provision in Head 21. In the submission to the Joint Oireachtas Committee the Commission raised particular concerns of the limited scope of the proposed provision, and called for this to be reconsidered given the profound and lasting effect that criminalisation of victims of trafficking has on their lives but also in the chilling effect this has on the overall anti-trafficking response (see [Appendix 1](#)).

The Joint Oireachtas Committee on Justice echoed this recommendation:

*10. The Committee recommends that consideration be given to enshrining a non-prosecution principle as a statutory defence within the legislation, to guarantee that victims of trafficking would not face prosecution for any offence that they were pressured into committing as a result of being trafficked.<sup>98</sup>*

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98 Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

Despite repeated calls by GRETA in 2017<sup>99</sup> and 2022,<sup>100</sup> a High Court Judgement,<sup>101</sup> the Commission,<sup>102</sup> TIP 2022,<sup>103</sup> and 2023<sup>104</sup> and countless efforts by NGO's, the Government has taken no action to rectify the gap created by a lack of protocols or legislation to dictate what happens when a victim is suspected of criminal activity.<sup>105</sup>

Evidence reported to us raises concern that victims (or potential victims) of trafficking continue to be imprisoned and charged for criminal offences beyond that of trafficking offences.<sup>106</sup> This suggests that the principle of non-punishment of victims for crimes they have committed as a direct consequence of them being trafficked is not being honoured fully and therefore is in contravention of both Article 8 of the EU Anti-Trafficking Directive and Article 26 of the UN Convention Against Human Trafficking.

In regards to data received for the reporting period, we are very concerned that one of the victims formally identified in 2022 was in custody on drug cultivation charges.

**The Commission reiterates its recommendation that to adhere fully to the non-punishment principle, the Criminal Justice (Sexual Offences and Trafficking) Bill should amend the Criminal Law (Human Trafficking) Act 2008 to include a specific statutory defence for victims of trafficking where they have committed crimes “as a direct consequence of them being trafficked.”**

### Expungement of Past Criminal Records

In our First Evaluation Report, we welcomed the announcement of the expungement of over 600 convictions obtained for ‘sale of sex’ under the preceding 1993 legislation<sup>107</sup>. However, to our knowledge this had not yet come to fruition, despite being reported so

99 GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Trafficking in Human Beings by Ireland. Second Evaluation Round](#), para. 207

100 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)

101 *P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* [2015] IEHC 222

102 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

103 US State Department (2022) [Trafficking in Persons Report](#), pp. 298-302

104 US State Department (2023) [Trafficking in Persons Report](#)

105 US State Department (2023) [Trafficking in Persons Report](#)

106 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 16

107 Department of Justice (2021) [Minister McEntee announces initiative to expunge previous convictions for ‘sale of sex’](#) (25 April); IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), pp. 63-64

in the US State Department TIP Report 2022.<sup>108</sup> Furthermore, and in line with the above recommendation relating to the application of the non-prosecution principle, we have called for the retrospective expungement of criminal offences for crimes beyond just prostitution-related offences.

**The Commission reiterates its recommendation that the State extends the expungement of criminal convictions to all victims of human trafficking where such crimes were committed as a direct consequence of them having had been trafficked.<sup>109</sup>**

## Investigation and Prosecution (Article 9)

### Article 9 Investigation and prosecution

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.
4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

<sup>108</sup> US State Department (2022) [Trafficking in Persons Report](#), pp. 298-302

<sup>109</sup> IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)



*“The first day was horrible because I was the only one with the Guards, there were lots of questions. It lasted for four hours or so. They want you to explain every detail. There are lots of questions the Guards were asking and I understand they want to use that to help get a clearer view of what the case looks like but to me it was messing with my mental health. I tried explaining to them. The second interview happened after so much pressure from them and my HSE AHTT person stepped in and she was like I’m going to go with you. On that day they were trying to make me understand - look we understand you, you can easily say I understand you and you still want to ask me lots of questions on how this happened, how that happened. The last one lasted for about two hours.”*



*“When they came, I was comfortable around them. The second time they came, before, they sent me an email to make sure that I was in the right frame of mind, that I was really ready to talk before coming down to see me. They told me - are you okay, you want us to still come? We can always postpone and come another time. When they came and I answered their questions, we were getting more information because I had more information to give them. They just said to me - in a quiet moment, if you remember anything, just put it down, take notes so when we come you can give us this information. We are not forcing you now to give us all the information because you have been through a lot but we just need you to have a note so if you remember anything just write it down.”*

Survivor Quote

Article 9 of the Directive outlines the essential elements required for the investigation and prosecution of human trafficking offences. In particular, it states that the investigation and prosecution should not be dependent on victim's accusations and reporting; that their duration should not be limited by the withdrawal of a victim's statement or by reaching the age of majority, and; that the organs of investigation and prosecution should to be trained and supplied with effective tools, such as those used to target organised crime.

GRETA noted in their evaluation report that the number of investigations into human trafficking offences has been decreasing over the years, and the number of prosecutions is very low.<sup>110</sup> No traffickers were convicted in 2022 – a decrease compared to 2021 when two people were convicted.<sup>111</sup>

Notably, there has been *no* trafficking prosecutions for labour or criminal exploitation.<sup>112</sup> This absence is particularly concerning and one that has also been raised in the TIP Report 2023.

We echo GRETA's recommendation that:

*“Irish authorities ensure that human trafficking offences are proactively and promptly investigated, making use of special investigation techniques in order to gather material, documentary, financial and digital evidence, and not having to rely exclusively on testimony by victims or witnesses. Prosecutors and judges should be sensitised to the different forms of human trafficking, the rights of victims and the need to adopt victim-centred and trauma-informed approaches.”<sup>113</sup>*

Currently, there appears to be a focus on the investigation of sexual exploitation crimes. While we welcome this, there is a clear dearth in investigations into other forms of trafficking – in particular, trafficking for forced labour and criminality.

Trafficking crimes are complex to investigate and prosecute.<sup>114</sup> We welcome the Garda Síochána Inspectorate's self-initiated inspection 'Transnational Organised Crime – A Review of the Structures, Strategies and Processes in the Garda Síochána', which we called for in the First Evaluation Report. We met with the Garda Inspectorate in May 2021 and August 2022 to discuss the importance of including victims of trafficking within this review, at a minimum, or the possibility of a standalone review. We are

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110 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), p. 4

111 US State Department (2023) [Trafficking in Persons Report](#)

112 Ibid

113 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), p. 4

114 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 67

pleased to note that the Garda Inspectorate has made considerable efforts to directly consult with victims of trafficking and frontline service providers in this regard. We await the findings of this review and hope that this will lead to positive reforms of the investigation and prosecution of trafficking offences.

Successful trafficking prosecutions rely heavily on a victim's testimony and their cooperation with An Garda Síochána and prosecutors. The reliance of victims' testimony in both investigation and in securing trafficking prosecutions is an enduring and complex area that needs to be continuously improved. Article 11(3) of the EU Directive, as well as our First Evaluation Report, make clear that assistance and support measures for victims should not be made conditional on their willingness to cooperate in the criminal investigation, prosecution or trial.<sup>115</sup>

There are a number of factors that influence and impact on a trafficking victims' ability or willingness to cooperate in an investigation and prosecution. While some of these are shared by victims of crime generally, it must be recognised that there are unique factors that affect victims of trafficking. These factors will be different depending on the particular vulnerabilities of the person and the form of exploitation they were subjected to. Fear of retaliation by the traffickers, wariness of possible implications of complicity in the traffickers' crimes, inability or unwillingness to identify themselves as victims, and lack of trust in authorities are just some of the reasons why victim-survivors may not be willing or able to cooperate with the criminal process.<sup>116</sup> In the past, evidence has also suggested that prosecutors have expressed reluctance to accept referrals of sex-trafficking cases because of errors made in the initial investigations, the perception that these cases are resource-intensive, and their relative inexperience with human trafficking laws when compared to more familiar laws related to rape, sexual assaults, and organising prostitution.<sup>117</sup>

Undoubtedly, there is a nexus between inadequate victim services and victim cooperation in criminal investigations and successful prosecutions. The supports victims receive need to meet their specific needs, usually over an extended period of time as investigations often take years to complete. As such, every obligation to support and assist victims must be fulfilled, in the round, if there are to be successful prosecutions.

The TIP 2023 calls for the continued regular liaison between investigators and prosecutors on evidentiary standards and legal matters that arise during investigations in trafficking cases and for victims to be able to access the National Referral Mechanism

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115 Ibid, p. 79

116 Farrell A., McDevitt J., Pfeffer R., et al. (2012) [Identifying challenges to improve the investigation and prosecution of state and local human trafficking cases](#). National Institute of Justice

117 Ibid

without requiring cooperation with law enforcement.<sup>118</sup> We are especially encouraged by the regular and close exchanges between the Office of the DPP and An Garda Síochána. This cooperation is extremely positive and essential to the overall efforts to bring perpetrators to justice.

There are number of measures that can (and, in some cases have) improved human trafficking investigations:

- ▶ **Increased Institutional Resources:** Trafficking investigations are complex, are often long, may be extra-jurisdictional, and require enormous victim support. Significant time, energy, and expertise must be allocated to both the investigation and support of victims.
- ▶ **Improved understanding of the victim experience:** Victim cooperation is one of the most common challenges faced in the identification and investigation of human trafficking cases. Victims are often fearful that the trafficker will retaliate against them or their families, which can influence their decision to cooperate in an investigation.<sup>119</sup> Increased understanding of the impact of fear, violence and overall negative situation victims have faced, along with a full understanding of victim's actions (including criminal acts) are a consequence of the force, fraud and coercion they have endured. This understanding would help law enforcement effectively contextualize victim experiences. Law enforcement and victim support strategies that have been found to be effective for domestic and sexual violence should be utilised in trafficking cases. One practical example would be that a family liaison officer is assigned to every trafficking victim cooperating with law enforcement to advocate for the victim and help prosecutors.<sup>120</sup>
- ▶ **Long-term support for the victims:** Offering short-term, limited support will inevitably leave victims feeling insecure and unsafe. If they do not trust that they will be protected from victimisation or re-trafficking, they will simply not be able to give their best evidence or to begin to recover. These services include health, mental health, and most importantly housing.

We welcome the commitment in the Third NAP to review the criminal justice approach to the trafficking by law enforcement after two years following the implementation of the new National Referral Mechanism.

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118 US State Department (2023) [Trafficking in Persons Report](#)

119 Newton, P. J., Mulcahy, T. M., and Martin, S. E., (2008) [Findings Victims of Human Trafficking](#). National Opinion Research Center at the University of Chicago

120 US State Department (2023) [Trafficking in Persons Report](#)

**The Commission recommends that victims and their experiences are at the centre of the Review of the Criminal Justice approach to trafficking.**

**The Commission supports the recommendation from the US State Department Trafficking in Persons Report that a family liaison officer is assigned to every trafficking victim cooperating with law enforcement to advocate for the victim and help prosecutors.**

### Specialisation

We welcomed the increased specialisation across a number of State agencies and bodies. Despite these positive reforms, it has come to our attention that there have been instances when suspected trafficking cases are referred to local Gardaí, and not to An Garda Síochána Divisional Protective Services Units and/or the Garda National Protective Services Bureau. We are unsure whether there is a policy requiring that all suspected human trafficking cases be investigated by members of the An Garda Síochána Divisional Protective Services Units and/or the Garda National Protective Services Bureau or, whether, at the very least, that such cases are overseen/supervised by a senior member of the DPSU/GNPSB. Of course, this would still rest on the ability of the investigating Gardaí to recognise that the case was a potential trafficking case.

It is also important to recognise that it was the local Gardaí who initially investigated (later supported by the GNPSB) the case that ultimately led to the successful prosecution in the Edosa trafficking case. During our consultations with survivors and in particular with those working on the case discussed, the great professionalism, support and dedication of the Gardaí involved in the case was commended. Despite this tremendously positive experience, unfortunately we have also heard accounts to the contrary where some victim-survivors found the Garda to have been unprofessional, impatient and disinterested.

**The Commission recommends that there is sufficient oversight by GNPSU or GNPSB members of all trafficking cases, given the potential negative impact that a lack of training may have on a trafficking investigation.**

### Jurisdiction (Article 10)

#### Article 10 Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:



- (a) the offence is committed in whole or in part within their territory; or
- (b) the offender is one of their nationals.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:

- (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
  - (b) the offence is committed for the benefit of a legal person established in its territory;
- or
- (c) the offender is an habitual resident in its territory.

3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

- (a) the acts are a criminal offence at the place where they were performed; or
- (b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

### **THE CASE STUDY OF EDWARD**

This case illustrates the relevance of collaboration between Ireland and the UK law enforcement, and how often victims are trafficked in both countries.

Edward was sent by his family to the UK to study. Upon his arrival, he was informed that he owed a considerable amount of money and his passport was taken. He was then forced to work in the service industry without any wages and accommodated in extremely poor conditions. When the UK police visited the premises he was arrested for being 'undocumented'. Edward applied for international protection in the UK. Despite him disclosing his trafficking ordeal he was refused. The alleged traffickers continued forcing him to work across different locations and industries for several years until he was transported to Ireland to 'work' on a cannabis grow farm. Edward was able to escape and was assisted by a friend from his country of origin who was studying in the country. Although Edward found it extremely difficult to trust the HSE and AGS due to his negative experience in the UK, he was supported by several agencies and NGOs and is currently in fulltime employment. Edward still fears for his life and believes that his family sold him to traffickers.

*(Case study courtesy of the HSE AHTT)*

## Cross-border and International Cooperation

The Garda National Protective Service Bureau use a range of legal instruments at the regional level to facilitate investigations and prosecutions with cross-border elements. Examples include Mutual Legal Assistance processes, Joint Investigations Teams (created for cross-border investigations with prosecutors, police and investigative judges from different countries that contribute to successful prosecutions)<sup>121</sup> and European Arrest Warrants. Given the well-established cross-border element in many human trafficking cases, such instruments are fundamental to aid Ireland's criminal justice response.

Ireland collaborated with international counterparts and agencies to tackle human trafficking. In June 2022, An Garda Síochána participated in an action with other 21 countries and INTERPOL that led to the identification of 130 potential trafficking victims and the arrest of several suspects.

As a response to the invasion of Ukraine, An Garda Síochána strengthened its cooperation with EU counterparts and EUROPOL for the purposes of preventing and identifying potential cases of human trafficking by sharing daily information and applying a collaboration approach between law enforcement bodies of several countries.<sup>122</sup>

Collaboration across the island of Ireland continued in 2022, with the Human Trafficking Investigation and Coordination Unit and the Organised Prostitution Investigation Unit ('OPIU') collaborating with the PSNI Modern Slavery and Human Trafficking Unit. Examples include operations conducted in border counties, with a focus on sexual and labour exploitation where several businesses were inspected in March 2022, as well as an operation focused on sexual exploitation linked to massage parlours.<sup>123</sup>

In October, PSNI officers supported An Garda Síochána operation into an organised criminal group responsible for the trafficking of people throughout the Northern Ireland border for sexual exploitation. Two suspects have been arrested on suspicion of human trafficking, controlling prostitution, brothel keeping and money laundering offences.<sup>124</sup>

Overall, An Garda Síochána collaborates regularly with the PSNI, sharing identified trends in organised prostitution and human trafficking across the border. Since 2022, both law enforcement bodies, as well as some State Agencies and NGOs participated

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121 European Parliament (2022) [REPORT on the proposal for a regulation of the European Parliament and of the Council establishing a collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation \(EU\) 2018/1726](#), Explanatory Statement

122 Kelly O. (2022) '[Gardaí liaison with Europol over potential human trafficking from Ukraine](#)' *The Irish Times*, 4 April [Accessed 21 June 2023]

123 Source: Department of Justice 2022

124 Ibid

in the ‘All Ireland Partnership’. One of the thematic areas discussed was sexual exploitation on the island of Ireland.<sup>125</sup>

We are aware of An Garda Síochána collaborating with other law enforcement bodies across Europe during 2022 in several active investigations involving potential sexual exploitation and trafficking for sexual exploitation crimes. Cross-border collaboration by the Workplace Relations Commission is reported in the [Prevention section \(Article 18\)](#).

## **Assistance and Support of Victims of Trafficking (Article 11)**

### **Article 11** Assistance and support for victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.
2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.
3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.
4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.
5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims’ subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.
6. The information referred to in paragraph 5 shall cover, where relevant, information

125 Ibid

on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ( 1 ) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ( 2 ) or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Article 11 is important as its implementation directly impacts on the recovery and reintegration of victims of trafficking by outlining the parameters of assistance and support that the State must provide. It is important to distinguish this practical support and assistance from the ‘protection of victims within the criminal justice system’, which is considered in Article 12.

Article 11 includes:

- ▶ certain conditions in the provision of assistance;
- ▶ the system for early identification;
- ▶ a comprehensive list of elements required for practical assistance (informed consent, safe housing, material assistance, medical and psychological assistance, provision on information and interpretation);  
and
- ▶ provision for victims with special needs resulting from their age, pregnancy, disability, type of exploitation and others.

In our First Evaluation Report, we analysed each of these provisions in detail and issued a number of concrete recommendations for the improved implementation of Article 11 by the State. This report builds on the original analysis, while focusing on novel developments.

There are two important elements required by Article 11 - the identification of victims and the provision of practical assistance and support to victims.

## Identification

Undoubtedly, the greatest development in the identification of victims of trafficking in 2022 is the publication of a General Scheme for the establishment of a National Referral Mechanism in law. This proposed mechanism aims to replace the current identification and referral system set out in the Administrative Immigration Arrangements which has been widely criticised. We welcomed the publication of the General Scheme and provided detailed observations in writing and appeared before the Joint Oireachtas Committee for Justice. Many of our recommendations for improvement of the proposed legislation were included in the Joint Committee's Pre Legislative Scrutiny Report.<sup>126</sup>

As the National Referral Mechanism is vital for the identification and subsequent provision of access to services for victims, we have provided a number of recommendations to improve the NRM in our analysis of Article 11.

Our full submission on the General Scheme is also available in Appendix 1.

In the absence of a new National Referral Mechanism, An Garda Síochána continue to be the only body who can formally identify victims. The coordination of assistance and support to victims hinges on the controversial and outdated Administrative Immigration Arrangements for the Protection of Victims of Trafficking (2011) policy. However, the restructuring of An Garda Síochána that established specialised units such as the Human Trafficking Investigation and Coordination Unit ('HTICU') and the Organised Prostitution Unit as well as the Garda National Protective Services Bureau with a focus on the wellbeing of victims of crime, has undoubtedly contributed to improvements in the identification of victims to some extent, while the establishing of a new National Referral Mechanism remains essential for any kind of fundamental improvement. Further information on our view of the current identification system is included under Article 11.4 in this section.

## Assistance and Support

The assistance and support required by Article 11 continues to be provided through an informal consortium of statutory and non-governmental entities. The HSE AHTT, located within the Women's Health Service,<sup>127</sup> is responsible for the development of individual care plans for victims. The team is made up of social workers and health

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126 Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

127 The WHS provides a free sexual health service including full sexual health testing, smear tests, treatment, contraception and onward referrals, as required, to women currently involved in prostitution, including transwomen. The clinical service is provided by a doctor and nursing staff who specialise in the promotion and care of sexual and reproductive health. Several clinics are run each week on a drop-in basis. Running alongside the clinical service, WHS also provides a non-clinical 'outreach' service.

professionals whose work has a national scope. This shared services ensures gender-specific expertise in assisting victims and aligns with the requirements of Article 1.

Owing to a lack of investment in any shelter-type facility for victims of trafficking, another important assistance-providing State body is the International Protection and Accommodation Service ('IPAS'), which under the current system is responsible for the accommodation to victims of trafficking within the Direct Provision System. Safe and appropriate accommodation is an essential component of support and a prerequisite for a victim's recovery. The Department of Housing, Local Government and Heritage, and the individual Local Authorities who provide longer-term accommodation options to victims of trafficking provide important assistance in this regard. De Paul and Peter McVerry Trust are two charities, contracted by IPAS to assist residents to move on from Direct Provision by finding, and in some cases providing them with accommodation. The Department of Social Protection provides financial subsistence to victims either directly or through other State bodies.

Other statutory agencies involved include, the Legal Aid Board which provides legal advice and information with reference to Article 11.5 and 11.6. The International Protection Office and the International Protection Appeal's Tribunal also have responsibilities with regards to victims seeking international protection.

Non-statutory services include Ruhama, Migrant Rights Centre of Ireland and the Immigrant Council of Ireland, who receive State funding to provide assistance to victims. Other relevant non-governmental organisations who provide assistance and support to victims are the Dublin Rape Crisis Centre who have psychological and sexual trauma specialists, AkidWa who specialise in violence against migrant women, Doras in Limerick and SVC in Cork as regional experts, and MECPATHS who are a unique child trafficking advocacy NGO. NGO's provide assistance in areas that include, but are not limited to: preliminary identification and referrals, counselling, court accompaniment, support finding accommodation, legal assistance and advocacy, survivor-led peer support, and reintegration courses.

**The Commission reiterates its recommendation that the HSE Anti-Human Trafficking Team plays a clear role in the National Referral Mechanism, due to its victim-centred approach, with increased importance and responsibilities given to the identification and assistance of victims of human trafficking.**

**The Commission recommends that the HSE Anti-Human Trafficking Team is appropriately staffed and that its expertise across all forms of human trafficking is maintained and expanded, where necessary.**

**The Commission recommends that as part of its role in the National Referral Mechanism, the HSE Anti-Human Trafficking Team is entrusted with maintaining clear disaggregated data.**

**The Commission reiterates its recommendation that a ‘roadmap’<sup>128</sup> is established to track the support and integration needs of each victim and how these are met both by the State and NGOs services.**

### **Conditions of Assistance (Article 11.1, 11.2, 11.3)**

**Article 11.1** Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

**Article 11.2** Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

**Article 11.3** Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

### **THE CASE STUDY OF AVA (MRCI)**

A common issue faced by victims/survivors is the fear of retaliation from their traffickers when they report what is happening to them to Gardaí. Ava’s case shows the urgent need of an adequate National Referral Mechanism that ensures victims’ access to assistance and protection that is not conditional on their cooperation with criminal investigations and proceedings.

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128 Similar to that of a Department of Justice’s ‘Supporting Victims Journey’, which tracked the support need of victims of sexual crimes. See Department of Justice and Equality (2021) [Supporting a Victim’s Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases](#)

Ava came to Ireland on the promise of a job as a housekeeper for a family. When she arrived to the country, she was made to work 12-hours days, 6-days a week cleaning several houses owned by her 'employer' and also made to mind his children. Her pay averaged 200-300 euro per week. Her passport was taken from her. Ava was threatened with deportation and verbally abused over the years by her 'employer', which kept her in a state of fear. Ava continues working for her 'employer' although the children are grown up, she has been allowed to make some friends and she has taken steps to regularise her immigration status. Ava has received assistance from MRCI on her immigration status but remains fearful of reporting her trafficker. Although HTICU is aware of her case, she still feels unable to formally report.

*(Case Study courtesy of MRCI)*

The combined provisions of the first three subsections of Article 11 - namely 11.1, 11.2 and 11.3, outline the conditions for assistance and support for victims of human trafficking that should: commence early, remain available before/during/after the criminal proceedings, and are not conditional on the victim's willingness to cooperate in criminal investigation and prosecution. Recital 33 is also relevant as it evokes the Charter of Fundamental Rights of the EU, which includes the principle of *equal treatment* – an essential approach to ensure that all victims benefit from the provision of assistance under the conditions of Article 11, subsections 1, 2 and 3.

### **Assistance Before, During and After Criminal Process**

Our previous analysis of this aspect of assistance remains unchanged, and with it, the negative findings and respective recommendations for improvement.

Understanding that successful identification of victims is an essential starting point for providing assistance, we have continuously highlighted the need for an equitable and transparent process for all victims of trafficking, irrespective of their race, nationality or citizenship, which the current administrative policy denies.<sup>129</sup> In this context, establishing and maintaining immigration entitlements for Third Country National ('TCN') victims of trafficking is an essential pre-condition for access to assistance and support before, during and after investigations, while the right to claim International Protection remains universal and unprejudiced.

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129 The Administrative Immigration Arrangements that guided the identification process in 2022 did not ensure equal access to assistance for all victims of trafficking. The AIA's categorisation of victims led to different access to accommodation and different access to recovery through training and employment for TCN victims. For example, the assistance trajectory of a TCN victim's is different from that of a TCN victim who is claiming international protection. Similarly, the Habitual Residence Condition represents a barrier for assistance to some victims, including those originating in the EEA. Such distinctions undermine the equitable treatment in the implementation of assistance before, during and after criminal investigation and prosecution.



We recall that the core of the universal criticism levelled at the current identification process centres on the State's pre-occupation with the nationality of victims and existing claims for International Protection (Administrative Immigration Arrangements); arguably to the detriment of fulfilling the broader obligation owed to victims.<sup>130</sup>

**The Commission reiterates its recommendation that the State ensures that all victims have access to the rights and assistance measures put in place for victims of human trafficking, regardless of their nationality/citizenship, or a pending International Protection claim.**

**The Commission reiterates its recommendation that the proposed new National Referral Mechanism incorporates explicit provisions to ensure that International Protection can be pursued at any moment in time – prior to, during, or after identification as a victim of trafficking.**

#### **Assistance as soon as Reasonable Grounds are Established**

As above, the implementation of Article 11.2 and our analysis of it remains unchanged. While the State endeavours to secure early assistance to victims, inherent issues within the system often preclude or limit access to services. Acknowledging these efforts, we are of the view that the process is limited by burdensome procedures and unrealistic expectations. In addition to straining the resources of An Garda Síochána, the current process of identification is unclear in terms of timing and procedure. It is not sufficiently formalised and does not result in formal notification or communication to a person of their status as victim of trafficking. In conclusion, we are of the opinion that the nature of the new NRM will impact on the implementation of Article 11.2 and reiterate the recommendations contained in our submission to Part 3 of the General Scheme (Sexual Offences and Human Trafficking) Bill 2022.<sup>131</sup>

**The Commission reiterates its recommendation that the new National Referral Mechanism is urgently introduced in law and implemented, with a view to quickly relieving An Garda Síochána of the duty to act as a central reference point for early provision of assistance and support to victims.**

130 Government of Ireland (2011) *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*; IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)

131 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

**The Commission reiterates its recommendation that the State ensures that all specialist support services, both statutory or non-governmental, are in a position to provide recommendations to the Irish Immigration Service relating to the extension (or continuation) of trafficking-specific supports, and that these recommendations be taken into consideration for the renewal of Temporary Resident Permits, where necessary.**

### **Assistance not Conditional on Victims' Cooperation**

Contrary to the provisions of Article 11.3 and in the absence of appropriate statutory provisions on the immigration status of victims of trafficking triggered by a positive identification decision, third country national victims often have no other option but to cooperate in criminal investigations in exchange for possible legal residence.

The Council of Europe GRETA stated in their Third Evaluation report 2022 that:

*“Granting a residence permit on account of the personal situation of the victim takes in a range of situations, such as the victim’s safety, state of health and family situation, and tallies with the human-rights based approach to combating THB. GRETA invites the Irish authorities to grant temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim’s cooperation in the investigation or criminal proceedings.”<sup>132</sup>*

In this context, we remain concerned with the prospect that all immigration and assistance-related issues will not be explicitly addressed in the Bill establishing a new NRM, but will be outlined in (non binding) Operational Guidelines, instead. Such administrative policies are not equivalent to a statutory protection. We are concerned that by omitting explicit provisions to provide assistance and enabling immigration provisions that allow access to it, the new NRM will perpetuate the differential treatment of victims depending on their nationality and immigration status and will interfere with the principle of unconditional assistance and voluntary cooperation with the criminal justice system.

**The Commission recommends that the Department of Social Protection explicitly exempt all victims of human trafficking from the Habitual Residence condition to access statutory assistance.**

132 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), para. 116

The Commission recommends that Part 3 of the law providing for the National Referral Mechanism explicitly states that access to assistance and support, and the necessary immigration status for third country national victims that underpins it, are not conditional on cooperation with criminal investigations and proceedings.

The Commission recommends that Part 3 of the law providing for the National Referral Mechanism clearly sets out assistance and support for suspected victims of trafficking providing equity of care for all victims.

### Mechanism for Early Identification (Article 11.4)

**Article 11.4** Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

“If I did not get into that elevator that day and spoke with that woman I would have probably lost my head and I would be somewhere in the ditch. I do not know where I would be right now because there is nothing that says these are the organisations you can talk to, this is the number you can call. When you go to the IPO you tell what have happened, they ask if you have accommodation, they register, they take you to the accommodation and then that is it”.

Survivor Quote

“When I arrived in the airport, the first person who assisted me was a police officer. I’ve never seen that in my whole life. He was so good to us. He’s the one who made me to have hope”.

Survivor Quote

We reiterate our concerns regarding the current NRM and draw attention to the continuous criticism of Ireland's approach to victim identification and assistance.<sup>133</sup> The existing NRM does not ensure 'early identification, assistance and support for victims' in all cases, as required under Article 11(4), which interferes with its implementation.<sup>134</sup>

The 4th Progress report of the European Commission referenced Ireland's plans to formalise the role of independent civil society organisations in the proposed NRM as a good practice example in the EU. There is an upcoming EU-level proposal for an amended EU Anti-Trafficking Directive that will require all EU Member States to formally establish their NRMs. In this regard, Ireland is leading in its approach to implementing the Anti-Trafficking Directive within the EU by taking the necessary legislative steps towards formalising the NRM. However, the measure will only be as good as the provisions contained in the legislation.

In our submission on the General Scheme, we welcomed the positive approaches of:

- ▶ conferring a role (a degree of agency) to victims in the process of identification;
- ▶ the inclusion of 'historic' and 'potential' victims of this crime; and
- ▶ the multi-agency cooperation and inclusion of independent stakeholders.

Measures to protect against deportation and the limited non-prosecution provision were also welcomed. In particular, the proposed new mechanism would expand the role of 'competent authority' for the identification of victims of trafficking beyond An Garda Síochána to include several other State agencies. In addition, the General Scheme suggests that certain non-governmental organisations will be designated as 'trusted partners' for the referral of victims. The new mechanism will be overseen by an operational committee made up of representatives from the competent authorities and trusted partners.

Our submission also draws attention to some significant omissions in the General Scheme. First, is the almost complete absence of a child-specific identification process. We have emphatically called for the inclusion of child-specific identification and assistance measures. Such calls are reiterated throughout our First National Evaluation

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133 THP v. Chief Superintendent of Garda National Immigration Bureau and Others [2015] 2 ILRM 1; US State Department (2022) [Trafficking in Persons Report](#); GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#); 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*

134 The main challenges lie with the law enforcement exclusive authorisation for identification of victims, a process without definite timing and a limited procedure that applied solely to undocumented third country national victims not claiming International Protection, essentially disregarding the diverse profile of victims of trafficking in Ireland.

Report and owing to the significant reforms that are urgently required, these have been included in a dedicated chapter within the First Evaluation Report, and below in this report.

The second omission is the absence of the sixty-day recovery and reflection period - a requirement of the Europe Convention on Action against Trafficking in Human Beings, and an extremely limited application of the provision for Temporary Residence Permit for victims of trafficking. Failing to provide for, in statute, immigration permissions seriously undermines the protections available to victims who are third country nationals, and in doing that, the principle of assistance to victims that is independent of cooperation with criminal investigation.

Third, the General Scheme of the Bill is not sufficiently clear on the rights and assistance suspected victims of trafficking can rely on before, during and after criminal investigation and proceedings, while also taking into account the implications of the habitual residence conditions barriers<sup>135</sup> to services. We have continuously highlighted the need to have an equal and fair process for all victims of trafficking, irrespective of their immigration status and nationality.

We were encouraged by the resulting report of the Joint Oireachtas Committee following the 2022 debates and public hearings, in that it provides clear guidelines to the legislators working on the drafting of the actual law.

On the whole, we welcome these proposals, which, if delivered upon, have the potential to significantly enhance the State's ability to identify and support victims of trafficking. It is positive that the legislative process has already commenced and we call for an urgent process of parliamentary scrutiny, enactment and implementation.

Our full list of detailed recommendations, relevant to Article 11.4 requiring the States to establish a mechanism for early identification of victims is available in our Submission on Part 3 to the General Scheme (Sexual Offences and Human Trafficking) Bill 2022 (Appendix 1).

**The Commission reiterates its recommendation that the establishment of a new National Referral Mechanism is progressed as a matter of utmost priority for the State.**

**The Commission reiterates its recommendation that the identification procedure (that is the centre of the referral mechanism) is made applicable to all suspected victims of trafficking in the State and that it involves transparent decision making**

135 The Department of Social Protection has issued guidelines for some victims covered by the AIA, to be deemed compliant with the HRC, provided such request is made by the HSE and with reference to an ongoing investigation; Gov.ie (2023) [Operational Guidelines: for Deciding Officers and Designated Persons on the determination of Habitual Residence. Right of Residency non EU/EEA nationals](#) [website]

**with timely confirmation of victim status to the individual and their legal representative. Such a procedure must include an appeals process.**

### **States' Efforts to Proactively Detect Victims of Trafficking**

In 2022, the State continued its efforts to detect victims of trafficking within high-risk environments and amongst vulnerable populations. It must be clarified here that the meaning of *detection* (as distinct from formal identification), is the process of proactively screening for potential victims of trafficking within known high-risk environments and industry sectors.

Targeted efforts to identify victims within high-risk environments or amongst vulnerable populations, is a powerful prevention approach, and as such, must be included in the Third National Action Plan. The European Union Strategy on Combatting Trafficking in Human Beings 2021-2025 has charted the high-risk economy sectors and other high-risk environments for human trafficking. In relation to sexual exploitation, prostitution, escort services, massage parlours, bars and nightclubs are high risk environments. In relation to labour trafficking, such environments can include the agricultural sector, construction, hospitality, the cleaning sector, domestic work, forestry, textiles and garments, and food manufacturing.<sup>136</sup> In a recent opinion paper, the European Parliament European Economic and Social Committee called for greater attention to be paid to vulnerable situations that may facilitate recruitment and exploitation by criminal networks and others. As a result, more attention is needed for other vulnerable groups including refugees, asylum seekers, and people who are undocumented or have a precarious residence status.<sup>137</sup>

**The Commission reiterates its recommendation that the new National Action Plan should include the development of a trafficking-specific screening tool that can be adapted and used by all relevant State agencies and frontline services.**

**The Commission reiterates its recommendation that the new National Action Plan should include a strategy for mandatory trafficking-specific training (including in cultural competency) to be systematically rolled out to all competent authorities and trusted partners likely to come into contact with victims of trafficking.**

136 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 Combating Trafficking in Human Beings 2021-2025](#)', COM (2021) 171 final, p. 6

137 European Economic and Social Committee (2023) '[Opinion on the Anti-Trafficking Directive](#)', p. 1

## Work Place Relation Commission's Role in Screening for Victims of Trafficking for Forced Labour

The existing safeguards to labour exploitation rely heavily on the operations of the Workplace Relation Commission (WRC),<sup>138</sup> its labour inspectorates<sup>139</sup> and its capacity to identify and 'flag' potential cases of labour exploitation - including human trafficking. We note that the General Scheme for the new NRM includes the WRC as a Competent Authority, which is both logical and beneficial for the system of identification of victims of human trafficking.

The overall capacity of the WRC is steadily increasing. In 2021, there was an increase of seven inspectors, to a total of 60 inspectors. Currently, the number of inspectors is 63 with an additional 10 positions approved for recruitment.

**The Commission recommends that the State continues to resource the Workplace Relations Commission to enable it to reach the target levels<sup>140</sup> and to the extent necessary to allow it to fulfil its new role as a Competent Authority in the new National Referral Mechanism.**

The WRC inspectors are organised in five regional offices around the country and such geographical coverage is conducive to the fulfilment of the role of a competent authority in identifying and assisting potential victims of trafficking around the country. The WRC informed us that all current inspectors (63) have received a training on indicators of human trafficking by An Garda Síochána.

**The Commission recommends that the Workplace Relations Commission continues to ensure all inspectors are trained on trafficking in human beings and identification of victims, to the level necessary to allow them to carry out their functions as a Competent Authority.**

During 2022, the WRC carried out 3,943 inspections (cases), which included 1,780 (45%) unannounced inspections. This represents a decrease of 11% from 2021, when 4432 cases were completed (remote and in-person due to Covid-19), which in

138 The WRC mission is to ensure people in dispute about compliance with employment or equality law, or having conflicts in their workplaces will have their disputes resolved quickly and fairly. Workplace Relations Commission, [Statement of Strategy 2019-2022](#), p. 3

139 WRC inspectors are also appointed by the Minister for Business, Enterprise and Innovation as authorised officers for the purposes of the *Employment Permit Acts 2003 to 2014*.

140 For example in the '[Towards 2016. Ten-Year Framework Social Partnership Agreement 2000-2016](#)', a total number of 90 labour inspectors were agreed, which probably requires an upwards revision corresponding to the improved economic climate and higher employment levels in 2020s in Ireland.

turn represents a further decrease compared to 2020. We are of the view that the decreasing number of inspections for the last three years contradicts the steadily increasing number of inspectors, or indeed the investment in the labour inspectorate.

At the same time, we welcome the increase in more targeted inspections – particularly a notable increase of the inspections conducted in the identified high-risk sectors for human trafficking. These activities are presented in more details below.

Another encouraging feature was that all inspections in 2022 were conducted in-person following the lifting of Covid restrictions, which is also essential for screening for potential cases of labour exploitation.

WRC inspectors are also authorised officers for the purposes of Employment Permit Acts. We welcome the WRC statement outlining that:

*“Recognising the potential of exploitation of workers who do not have permission to work, it is a long-standing policy of the WRC not to prosecute employees who work without permission.”<sup>141</sup>*

The inspections in 2022 included 70 joint inspections with other regulatory bodies such as An Garda Síochána, Revenue and the Department of Social Protection, which represents roughly the same level of activity (57 joint inspections were completed in 2021). The question of joint inspections, in particular with immigration authorities, remains a point of dispute in Ireland.

The WRC affirmed its satisfaction:

*“that there are sufficient firewalls in place in terms of any joint inspection activity that it carries out in conjunction with the State’s immigration enforcement authorities.”<sup>142</sup>*

Frontline specialist NGOs on the other hand state that:

*“joint raids involving Gardaí are harmful to potential victims of trafficking who are fearful of their lack of documentation, and it compounds the trafficker’s coercive tactics who have convinced victims that the Gardaí will deport them when they discover undocumented status.”<sup>143</sup>*

This potentially undermines the confidence of a third-country nationals who are working undocumented, or irregularly employed to report an exploitative employment situation to a WRC Inspector, as reported in our First Evaluation Report.<sup>144</sup> We are still

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141 Source: Workplace Relation Commission 2023

142 Ibid

143 Source: Consultations with Civil Society Organisations 2023

144 Arnold S, et al. (2017) [Illegal Employment of Non-EU Nationals in Ireland](#), p. 33



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.<sup>145</sup> In that regard, we reiterate our recommendation for inserting explicit measures regarding the non-punishment of victims of trafficking, including through the provision of special defence measures under the new NRM legislation (for further details see Section Non-Prosecution of victims-Article 8).

**The Commission recommends that the Workplace Relations Commission uses special care and adopts innovations in maintaining firewalls between immigration enforcement and labour inspections, to ensure that potential victims of trafficking are empowered to report exploitation, remaining protected against immigration and/or employment related offences in line with Article 8 of the Anti-Trafficking Directive.**

In 2022, the WRC Labour Inspectorate reported that they've identified six suspected cases of trafficking for labour exploitation pertaining to individuals working in the following sectors:

- ▶ Food Service Activities (2);
- ▶ Construction (1);
- ▶ Car Washes/Valeting (1); and
- ▶ Agriculture (1).<sup>146</sup>

All cases were referred to GNPSB, however no further information was kept by WRC on the cases. We anticipate that this approach will be improved after the adoption of the new NRM, when the WRC will play a specific role requiring them to follow up on cases and to keep data on the identification, progress and outcomes of such cases, including in regards to the redress and compensation of victims.

**The Commission recommends that at a minimum, the Workplace Relations Commission keeps disaggregated data on the potential victims of trafficking that they uncover and report to An Garda Síochána; and keeps data regarding any efforts to provide redress and compensation to such victims of trafficking.**

145 The Commission has previously noted, in broader terms, that the absence of 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 crime or violations of their rights, or when they are seeking services to which they are entitled. See Timmerman, R. I., Leerkes, A., Staring, R., and 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), pp. 427-455.

146 In one case the sector was not specified.

In 2022, the WRC continued to carry out inspections of high-risk sectors for human trafficking, which represents an overall increase in the vast majority sectors. These efforts included:

- ▶ 280 inspections in nail/hair and beauty salons (15% increase from 2021),
- ▶ 83 inspections of the construction industry (9% increase from 2021),
- ▶ 49 inspections in the agricultural sector (14% decrease from 2021),
- ▶ Inspections in the hospitality industry (89 in hotels- 134% increase from 2021; 1390 in Food production/service - 82% increase from 2021; 156 in beverage service activities - 170% increase from 2021),
- ▶ 35 inspections in the fishing industry (25% increase from 2021),
- ▶ 33 announced inspections of domestic work (multi-fold increase to 2021 - 2 inspections),<sup>147</sup>
- ▶ 23 inspections in the meat industry (for comparison between 2016 and 2020 in total 61 inspections were carried out).<sup>148</sup>

We welcome the markedly increased efforts by the WRC in the high-risk sectors for trafficking. Attention to the inspection of such sectors is considered a good practice approach in the EU.<sup>149</sup> The consultative approach adopted in the domestic work and meat industry sectors are similarly commendable.

There is evidence that the WRC continues to maintain sectoral specialisation of the inspection work, which is necessary and helpful due to the diverse environment. For instance, to respond to the risks in the fishing sector, 15 more inspectors were trained and made available for deployment in fisheries compliance operations, which is a two-fold increase from 2021. Similarly, in 2022 the WRC retained its sectoral focus on the meat sector, and carried out 23 inspections that exposed a high proportion of employers (78%) operating in breach of employment law.

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147 The WRC carried out a pilot inspection operation in the Personal and Household Services Sector during 2022. The objective was to identify best practice for inspections in this sector and compliance patterns generally in order to inform planning for a future campaign. 33 announced inspections were undertaken and 44 contraventions of employment law were detected. 60% of contraventions related to failure to keep working time records and failure to issue, or to incorporate the correct particulars in, terms of employment. The WRC intends to follow up with specific awareness initiatives in these areas.

148 In late 2021, the WRC undertook a consultative process with operators in the meat processing sector with a view to conducting a series of compliance checks during 2022 to raise awareness and to check and ensure compliance with relevant employment legislation in this sector. The WRC received responses from 85 operators in the meat sector arising from the consultative process, and 25 (29%) of these respondents indicated they have availed of the services of Employment or Work Placement Agencies or similar intermediaries to engage workers or source of employees in this sector.

149 The high-risk sectors for labour exploitation were included in the [EU Strategy on Combatting Trafficking in Human Beings 2022-2025](#) (p. 6) and in the [IHREC 2021 submission to GRETA](#) (p. 5)

## An Garda Síochána /EMPACT – Pro-Active Screening for Victims of Trafficking

Over 2022, An Garda Síochána remained the leading actor in the early detection of potential victims of trafficking and other vulnerable individuals within the high-risk environment of prostitution. The specialised arms of the national law enforcement, such as the Garda National Protective Services Bureau, the Garda Human Trafficking Investigation and Cooperation Team, and the Organised Prostitution Investigation Unit are of particular value for taking ongoing actions directed at the individual safety and prevention of exploitation through human trafficking.

The participation of Garda Síochána in the European Multidisciplinary Platform Against Criminal Threats ('EMPACT'), was also important to the pro-active identification of potential victims and preventative actions over 2022.<sup>150</sup> In this section, we present some of the notable efforts to screen high-risk sectors for human trafficking and other vulnerabilities.

During the year, a range of activities took place under the EMPACT that amount to proactive screening for victims of exploitation. These were carried out in massage parlours, nail bars, car washes, agricultural sectors including forestry, fruit and vegetable farms, livestock farms (animals and poultry) and involved the Garda National Protective Services Bureau and The Garda National Immigration Bureau, WRC Inspectors, the Department of Social Protection and the Revenue Commissioners. During the 16 days of action, Garda Síochána undertook screening activities aimed at detection of vulnerabilities and support awareness in the sex industry.

Since 2017, An Garda Síochána have undertaken a number of positive actions to build and improve trust with those in the sex trade and to actively identify victims.<sup>151</sup> According to the Department of Justice, since the introduction of the Criminal Law (Sexual Offences) Act 2017, which decriminalised the sale of sex, potential victims of human trafficking are more easily identified.<sup>152</sup> An Garda Síochána have undertaken a number of positive actions to build and improve trust with those in the sex trade and to actively identify victims.<sup>153</sup>

An Garda Síochána reported a number of positive outcomes as a consequence of the targeted action.<sup>154</sup>

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150 EMPACT (European Multidisciplinary Platform Against Criminal Threats) is a security initiative driven by EU Member States to identify, prioritise and address threats posed by organised and serious international crime. Human trafficking is a priority crime area within EMPACT. GNPSB participate in the Human Trafficking Group. Personnel assigned to GNPSB attend EMPACT meetings relating to various human trafficking projects.

151 O'Connor M. and Breslin R. (2020) [Shifting the Burden of Criminality: An analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#), Dublin: UCD, pp. 95-96

152 Source: Department of Justice, February 2022

153 O'Connor M. and Breslin R. (2020) [Shifting the Burden of Criminality: An analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#), Dublin: UCD, pp. 95-96

154 Source: Department of Justice 2023

Examples include:

- ▶ A Liaison Officer attached to the Organised Prostitution Investigation Unit was contacted by an individual in the sex trade who was the victim of assault by a client. Gardaí are currently investigating this matter and are following a definite line of enquiry.
- ▶ Following a safeguarding visit from a member of An Garda Síochána in the south-west, an individual working in the sex trade made contact with a local Garda Station to express their concern for several women believed to be trafficked for sexual exploitation. Enquiries are ongoing into this matter.
- ▶ In the east of the country, a woman in the sex trade contacted a local Garda Station to report the location where they believe women were working for a 'pimp' who is suspected of controlling their earnings. The location has been identified by Gardaí and enquiries are ongoing.
- ▶ As a result of this work by Gardaí, a number of files are now being prepared for the Director of Public Prosecutions, with a view to determining if any criminal prosecution can be initiated.
- ▶ An Garda Síochána have two dedicated phone numbers for those in the sex trade in Ireland to contact to report a crime, seek advice or assurance, as necessary.

Aimed at self-reporting, the SMS campaigns initiated in 2020 continued in 2022. These were safeguarding operations organised by the OPIU within GNPSB, in conjunction with the PSNI and relevant NGOs in response to restrictions imposed by the Covid-19 pandemic, to check on the welfare of persons involved in the sex trade. As part of this, four separate bulk SMS messages were sent in four languages (English, Romanian, Spanish and Portuguese) alongside the following lines:

*Message from the Irish Police/Gardaí: Gardaí (Irish Police) are concerned for your welfare during these times. Should you have any concerns please contact on (087-xxxxxxx) us for assistance or in emergency dial 999. Stay safe. From the Organised Prostitution Investigation Unit.*

An Garda Síochána reported that over 6,000 messages have been sent to date and, based on the feedback received through non-governmental organisations, the reaction was positive. Any replies received were responded to and, where requested, further direct contact was initiated.

## Screening For Victims of Trafficking Within the International Protection System (Vulnerability Assessment)

We remain keenly interested in the process of Vulnerability Assessment ('VA') among the IP applicants, viewing it as an important early identification mechanism to detect victims of trafficking among the asylum seeking populations.<sup>155</sup> The obligation to carry out a VA, in line with the recast EU Reception Directive, lies with the International Protection Accommodation Service (IPAS). In that sense, IPAS carries two important roles in the national response to human trafficking – the provision of accommodation to victims of trafficking and screening for potential victims of human trafficking among those seeking International Protection in Ireland.

Within IPAS, the dedicated Resident Welfare Team ('RWT') is entrusted with carrying out this task.<sup>156</sup> RWT consist of a Programme Manager, four Assessment Officers and two Social Work Team Leaders<sup>157</sup> who can make a determination of a person's vulnerability status and reception needs and refer vulnerable persons to services which may be helpful to them. In 2022, the VA was extended to all IP applicants. Such assessment is offered on a voluntary basis but is not taken up by all applicants.<sup>158</sup> Data provided by IPAS indicate that 8% (1097) of the IP applicants took up the offer of VA in 2022.<sup>159</sup> The level of engagement with VA was three times higher in 2021 (25%). The VAs showed a high-rate of various vulnerabilities among the IP applicants. 829

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155 It is also a means of ensuring that victims are allocated appropriate accommodation and access to specialist support services. Although, as seen in Section 4 on Safe Accommodation this is not always the case, especially for victims of trafficking who are often housed in mixed gender accommodation that is not near trafficking-specific support services.

156 IPAS's Vulnerability Assessments used to begin with an initial interview with a Vulnerability Assessment Officer (VAO) from the Resident Welfare Team. Following a review in September 2022, a preliminary screening process via a questionnaire was introduced. VAOs have been trained on the psychological impact of trauma in war and forced migration, on survivors of violence, intercultural awareness and interview and de-escalation skills. The officer asks a standardised list of questions in a sensitive and conversational manner with a gender-sensitive approach and interpretation as required. The questions relate to age, disability (both physical and non-physical), pregnancy, child-care responsibilities, serious illness and indicators of other vulnerabilities. To assess human trafficking, the VAO is required to ask 'Does the applicant indicate that they may be a victim of human trafficking or have been brought to the State against their will?' followed by asking if the applicant is currently afraid of anyone in the State or of anyone present during the interview with IPO. When the assessments indicates that the applicant has one or more vulnerabilities, the VAO may refer the applicant for one or more further assessments carried out by a social worker. The Resident Welfare Team holds regular Vulnerability Assessment Clinics in International Protection accommodation centres, where residents have an opportunity to discuss any special reception needs with the Resident Welfare Team directly. For more information see IPAS (2022) [Vulnerability Assessment Pilot Programme](#) (28 September)

157 A third Social Work Team Leader was expected to be imminently appointed in May 2023.

158 Participation in a vulnerability assessment is voluntary. IPAS makes a written offer for a vulnerability assessment to all persons who made an application for International Protection to the International Protection Office (IPO). Where consent is given by the applicant, a vulnerability assessment is then scheduled with an Assessment Officer from the Resident Welfare Team.

159 Of the 13,651 International Protection applicants in 2022, 1097 agreed to participate in VA. This represents 8% of all International Protection applicants. Source: IPAS 2023.

IP applicants (78%) had some sort of vulnerability in 2022,<sup>160</sup> compared to 63% (438) in 2021.

IPAS reported that of the 1097 individuals screened in 2022, six cases of human trafficking vulnerabilities were recorded. This represents 0.5% of individuals screened. In contrast, in 2021, 3% of individuals screened revealed human trafficking vulnerabilities. In 2021, we were informed by IPAS that training on VA's for RWT was secured in October 2021. This training did not include any specific training on trafficking.<sup>161</sup> Therefore, in our First Evaluation Report we recommended that training to the personnel conducting VA's should include human trafficking competence and basic identification skills, at a minimum.

IPAS reported that no formal training was conducted in 2022. In October 2022, the RWT alongside IP-Assessment Officers attended a presentation delivered by the Anti-Human Trafficking Unit in An Garda Síochána. In addition, some members of the RWT were trained by Ruhama in preparation of handling 'complex cases'. We were informed that the RWT is currently engaging with the Learning and Development Team in the Department of Children, Equality, Disability Integration and Youth to develop and deliver bespoke training for staff members with responsibility for VA's and associated complex cases in 2023.

**The Commission reiterates its recommendation that IPAS ensures that the relevant staff involved in Vulnerability Assessments are specifically trained on human trafficking.**

The VA process in Ireland is still a work in progress subject to review and adjustment during the pilot programme. For instance, in September 2022 an internal review of the VA process was conducted by staff working on the pilot programme to identify ways to reduce waiting times for assessments and ensure that vulnerable people can be supported more effectively by IPAS. As a result of the significant increase in the number of IP applications, a preliminary screening process via a questionnaire and referral was introduced to identify vulnerable applicants as early as possible in the

<sup>160</sup> Among them, 1080 instances ('instance' different from 'an individual') of vulnerability were identified, of these 689 pertained to adults and 391 to children respectively. The highest rate of vulnerability uncovered related to serious medical issues, which was followed by a mental disorder (66 with adults, 8 with children) and disability (50 with adults and 12 with children).

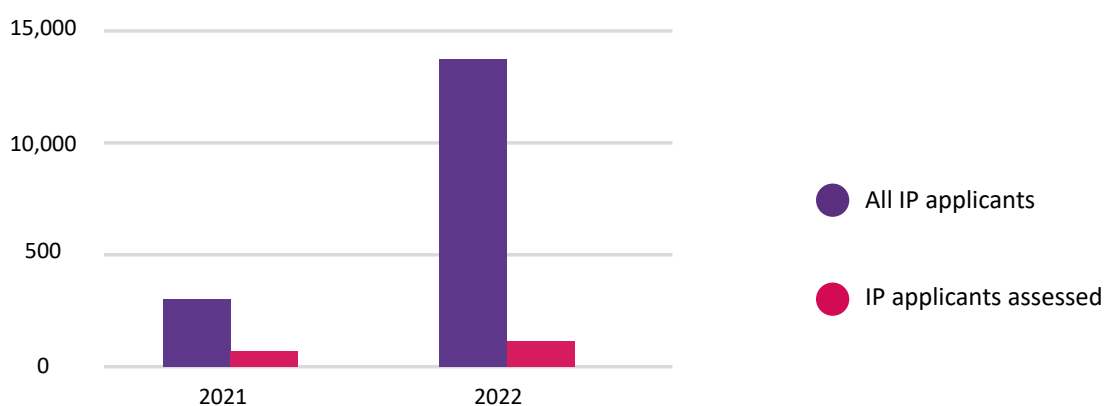
<sup>161</sup> The Training in 2021 was delivered by organisations with relevant profile but human trafficking appeared to be missing from the expertise. Training in 2021 was delivered by three organisations, Spirasi, Barnardos and the HSE National Office for Suicide Prevention. Barnardos training covered interview de-escalation skills and HSE training covered best practice steps if concerned that someone may be in suicidal distress. Spriasi training was delivered in three sessions over three days and covered the following topics: Psychological impact of experiencing traumatic events in the context of war and forced migration; Survivors of Violence-A medical and health-related perspective; Intercultural awareness and effective psychosocial assessment.

process.<sup>162</sup> The revised process has been in place since October 2022, with a further review to take place in due course.

Documents and resources in relation to the pilot programme, including the vulnerability assessment policy, questionnaires and referral forms, frequently asked questions and translations of same, have been published on the IPAS website.<sup>163</sup>

The unprecedented increase in the number of persons applying for International Protection (13,651 IP applicants in 2022, compared to 2649 in 2021) has placed significant pressure on IPAS resources overall, and by extension on the VA function delivery. Despite the absolute increase (37%) in the number of vulnerability assessments from 2021 (from 686 in 2021 to 1097 in 2022), the VA only covered 8% of all applicants in 2022, while VA in 2021 benefitted 25% of all applicants.

— **Diagram 1. Total number of IP applicants and extent of Vulnerability Assessment among them, per year**



We recognise that IPAS is experiencing considerable challenges around both increased numbers of applicants for IP and difficulties in securing suitable accommodation.

According to IPAS, it:

*“continues work to improve how it delivers services to people who claim International Protection and seek its assistance and to meet the requirements of the 2018 Regulations,<sup>164</sup> despite significant pressures.”<sup>165</sup>*

162 Questionnaires are available to applicants in a number of languages in all International Protection accommodation centres and via the IPAS website. For service providers working with International Protection applicants, a vulnerability assessment referral form is available on the IPAS website and can be submitted by a third party or service provider on behalf of an applicant and with their consent. For more information see Gov.ie [International Protection Accommodation \(IPAS\)](#)

163 Gov.ie [International Protection Accommodation \(IPAS\)](#)

164 *International Protection Act 2015; S.I. No. 230/2018 - European Communities (Reception Conditions) Regulations 2018*

165 Source: IPAS 2023

We further observe that within these considerable challenges and efforts, the IPAS priorities in 2022 lay almost exclusively with the obligations in relation to the IP system, even though IPAS also represents a primary service for suspected victims of human trafficking (see more in section 'Safe accommodation' under subsection Article 11.5).

### Conclusion on Vulnerability Assessment

We acknowledge the high levels of vulnerability identified through the process of Vulnerability Assessments of International Protection applicants (78%), indicating widespread need for specialised support amongst asylum seeking populations. As a human rights and equality body, we see the need for an International Protection system that is responsive to vulnerability on a large-scale, which is beyond the scope of the present report.

We stress that VA's should only serve as a tool for detecting potential victims of trafficking within the International Protection seeking population, and not as a framework for identifying needs. The State must apply the human trafficking framework for support and assistance of victims of trafficking that is specific to their needs and based on the anti-trafficking laws.

**The Commission recommends that the DCEDIY designates sufficient resources to IPAS to allow them:**

- ▶ **to carry out quality Vulnerability Assessments with a sufficient spread as a meaningful screening strategy for the identification of potential victims;**
- ▶ **to organise an efficient referral of suspected victims to the specialised human trafficking framework; and**
- ▶ **to participate as a Competent Authority in the upcoming National Referral Mechanism reforms.**

### Tusla - Screening for Child Victims

As reported in our First Evaluation Report, Tusla's sole mechanism for the proactive screening for child victims of trafficking and/or at risk of trafficking (Risk Assessment Matrix on Separated Children at Risk of Trafficking) is exclusively used for unaccompanied and separated minors.

We are of the opinion that child trafficking represents an important dimension of this crime in Ireland that deserves targeted efforts, which Tusla must play a leading role in. The combined data from 2013-2022 that we analysed indicates that children represent 8% of the victims identified in Ireland for that period. In 2022 alone, the proportion of child victims was 12%, wherein trafficking for labour and sexual exploitation appeared



in ratio 1 to 4 respectively. A report published by the UCD Geary Institute in 2023, revealed a concerning data about a pervasive sexual exploitation of teenagers in residential care:

*“Children and young people, and in particular girls, in residential care or who go missing while in State care, are being targeted for sexual exploitation in an organised manner by coordinated networks, or gangs, of predatory men.”<sup>166</sup>*

Previously in 2021, the Greentown project initiative scoping study estimated that a large number of teenagers and young people were exploited by gangs for criminal activities in local communities around the country.<sup>167</sup>

On the basis of the information and data available, we are of the opinion that preventative screening efforts are needed to capture early instances of exploitation and human trafficking in known high-risk environments, so that children involved receive the level of assistance and protection available to them.

**The Commission reiterates its recommendation that Tusla must adopt a trafficking-specific systematic screening strategy to facilitate the detection of potential and at risk child victims of trafficking. Particular attention must focus on vulnerable populations, such as unaccompanied, separated children, children in the International Protection system, children in residential care as well as in resident (local) communities where the risk for child exploitation in all its forms is known to be high.**

## **Elements of Assistance (Article 11.5)**

**Article 11.5** The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least: standards of living capable of ensuring victims’ subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

<sup>166</sup> Canning, M., Keenan, M. and Breslin, R. (2023) [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#), p. 59-60. Dublin: SERP

<sup>167</sup> Naughton, C. and Redmond, S. (2021) [National Prevalence Study: Do the Findings from the Greentown Study of Children’s Involvement in a Criminal Network \(2015\) Extend Beyond Greentown?](#) University of Limerick: Limerick, p. 23, “The national prevalence survey suggests that up to 1,000 children in Ireland who are involved in more serious and prolific offending may be caught up in local crime networks. The findings plausibly suggest malign, intrusive and coercive adult influence in the lives of children caught up in these criminal networks.”

Arguably, Article 11.5 represents one of the most important provisions of the Anti-Trafficking Directive –detailing the assistance and support victims of trafficking must receive by the State, which must be on a consensual and informed basis. The provisions include safe accommodation and material assistance, medical and psychological assistance, counselling and information, and translation assistance. Similar, to the approach taken in our First National Evaluation Report, the following subsections review the implementation of each of these elements separately.

### **Informed Consent (Article 11.5)**

The issue of informed consent to receiving services is generally considered core to the work of anti-trafficking organisations providing supports to trafficking victims.<sup>168</sup> Where this issue is overlooked, it can reinforce patriarchal and gender inequalities by perpetuating a form of discrimination against vulnerable people by removing their ability and right to choose.<sup>169</sup>

From our consultation with frontline agencies and NGOs, it appears to be standard practice for victims to be offered a consent form when accessing services. Under the current NRM, the existing operational dependence of provision of assistance by a State service on a referral by An Garda Síochána potentially conflicts with the notion of informed consent (and respectively the withdrawal of consent) required by victims prior to their accessing State provided assistance.

We have recommended that legislators include clear rights to specified assistance and support as provided under Article 11 in the proposed legislation establishing the new NRM. Providing statutory rights is the only ensure victim’s fully informed consent.

**The Commission reiterates its recommendation that the referring pathway within the new National Referral Mechanism is centred on health and support, rather than criminal justice. All referrals must be underpinned by the informed consent of the victim.**

### **Safe Accommodation (Article 11.5)**

We take special care in reviewing the implementation of this provision, due to its centrality in the system of assistance. It is crucially important to recognise that the majority of victims of human trafficking are homeless migrants.<sup>170</sup> Therefore, the

168 Yonkova, N. et al. (2017) [Protecting victims: An analysis of the Anti-Trafficking Directive from the Perspective of a Victim of Gender-Based Violence](#). Vilnius: EIGE, p. 87

169 Bindel J., Brown L., Easton H., Matthews R. and Reynolds L. (2012) [Breaking Down the Barriers: A Study of how Women Exit Prostitution](#). Eaves and London South Bank University

170 IPAS provided the Commission with a snapshot picture of all victims of trafficking accommodated in the month of December. In December 2021, IPAS reported that they operated at almost full capacity (10,577 resident), including 84 different centres spread around Ireland. Just 77 or less than one percent (0.7%) among them were

provision of safe and appropriate housing for victims is an internationally accepted priority need. It is central to the recovery of victims, enabling them to reclaim their independence and, where possible, to make their contribution as witnesses in criminal investigations or prosecutions. The availability of gender-specific shelters for victims is a tenet of any anti-trafficking response and one that the State has been failing to provide.

Our review of the anti-trafficking response in 2022 shows that the implementation of Article 11(5) pertaining to gender-specific and safe housing continues to be highly inadequate and is deteriorating when compared to previous years. Our evaluation further shows that accommodation for victims of trafficking remains a neglected matter.<sup>171</sup> Given the profound failing (further detailed below), we are of the view that the State is in contravention of its obligations under Article 11(5), which requires that assistance to victims:

*“shall include...provision of appropriate and safe accommodation.”*

Our First Evaluation Report outlined grave concerns regarding this issue.

We want to make it clear that the chronic delay in the provision of shelters for victims of trafficking, separate from Direct Provision, and the conflation of the legal frameworks for International Protection and anti-trafficking, are at the core of the State’s failure to implement its obligations to safely house victims of trafficking under Article 11.5.

The increased number of applications for International Protection is a compounding factor that should not have any bearing on the problem at hand. Had the State fulfilled its obligations and addressed the problems (very clearly established to date),<sup>172</sup> victims would have been spared the chronic conditions they now face.

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victims of trafficking, including 11 male and 66 female victims. It was reported that 18 of them were victims of trafficking for labour exploitation and 2 were victims of trafficking for forced criminal activities. The vast majority, 44, were trafficking for sexual exploitation, and a further 13 were reported as victims of torture. The data shows that victims of human trafficking represent 0.7% of the residents accommodated by IPAS.

171 A string of decisions to date indicate that this central type of assistance and obligation has not been treated with the necessary priority. The State has failed to provide a specialised gender-specific shelter for victims of human trafficking and has decided against the use of the existing DV shelters for this purpose. This sets the country’s response apart from other EU Member States, where gender-specific shelters have been utilised for victims of trafficking affected by gender-based violence. This is particularly relevant given the Joint Oireachtas Committee investigation of Direct Provision as well as the High Level Group Review of 2020, which recommended the establishment of gender-specific shelters for victims, separate from Direct Provision. The White Paper based on these findings made some references to victims of trafficking but their situation in the process of dismantling Direct Provision remains unclear and precarious to this day.

172 The problem with accommodation has been ascertained by 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 (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#); the Expert Group on Direct Provision (Government of Ireland (2020) [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process \(year XXX\), by the report of the Joint Committee](#)); OSCE (2020) [Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combating Trafficking](#)

We were disappointed there were no express provisions in the General Scheme on the establishment of a National Referral Mechanism to provide for gender-specific and child trafficking-specific services to victims; a clear recommendation we made in the First National Evaluation Report and an explicit commitment of successive Governments. Given the continued criticism of the Direct Provision System, it is troubling that Head 19 (1)(b) of the General Scheme of the National Referral Mechanism Bill continues to follow the status quo of accommodating identified victims of trafficking within Directive Provision. Instead, we would recommend that the Bill contains access to gender-specific accommodation for victims of trafficking, in addition to assistance from Local Authorities for medium to longer-term support.

Inadequate accommodation contributed to the downgrading of Ireland in the Trafficking in Persons tiered system. Despite this, it continues to be the operating policy.<sup>173</sup> It is of note that some victims of trafficking do not claim International Protection and some are EEA citizens, hence the entire International Protection system is irrelevant to their residence rights in the State. A possible explanation for placing victims of trafficking in Direct Provision, could be the stereotype that victims of trafficking are migrants, which on one hand, demonstrates a lack of understanding of human trafficking, and on the other, perpetrates an unhelpful perspective on the intersection between migration and serious crime,

 *“There is a shame that goes around with you when you are taken and forced to sleep with men and all those things done to you. Your pride is taken away. With that stigma, you just exclude yourself from society. If you walk around in the corridors you meet someone who is going through the same experience as you it would give you comfort, you will feel seen, you will not hide. If you go downstairs to have dinner, if you talk to solicitors, if you meet*

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*in Human Beings, Valiant Richey; US State Department (2022) [Trafficking in Persons Report](#); US State Department (2023) [Trafficking in Persons Report](#); and by the Commission as a National Rapporteur in 2021 and 2022 (IHREC (2021) [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 \(GRETA\)](#)); IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#))*

173 The US State Department's [2020 Trafficking in Persons 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. US State Department (2020) [Trafficking in Persons Report](#), p. 271

*up with nurses, they already understand what you went through. Because some they just keep asking me to tell me what happened and you are thinking okay, here we go again”.*

Survivor Quote

### **IPAS as a Main Service Provider for Victims of Trafficking**

The primary function of IPAS is to provide International Protection applicants with accommodation, according to IPAS their function is

*” exclusively to provide accommodation to International Protection Applicants.”*

In addition to this function they have also - in our opinion, been inappropriately tasked with accommodating victims of trafficking. IPAS reported that they operate an online data system that tracks every resident, including victims of trafficking. This appears to be a positive development compared to 2021. Over 2022, IPAS accommodated an unusually high number of IP applicants (IPO data shows 13,651 IP applicants in 2022, compared to 2649 in 2021).

From our consultations, it is clear that victims of trafficking are a secondary consideration within IPAS service delivery. The needs of victims of trafficking have not been effectively considered and the standards have further deteriorated, even compared to 2021, which could cause secondary trauma.

In 2022, IPAS reported providing accommodation to 35 new individuals who were identified as victims of trafficking. Of those, 22 were referred by the HSE AHTT, five directly by Garda Síochána and a smaller number identified through vulnerability assessment, or other methods. Of them, 32 were women and 3 were men. 95% of the victims were third country nationals, 86% were also seeking IP. The vast majority (88%) were from Africa, while the others were from Asia or from the EEA.

In addition to the data on ‘new’ victims of trafficking referred to IPAS in 2022, the Commission as National Rapporteur requested a snapshot for the month of December 2022 of all residents in IPAS who are victims of trafficking at that period of time. A snapshot data provided by IPAS paints the following picture:

- ▶ Victims of trafficking occupy less than 1% of IPAS capacity: The snapshot shows that there were in total 103 victims of trafficking residing in Direct Provision, which is less than 1% of all IPAS residents.

- ▶ Victims of trafficking are mostly female, third country nationals: 88% of the victims in IPAS were female, of which a quarter were mothers with children. 99% of all victims were TCN, the vast majority were from Africa (90% from 12 African countries) and a smaller number from Asia, non-EEA Europe, and one case of an EEA national.
- ▶ The vast majority of female victims were placed in mixed gender accommodation: Out of the 91 female victims, just three were accommodated in single 'female centres' (less than 4%). There were a further 11 female victims that were housed in centres for 'families and female singles'. The majority – 76 female (83%) – are in random mixed gender settings.
- ▶ Capacity for gender-specific accommodation: Information from IPAS shows that in the Dublin area there are 4 centres for 'female residents' only occupancy, with a combined capacity of 133 spaces. Why these spaces are not used for victims of trafficking is unknown. This raises questions and invites consideration for transformation of any such centres into shelter-type accommodation for victims of trafficking.
- ▶ Male victims: Three of the total 12 male victims are living in single male accommodation, two of them for more than four years, which raises concern for the potential impact this institutionalisation has on their recovery.
- ▶ Length of stay in DP: 21 (22%) of the victims have been living in DP for more than three years – from before 2020. Nine victims (almost 10%) have been living longer than four years.
- ▶ Moving on from DP: There is evidence that some victims of trafficking are moving on from DP. However, there are also a number of victims who have remained in Direct Provision for a considerable amount of time. In December 2022 there were 6 victims residing in DP since 2018, 12 since 2019, 24 since 2020, 14 since 2021 and 43 since 2022. It would appear that victims left DP in greater numbers in 2021 compared to 2020. There is a need to study this aspect further in order to better understand what barriers victims face when they are trying to leave DP and how best resources can be allocated. The data at the end of the year indicates that EEA national victim finds it easier to resettle out of DP
- ▶ Implications for resources: Overall, the capacity required for victims of trafficking is small. The vast majority of victims are female, who require safe and secure single gender accommodation. A sizeable number of female victims are accompanied by their children, which must be taken into account. Male victims are a small minority and it would appear that,

with minor exceptions, they tend to use DP services for shorter periods. The danger of long-term institutionalisation presents a relevant risk for the recovery of victims. Information about the type of exploitation the people were subjected to is not recorded. As such, there is no way of knowing what supports they may require.

### Findings Regarding Accommodation of Victims

The dramatic increase in applications for IP in 2022 has created additional pressure on IPAS, which further impacted the already insufficient assistance to victims of trafficking. Following the fluctuations of the number of applicants for IP over the years (13651 in 2022, 2649 in 2021, 1566 in 2020, 4781 in 2019) it is evident that the levels will remain volatile and unpredictable. Leaving victims of trafficking exposed to this volatility, deprioritises their needs and leads to serious failures in our international obligations regarding victims of trafficking. It creates a misleading impression that the deficiencies in the victim accommodation assistance are as a result of unprecedented circumstances. This is not the case. The failure is a result of the policy approach to conflate the framework on International Protection and human trafficking. The safe and appropriate accommodation for suspected victims of trafficking has to be separate from DP.

In addition to the failure to establish a specialised shelter and the general confusion between legal frameworks, we have identified three distinct problems with housing of victims of trafficking.

These are linked to the:

- ▶ standards of accommodation in DP;
- ▶ IPAS denial of resettlement assistance; and
- ▶ application of Circular 41/2012 by the Local Authorities.

All of these problems compound the unequal treatment of victims of trafficking and the unhelpful overemphasis on their nationality and immigration-related applications, captured in *Table 1. Categories of victims of trafficking and the entitlement to accommodation*, included at the end of this section. This section further offers an explanation with respect to these distinct and interrelated problems, which, taken together result in the current failure in this area.

### Inappropriate Accommodation in Direct Provision

IPAS/Direct Provision centres continue to be mixed-gender, room sharing, mostly full-board arrangements that lack any privacy or specifically trained staff on site. For the purposes of our First Evaluation Report, IPAS reported some efforts to secure single room occupancy to victims of trafficking, which was seldom realised in practice, according to survivors. The only option is to house female victims of human trafficking

in family centres or single female’s centres, which appears to be the only safety consideration.

The facilities have staff onsite on 24/7 basis, who are:

*“informed to contact emergency services if an issue/event necessitates this.”*

Bar the centres’ management, the staff servicing direct provision are not informed that they are in fact providing a vital service to victims of trafficking crime, in many cases crimes committed in Ireland. It has not been reported to us that the proximity of specialised anti-trafficking services is a factor in selecting a centre for the accommodation of a victim. Consultations with survivors of trafficking indicate that indeed the geographical dispersal of victims is indiscriminate to such considerations. In 2022, the DP standards that are neither ‘safe’ nor ‘appropriate’ have deteriorated even further. In the City West Reception Centre the standards are diminishing daily and victims (as well as any other person accommodated there) are experiencing significant distress to the point that their health and life may be at risk.

### Denial of Resettlement Services

When a victim claiming International Protection receives a positive decision of any kind,<sup>174</sup> IPAS arranges services for their transition out of Direct Provision and into the community. De Paul and Peter McVerry Trust charities, have been contracted for the provision of this essential service and form part of the Transition Accommodation Teams with IPAS. Many victims of trafficking have no access to these teams and their services.<sup>175</sup> Victims of trafficking who are not claiming IP are denied IPAS resettlement services out of Direct Provision. Firstly, this affects EEA victims. Secondly, this disadvantages TCN victims who are formally recognised as a victim of trafficking and are granted the specialised Temporary Residence Permit (Stamp 4 renewable residence permit). Such victims, while entitled to residence rights, remain disadvantaged in comparison to International Protection holders.

### Application of Circular 41/2012

This is further compounded by the fact that the Regional Housing authorities no longer accept victims of trafficking on their ‘Homeless List’ because victims have only a short-term permit of 6-months duration and cannot meet the threshold of Circular 41/2012, requiring five years of continuous residence. This is a new development in the policy

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174 The person is declared a refugee, is granted subsidiary protection status or, is granted permission to remain for humanitarian reasons.

175 IPAS previously explained to the Commission that the reason for this exclusion is because victims of trafficking receive support from the HSE AHTT, who are tasked with the development of an individual care plan for victims. However, HSE AHTT cannot match the level of resources, expertise and connections of the specialised housing charities necessary to secure the transition of victims into the community. Essentially, all the HSE AHTT can do is support victims to access the overburdened private rental market with no additional supports.



that further curtails the right of victims of trafficking to move on from Direct Provision. We have obtained a legal opinion to the effect that the application of this Circular is inappropriate and needs to be discontinued. The Circular impermissibly creates an exclusion from eligibility from social housing support, which are not found in law, and by denying to victims lawfully resident in the State accommodation to which - as a matter of EU law the State has signed up to implement -they are entitled. Namely, that accommodation that is 'appropriate and safe'.

We are deeply concerned about the resulting impact of these three factors (deteriorating conditions, exclusion from IPAS resettlement assistance and application of Circular 41/2012) that has essentially left victims of trafficking in inappropriate and unsafe accommodation, with no possibility to move on from Direct Provision.

### **Failure to Establish a Shelter**

In 2020, a single-gender specialised shelter for victims of trafficking who have experienced GBV was procured by the Department of Justice and the arrangements were fairly advanced (the premises were designated and refurbishment underway). However, due to the transfer of the accommodation service from Department of Justice to the new Department of Children, Equality, Disability, Integration and Youth ('DCEDIY'), these arrangements were discontinued and the shelter plan abandoned. A renewed public procurement process has not yet taken place. We have been informed of 'an Expression of Interest' process, involving an NGO that will deliver a small pilot unit for eight female victims with 24 hour support and a case worker/liaison; to be made operational in quarter three of 2023.

### **Confused Legal Framework**

IPAS informed us that they are transitioning to a new model of accommodation for IP applicants, which will encompass victims of trafficking as part of the group of vulnerable applicants, however, as previously explained, not all victims are IP applicants. We find these plans concerning and a further indication of the State's conflation of legal frameworks.<sup>176</sup> It would appear that the vulnerability assessment and corresponding response is considered sufficient by the State to meet the obligations under the Anti-Trafficking Directive. We believe this position is erroneous and misguided.

Unsurprisingly, the Vulnerability Assessments of International Protection applicants show high levels of vulnerability (80%), highlighting the additional supports required amongst asylum seeking populations. This calls for a system that is responsive to vulnerability on a large-scale, and is beyond the scope this report. However, regarding

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<sup>176</sup> The obligations vis-à-vis victims of human trafficking are emanating from the Anti-Trafficking Directive (and other international treaties on human trafficking) and not from the State's obligations regarding international Protection.

victims of trafficking, vulnerability assessments should be viewed as a tool to aid in the detection of potential victims, and *not* as a tool to determine the levels and type of assistance they should receive. The State already has specific obligations it owes to victims of trafficking that derive from distinct human trafficking legal instruments intended for victims of crimes - often crimes which have occurred within the State. The current plans to use vulnerability assessments, and the entailing measures as a panacea for all – International Protection applicants who need additional supports and victims of trafficking – is the incorrect approach and contravenes the human trafficking law.

On 15th of February 2022, the Minister for Justice announced plans for a new State body to oversee the GBV response in the State and that the shelter infrastructure for victims of domestic violence will be further expanded.<sup>177</sup> We re-emphasise the importance of recognising human trafficking is a form of GBV, in line with the EU Victims' Directive, and any policies on enhancing the GBV response has to take into consideration the wellbeing of victims of trafficking.

Similarly to 2021, and in light of the highly problematic and very complex situation surrounding housing of victims of trafficking, the Commission as a National Rapporteur is compelled to issue a number of recommendations with the view to facilitating progress in this critical area of assistance.

**The Commission recommends that the Department of Children, Education, Disability, Integration and Youth utilise the designated ring-fenced investment and establishes a gender-specific shelter for victims of trafficking without any delay.**

**The Commission recommends that the State designates resources for expansion/ replication of the shelter for victims, as necessary, to meet the needs of victims of trafficking within the State (including providing spaces for women with children and in Domestic Abuse shelters for emergency periods).**

**The Commission recommends that the Department of Children, Education, Disability, Integration and Youth involves specialised and established NGOs in the provision of gender-specific accommodation for victims of trafficking.**

**The Commission reiterates its recommendation that the Department of Children, Education, Disability, Integration and Youth should treat the accommodation of victims of trafficking as an issue of utmost priority within the process to**

<sup>177</sup> Bray J. and McGee H. (2022) '[New refuges to be opened as part of government plan to tackle domestic violence](#)' *The Irish Times*, 25 January

**end Direct Provision, to ensure that victims of trafficking no longer reside under such arrangements.**

**The Commission reiterates its recommendation that all national (IPAS) and Local Authority housing policies be reviewed to ensuring the specific needs of victims of trafficking are recognised and that the interplay of such policies does not adversely impact on victims of trafficking.**

**The Commission reiterates its recommendation that all Local authorities cease the application of Circular 41/2012 to refuse housing assistance to victims of trafficking on short-term residence permits, with immediate effect.**

**The Commission reiterates its recommendation that the National Coordinator (the Department of Justice), foster regular exchanges between relevant State actors involved in the assistance of victims to ensure that any change in existing policies does not adversely affect them.**

**The Commission recommends that the National Coordinator establishes a mechanism for raising concerns of potentially incompatible policies between different State authorities.**

**The Commission recommends that the National Coordinator initiates consultation with relevant Departments on rapid policy directional change ensuring victims of trafficking are provided with accommodation assistance that is separate and distinct from the International Protection framework.**

**The Commission recommends that the State assigns the duty of providing refuge-type accommodation for victims of trafficking who have been subjected to gender-based violence to the Authority on Domestic, Sexual and Gender Based Violence. Once established, this Agency will oversee funding, determine standards and coordinate the provision of shelter-type services.**

**The Commission recommends that the new National Referral Mechanism explicitly exempts identified victims of trafficking from habitual residency and reckonable residence requirements for the purposes of accessing social housing supports.**

**The Commission recommends that the State strongly considers relieving the IPAS of the duty to provide accommodation services to all victims of trafficking. For as long as IPAS remain the primary housing assistance provider to victims of trafficking, and having reviewed its availability and use of capacity, the Commission issues the**

**following recommendations, until an appropriate resolution for housing victims of trafficking is found:**

- ▶ **IPAS should review its capacity and devise a better strategy for accommodating victims of trafficking.**
- ▶ **IPAS should utilise its single gender accommodation for victims of trafficking who are recovering from sexual violence, giving consideration to geographical proximity of specialised Anti-Trafficking services.**
- ▶ **IPAS should use the resettlement teams of the contracted housing specialists (i.e. Peter McVerry Trust and De Paul Charity) to support all victims of trafficking moving on from Direct Provision, without conditions.**

— Table 1. Categories of victims of trafficking and the entitlement to accommodation

All presumed victims of trafficking (VOT) can rely on emergency accommodation in Direct Provision (DP) for 60 days																	
<p><b>Detected victims seeking International protection (IP)</b></p> <p><i>(Aspirational special care by IPAS: single unshared room, in single gender shelter or families)</i></p>	<p><b>Detected victims not seeking International Protection</b></p> <p><i>(Theoretically should not be in care of IPAS beyond 60 days and receive notifications to leave IPAS to that effect at the end of this period. In practice, some spending months in DP)</i></p>																
<p><b>Third country national (TCN) victims claiming international protection (asylum)</b></p> <p><i>Cannot be formally identified as victims of trafficking, in line with present policy (Formal identification in Ireland involves a letter by a high-ranking officer);</i></p> <p><i>Holding asylum seeker permit;</i></p> <p><i>Cooperating with An Garda Síochána in ongoing investigations;</i></p>	<table border="1"> <tr> <td> <p><b>TCN formally identified as VOT on stamp 4 TRP</b></p> <p><i>Must have been formally undocumented;</i></p> <p><i>Issued stamp 4 Temporary Residence Permit (TRP) for 6 months renewable;</i></p> <p><i>Cooperates with investigation.</i></p> </td> <td> <p><b>TCN presumed victims, holding other immigration stamps, homeless</b></p> <p><i>Cannot be formally identified, according to current policy;</i></p> <p><i>Holders of various status: stamp 2 student, stamp 1 work permit, or stamp 3 as dependent or others;</i></p> <p><i>Cooperating in investigation.</i></p> </td> <td> <p><b>EEA (European Economic Area) presumed victims who are homeless</b></p> <p><i>EEA and Irish victims cannot be formally identified</i></p> </td> <td> <p><b>EEA nationals who are presumed not to be VOT, homeless</b></p> <p><b>EEA embassy repatriation or remaining in Ireland and exercising Freedom of movement as an EEA.</b></p> </td> </tr> <tr> <td> <p><i>Living in DP while awaiting an IP decision, often a long period of time;</i></p> <p><i>Receiving additional assistance from HSE AHTT, such as accompaniment to medical appointments, interviews;</i></p> <p><i>Has entitlements on par with all other asylum seekers.</i></p> </td> <td> <p><i>Housed in DP/IPAS;</i></p> <p><i>Housing help by HSE AHTT;</i></p> <p><i>Informed of the need to leave IPAS as not seeking IP!</i></p> </td> <td> <p><i>Housing help by HSE AHTT.</i></p> <p><i>Habitual residence is waived</i></p> </td> <td> <p><i>Local authority Homeless list, HAP payment follow subject to HRC test</i></p> <p><b>Housing resolved, living independently</b></p> <p><b>Exercising Freedom of movement as an EEA.</b></p> </td> </tr> <tr> <td> <p><b>Housing unresolved, residing in DP until the IP decision is handed</b></p> </td> <td> <p><b>Positive IP decision</b></p> <p><i>Issued with long-term Stamp 4 as a recognised refugee.</i></p> <p><i>Housing help by IPAS Resettlement Team and Local authorities/HAP!</i></p> <p><b>Housing resolved, living independently</b></p> </td> <td> <p><b>Negative IP decision</b></p> <p><i>Identified formally as VOT;</i></p> <p><i>Long term residence permit at this point;</i></p> <p><i>Housing help by HSE and Local Authorities/HAP.</i></p> <p><b>Housing resolved, living independently</b></p> </td> <td> <p><i>not identified as VOT</i></p> <p><b>IOM repatriation</b></p> </td> </tr> <tr> <td> <p><b>Housing unresolved</b></p> <p><b>Residing in DP</b></p> <p><i>After 3 years, provided application for a change of status stamp to long term; 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2 60 days, presumably to match the length of Recovery and Reflection permit, intended for formally identified victims. Irish citizens do not spend time in Direct Provision

### Material Assistance (Article 11.5)

This is an important aspect of assistance because victims of trafficking seldom have any personal means. Consequently, the provision of financial support and practical essentials, such as food and clothes is vital for regaining a sense of control of their lives.<sup>178</sup> It is important that any material assistance provided seeks to empower victims by encouraging independent living.

Although limited, there are a number of entitlements that victims of trafficking receive when they live in accommodation provided by the IPAS. Due to the highly ambiguous and convoluted state of the NRM at present, it is difficult to outline exactly what material assistance victims receive. Table 1 included in the previous section illustrates one such attempt and evidences the highly divergent, complex and often-inconsistent level of material assistance offered to victims.

In the present context, the entitlements to material assistance largely derive from the International Protection system and not from the identification as a victim of trafficking. The degree to which victims of trafficking understand the significance of the ‘choice’ they face between seeking International Protection or being identified as a victim of trafficking is hard to gauge. During our first evaluation work as Rapporteur in 2021, there was some evidence to suggest that survivors were not particularly informed on the difference between the two systems, how they intersect, and how this may affect them.

Owing to the undeniable vulnerability of victims of trafficking, it is essential that identified victims of trafficking be afforded the necessary supports they require in order to recover. Adequate provision of such supports would better safeguard the rights of victims and would, in all likelihood, increase the possibility of victims being able to assist An Garda Síochána with the investigation of trafficking offences where the victim is safe and supported.

Accordingly, O’Malley J in the P Case emphasises this exact point:

*“Concentration on the veracity of an applicant may also lead the decision-makers to overlook the fact that what is at stake is not simply a matter of entitlement to a beneficial status, as in an application for refugee status, but a measure intended to facilitate the investigation of a serious crime. It does not necessarily lead to any permanent material gain for the applicant but is intended to assist the State in preventing the modern blight of human trafficking.”<sup>179</sup>*

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178 Yonkova, N. at al. (2017) [Protecting victims: An analysis of the Anti-Trafficking Directive from the Perspective of a Victim of Gender-Based Violence](#). Vilnius: EIGE, p. 83

179 P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General [2015] IEHC 222, at para 183

In December 2022, we presented our analysis and recommendations to the proposed new NRM, and in particular to Head 19 of the General Scheme dedicated to ‘Access to Services’ for victims of trafficking. We expressed our view that a statutory entitlement should be considered comparable to the entitlement to an aftercare plan provided to children in the care of the Child and Family under section 45 of the Child Care Act 1991.<sup>180</sup>

We have been informed that all immigration and related issues will form part of the ‘Operational Guidelines’ that will accompany the Bill. These are not equivalent to a statutory protection and could lead to divergent outcomes for victims. It must be remembered that the core of the universal criticism levelled at the current NRM centres on the State’s pre-occupation with immigration issues (Administrative Immigration Arrangements); arguably to the detriment of fulfilling the broader obligation owed to victims.<sup>181</sup> It is our view that by excluding the immigration measures from the legislation and by placing them within the Operational Guidelines, the new NRM will perpetuate the differential treatment of victims depending on their nationality and immigration status, will interfere with the principle of voluntary cooperation with the criminal justice system, and the unconditional assistance:

“before, during and after the conclusion of criminal proceedings.”<sup>182</sup>

**The Commission recommends that the General Scheme Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 clearly sets out assistance and supports for suspected victims of trafficking. Particularly, to third country national and EEA national victims, through express provisions for:**

- ▶ **social welfare (free of any habitual residence condition tests, or pending applications, which must be irrelevant);**
- ▶ **housing assistance (that includes a specialised shelter and/or private arrangements);**
- ▶ **medical and psychological care; and**
- ▶ **immigration status, where necessary to facilitate the entitlement to the above listed assistance, before, during and after the formal identification process subject of this scheme.**

180 See [Appendix 1: Submission to the General Scheme for the Sexual Offences and Human Trafficking Bill 2002, Head 19 Accesses by Victims of Human Trafficking](#)

181 Government of Ireland (2011) *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*; IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#); GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)

182 Article 11.1 of the EU Anti-trafficking Directive)

The Commission reiterates its recommendation for a clear and transparent approach to material assistance of victims of trafficking that is independent from the International Protection system.

The Commission reiterates its recommendation regarding the equal treatment of victims regarding their nationality or whether or not they claim International Protection.

The Commission recommends that the Department of Justice (as the lead department on Domestic, Sexual and Gender-Based Violence) be tasked with integrating victims of trafficking who have suffered gender-based violence into their overall Domestic, Sexual and Gender-Based Violence response.

#### Medical and Psychological Assistance (Article 11.5)



*“I wish to have a place of my own, to feel safe again, have the privacy again. I could remember when I was moved here it was hell. Due to all the past experience I just want to die, let me end it all, I don’t want to live again. I was tired of live. Everything about me was negative, everything about life was negative. I just kept telling myself I see no reason to be alive.”*

Survivor Quote



*“Counselling is needed, especially the first few months of all the overwhelming thoughts, you don’t know if you are safe, you don’t know if it is true, you don’t know if you are dreaming, you don’t know if it is even reality, you don’t know if it’s part of the act that you are still being controlled. It is overwhelming at first so I would recommend to talk to someone and have guidance”.*

Survivor Quote



The subsection of Article 11.5 pertaining to medical and psychological support, as a vital element of assistance to victims of human trafficking is of particular importance to their recovery. The EC study on the gendered dimension of trafficking concludes that the harms of trafficking are distinctly specific to gender and require gender-specific approaches. In particular, the study defines trafficking for sexual exploitation as a gendered, severe and sustained form of violence against women, which causes physical, reproductive, mental, secondary victimisation that are often different and more severe than domestic violence.<sup>183</sup> Other forms of human trafficking can also lead to gender-specific harms, such as unplanned and multiple pregnancies, forced and unsafe abortions, long-term chronic vaginal and pelvic pain. Other harms include neck and mouth injury from forced oral sex, hepatitis C infections, severe diarrhoea, fatigue and malnutrition.<sup>184</sup> Labour related injuries are common among victims of trafficking for forced labour, due to the insufficiently developed safety standards or regulations in the high-risk sectors where exploitation occurs. The psychological harms of coercion, violence and isolation have been described as severe and enduring. Such harms include multiplied rates of post-traumatic stress disorder, depressions, eating disorders, attempted and completed suicides.<sup>185</sup> Exploitation within families could also result in similar harms, i.e. disabled women trafficked for forced marriage.<sup>186</sup>

Ireland has one of the most generous systems of medical assistance to victims of trafficking, based on the provision of a medical card, on par with citizens. The medical card gives access to wide range of medical services free of charge.<sup>187</sup> Other health services available free of charge include maternity services, immunisation services and health screening. A Local Health Office may have waiting lists for these services and may have to give priority on the basis of medical need. A free medical screening service is also available to all asylum seekers (which may include victims of trafficking).

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183 Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J. and Tunte, M. (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

184 Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J. and Tunte, M. (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

185 Courtois, C. and Gold, S. (2009) *The Need for Inclusion of Psychological Trauma in the Professional Curriculum: A Call to Action*. Psychological Trauma: Theory, Research, Practice, and Policy, American Psychological Association 2009, Vol. 1, No. 1, pp. 3–23

186 Shah S., Balderston S. and Woodin S. (2015) *Access to Support Services and Protection for Disabled Women Who Have Experienced Violence: Results and Recommendations for Service Providers and Policy makers*. Vienna: Ludwig Boltzmann Institut

187 Services available free of charge under the Medical Card Scheme include: General Practitioner (local doctor) services; Hospital in-patient and out-patient services (as a public patient); Prescriptions/medicines (with some exceptions); Women's health services; Psychological services for those traumatised by torture, rape or other critical life experiences; Optical tests and glasses; Hearing tests and hearing aids; Dental treatment for adults. Where defects have been noted at school medical examinations, dental treatment for children.

Services available under the Medical Card Scheme include:

- ▶ General Practitioner (local doctor) services
- ▶ Hospital in-patient and out-patient services (as a public patient)
- ▶ Prescriptions/medicines (with some exceptions)
- ▶ Women’s health services
- ▶ Psychological services for those traumatised by torture, rape or other critical life experiences
- ▶ Optical tests and glasses
- ▶ Hearing tests and hearing aids
- ▶ Dental treatment for adults
- ▶ Where concerns have been noted at school medical examinations, dental treatment for children.

The HSE AHTT is responsible for providing victims of trafficking with an individual key worker, who conducts an assessment to devise an individual care plan to assist victims through all aspects of medical recovery.

Assistance is also given in attaining medical cards (to avail of free medical care). A Psychology Drop-In Clinic was piloted in the service in October 2022 and following positive feedback there are plans to extend this pilot into 2023. As note above, we recommend that this programme is permanently established. In the absence of this psychological support, victims have to enter the overburdened public mental health service. Regrettably, this has resulted in long delays for victims who are seeking support. From our consultation with survivors, it is clear that they have struggled to navigate the complex systems of supports that are available. While many survivors spoke highly of the HSE AHTT, they recognised that the Unit has limited capacity to provide this direct specialist counselling services. Additionally, there is a need for greater awareness among front-line responders relating to the gender and cultural obstacles to accessing psychological support, especially by male victims of trafficking for labour exploitation.



*“Every time you talk to the Gardaí, they just give you a fright. Every time they told me they were coming to me I just wanted to tell them - I’m not ready, I’m not ready, I’m not ready, I’m not ready. It just triggers even more of the things you are going through. I tried to run away from them. As*

*much as they try to assure you, they keep asking you even questions that get you upset. A couple of times my caseworker went with me and made me feel better because she was just there to support me and I thought that was very good”.*

Survivor Quote

The role NGOs play in providing counselling and psychological support was highlighted as being essential to survivors; the limited waiting time and the expertise of counsellors were underscored as key to the delivery of a good service.

While we are still awaiting the publication of the law establishing a NRM with details of whether assistance measures will be placed in statute, we sincerely hope that such a mechanism includes provision for medical and psychological assistance to victims.

While the HSE AHTT is located in Dublin they support victims across the country. This necessarily involves travel for either the caseworker or the victim. Victims’ access to medical care and specialist mental health support should not be dependent on their geographical location and victims must have the same access to support irrespective of whether they are living in private or social housing or in an urban or rural area.

**The Commission recommends that victims of trafficking are prioritised for access to the public psychological support system.**

**The Commission recommends that everyone providing psychological support to victims should be suitably qualified in supporting trafficking victims and that there should be a geographical spread of medical and mental health assistance for all victims of trafficking.**

**The Commission reiterates its recommendation that increased funding is made available to frontline organisations who are providing psychological support to victims, including additional funding for clinical supervision of support staff.**

**The Commission recommends that the Drop-in Psychological support clinic offered on pilot-basis with the HSE Anti-Human Trafficking Team be established permanently.**

### Translation and Interpretation (Article 11.5)

Facilitating the communication between victims and service providers and authorities is a recognised assistance need within the Anti-trafficking Directive.

In addition to the obligations in Article 11.5 of the Directive, the Criminal Law (Victims of Crime) Act 2017 s.22 provides that:

*“any oral or written communications with the victim are in simple and accessible language and take into account the personal characteristics of the victim including any disability, which may affect the ability of the victim to understand them or be understood.”*

Innovative approaches to facilitating communication by cultural mediation were developed by the Department of Justice in an EU transnational project in 2020-2021. In April 2022, the Department of Justice extended the funding agreement to the International Organization for Migration (IOM) and allocated €535,807 to extend PROTECT II until 30th of June 2023. This project strengthens the response of effective access to services amongst vulnerable migrant communities and other minority groups in Ireland through cultural mediators. Cultural mediators serve as a bridge between service providers and migrant and ethnic minority service users. IOM cultural mediators are trained individuals who work with service providers and migrant and ethnic minority beneficiaries, particularly survivors of domestic, sexual and gender-based violence (DSGBV) and trafficking.

PROTECT II aims to support migrants who may be at risk or are victims of human trafficking and sexual gender-based violence (SGBV) by providing information about their rights and the specialised services available. The project provides basic training to the cultural mediators on profiles of victims and indicators of trafficking. The project also aims to sensitise professionals and service providers (including Gardaí ) working with migrants, as well as other stakeholders to better understand the cultural issues and specific needs of victims of human trafficking and DSGBV coming from vulnerable and minority groups.

As part of the training programme for cultural mediators, IOM provides a module on how to identify signs of trafficking and how to support victims by using a trauma-informed approach. In December 2022, IOM commenced working with Garda Síochána Human Trafficking Investigation and Coordination Unit on a pilot basis to see how cultural mediators could support Family Liaison Officers in their work with victims of trafficking.

Two translation services are contracted and retained by An Garda Síochána. The Workplace Relations Commission website provides a comprehensive range of information on employment rights and redress options in 103 languages using inbuilt translation technology. Specific vulnerable groups (including fishers and domestic

workers) have bespoke information relevant to their sector and this is available in the common languages of the workers in these sectors.

IPAS reported that the DCEDIY contracts with companies for interpretation services. It is open to IPAS to book the service using an online system. We have been informed that there is currently no contract with a single translations company. Where translation services are required, a translation company is procured in accordance with relevant procurement rules.

IPO provides interpretation and translation services. All applicants for International Protection have relevant documents translated and have access to interpretation services whilst in the protection process. In addition to interpretation services, the IPO arranges cultural mediators to support applicants in understanding and completing their International Protection application on the date of registration.

The LAB interpretation and translation services are arranged via their clerical team directly with the interpreter company. This approach appears to work well and there were no reports of any delays or issues.

NGOs have reiterated the need for the new NRM to include a free and dedicated interpretation and translation service that should be available to both victims and the organisations themselves. We note that the arrangement of interpreters by NGOs assisting victims increases their workload and supposes a drain in their resources, but also slows the progress made in assisting such victims. For example, the International Transport Workers Federation reported that they rely upon a combination of informal and professional interpretation and translation to communicate with fishers.

A multilingual phone services is offered by both the Dublin Rape Crisis Centre and Women's Aid Domestic Violence 24 hour helplines. Given the intersection of trafficking and other forms of gender-based violence, these services offer an opportunity to support and potentially detect more victims of trafficking. However, this will only be possible if the service providers are resourced to proactively recognise, respond to and refer potential or suspected victims of trafficking.

**The Commission reiterates its recommendation that the State should expand the translation and interpretation services to all specialist NGOs who support victims of trafficking.**

**The Commission reiterate its recommendation that as part of the reformed National Referral Mechanism, a Standard Operation Procedure be drawn up that will ensure effective and accessible access to translation, interpretation and cultural mediation services to all NGOs and victims.**

## Information on International Protection (Article 11.6)

**Article 11.6** The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ( 1 ) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ( 2 ) or pursuant to other international instruments or other similar national rules.

This Article outlines the information that must be provided to victims of trafficking who are seeking International Protection. The Commission notes that Article 11.6 does not, in principle, apply as a result of Ireland opting out of Directive 2004/81/EC - the residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.<sup>188</sup>

Nonetheless, the provision of information on the recovery and reflection period,<sup>189</sup> as well as the rights of victims to claim International Protection is guaranteed through the involvement of the Legal Aid Board ('LAB') in the provision of legal information - a similar function is also fulfilled by the solicitors of the law centre of ICI.

Legal assistance is provided by a specialist unit in the LAB and includes provision of free legal advice on immigration status and matters set out in the AIA, information about the role of a witness in criminal trial, information about available mechanisms for compensation and information about seeking redress regarding employment breaches. It must be noted that full legal representation is not offered to victims of trafficking, except in the context of International Protection applications.<sup>190</sup>

In 2022, the LAB received 27 referrals of potential victims of trafficking; all referrals came through Garda Síochána and the HSE's Anti Human Trafficking Team. All victims were offered a consultation, albeit a small number did not avail of this. It is noted that some will take this up in early 2023 as the offer of legal advice is typically renewed

<sup>188</sup> The United Kingdom and Ireland are not bound by Directive 2004/81/EC or subject to its application. See [Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities](#), Recital 21.

<sup>189</sup> Provided for in the Administrative Immigration Arrangements.

<sup>190</sup> The LAB can offer legal advice (as distinct from representation) to potential victims of trafficking regarding their: i) status and seeking international protection (including Rest and Refection); ii) employment; iii) compensation; iv) criminal matters. The LAB can offer representation on asylum and separate legal representation relating to previous sexual history in a criminal trial.

before a file would be considered 'closed'. Of the 27 applications received, 17 related to the International Protection process, and of those three were granted International Protection status or permission to remain in 2022. 15 were female, mostly trafficked for sexual exploitation (13), while 12 were male and mostly trafficked for labour exploitation (10). There was one case of forced criminality and two did not specify the type of exploitation. The LAB reported frequent engagement with solicitors representing the client in the IP process. This is key in relation to the IP application process as the client may have overlooked this aspect of their case and may not specifically have referred to 'trafficking' in giving instructions.

The IPO is responsible for processing and coordinating the International Protection applications. In 2022, they reported 19 cases where human trafficking was central or a peripheral aspect of the application for IP. In five of them, a recommendation for International Protection or Permission to Remain were issued. All cases involving trafficking are referred to the IPO Human Trafficking Liaison Officer, who then refers the case to An Garda Síochána. The majority of the cases were female (16) and three were male. Most were from Africa (16), one from Asia, one from non-EEA, and one from Latin America. The vast majority (17) of the recorded cases involved trafficking into prostitution, and in two of them labour exploitation was also present. In two further cases, exploitation was solely for labour.

Both IPO and IPAS play important role in the process of detection of and response to potential victims of trafficking. On the basis of data provided by the IPO and IPAS, we observe that a proportion of victims of human trafficking seek International Protection in the State. For other victims, this is not a relevant legal framework or avenue to protection and assistance. While considering the International Protection status to be the highest level of protection a State can offer (benefitting a small proportion of trafficking victims in terms of stable immigration and family rights), we highlight that in terms of assistance, the system put in place for victims of trafficking is separate and distinct, especially designed to support victims of crime, including crimes often committed in the State.

**The Commission reiterates its recommendation that the International Protection Office database be used by other State agencies as an example of good practice of data keeping, as it allows easy extraction of relevant statistics, including on victims of trafficking seeking International Protection.**

## Attending to Victims with Special Needs (Article 11.7)

**Article 11.7** Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.



*“It was a hotel that had security, you sign in and sign out, there was a notebook, there were cameras but I was assaulted by someone and he is currently in jail. I do not know where you would be safe. I try but women are never safe anyway.”*

Survivor Quote

### THE CASE STUDY OF SANDRA

This case shows the importance of family reunification for the recovery of survivors of human trafficking. It also shows the urgent need for recovery and/or reissuing of identification documents.

Sandra with help from a ‘friend’ was recruited from her country of origin by a woman who promised her a job in Europe. She went through Voodoo rituals and oaths to ensure her compliance. Sandra suffered physical and sexual assaults whilst in transit through several countries before reaching Ireland. All her identification documents were taken from her and she was repeatedly threatened with deportation and harm towards her family, including her children, if she sought help. Sandra has been receiving assistance and is currently in fulltime employment, living in private rented accommodation. She still suffers high levels of trauma and requires support. Her continued separation from her children causes her the most distress, as they remain in danger in her country of origin. Sandra’s family reunification application was refused on the basis that she does not have identification documents and her case is currently under appeal.

*(Case study courtesy of the HSE AHTT)*

All victims of human trafficking are extremely vulnerable individuals. Yet, there are those among them that have profound vulnerabilities due to their personal circumstances that give rise to special assistance needs. Article 11(7) requires that



the States attend to the special support needs of victims of trafficking, in particular, to needs arising from pregnancy, health, disability or from serious forms of violence suffered.

No major changes have occurred in the reporting period at operational level. However, the explicit recognition of human trafficking as a form of gender-based violence in the new national strategy provides an important additional framework focusing the State's attention to victim special needs deriving from sexual and other forms of gender-based violence.

Article 11 is implemented in Ireland by an individual care planning approach that is undertaken by the HSE AHTT and by a range of specialist NGOs, with significant expertise in tailored victim assistance. The HSE AHTT's individual care plan is developed based on the specific circumstances of the victim. This includes referrals to other State services or NGOs.<sup>191</sup> The care plan is guided by the OSCE standards for the care of victims of human trafficking.

During our consultations, NGO's expressed appreciation of the work of the HSE AHTT:

*“One positive feature is the Anti Human Trafficking team at HSE, which coordinates services for all identified victims – this is the best thing about our current Admin Arrangements & must be maintained in a new NRM along with the high calibre of staff.”*

The holistic, gender-specific, trauma-informed, approach of the HSE AHTT is to be commended and is an approach that should be replicated by other State agencies.

We maintain that despite the awareness of the extreme trauma experienced by most victims of trafficking, there are no trafficking-specific pathways to specialist care, such as expedited access to counselling or therapy. As a result, victims often experience extremely long waiting times for services such as mental health support. Survivors raised this as a particular issue during our consultations. Another related issue raised by survivors was the lack of awareness by some professionals within the public mental health services of human trafficking.

Specialist NGOs with extensive expertise in trafficking contribute significantly to supporting the needs of victims, through a trauma-informed, gender-specific and victim-centred approach. In particular, Ruhama and Dublin Rape Crisis Centre specialise in supporting victims of sexual exploitation and violence. Similarly, the solicitors in the Immigrant Council of Ireland's law centre have expertise in working with victims of crime with special needs. The Migrant Right Centre of Ireland responds to victims with complex needs as a result of violations and combined types of exploitation.

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<sup>191</sup> Such as safe accommodation, health, family separation, liaison with Gardaí regarding investigations, PPS numbers, medical card, material assistance and social welfare, referral to legal assistance, education, training, repatriation and other forms of support as necessary.

Given the vulnerabilities of victims there is a need for services to be available on a 24/7 basis. It is not reasonable that State services are only available Monday-Friday 9am-5pm. Where caseworkers are not available at weekends and public holidays it falls to Garda Síochána and NGO's to provide this vital support. Given the acute issues of safety and mental health faced by victims, State services must be made available on a 24/7 basis alongside increased funding for NGO's to support this work.

During the our consultations with survivors, many of the women spoke of the profound impact being separated from their children has on them. In our submission on the NRM Bill, we raised the need for specific provision of Family Reunification to victims of trafficking, especially with minor children for victims of trafficking. This is important, not just for victim recovery, but also as a means of protecting children and family members who are often threatened with violence and retaliation from the traffickers. Additionally, it is a way to fully protect and reassure witnesses in criminal investigations and prosecutions.

We cannot stress strongly enough the need to involve survivors of trafficking in the design of the anti-trafficking response. Integrating the survivor voice in its consultations, reports and public events has become a priority for us as a National Rapporteur.

**The Commission reiterates its recommendation to establish a dedicated Survivor Council to ensure that survivor voices inform the overall Anti-Trafficking response, in particular, the new National Referral Mechanism and National Action Plan.**

**The Commission reiterates its recommendation that the HSE Anti-Human Trafficking Team retains its gender-specific expertise, in the provision of care for victims of trafficking with special needs, especially those arising as a result of trafficking exploitation involving gender-based violence.**

**The Commission recommends that funding and resources are made available to the HSE Anti-Human Trafficking Team to allow them to operate a 24/7 support services to victims. Increased funding must also be made available to NGO's who already provide this 'round the clock' assistance to further support this important work.**

**The Commission reiterates its recommendation to the State to develop trafficking and gender-specific pathways of care that are victim centred, ensuring that specialist NGOs with expertise of trafficking are fully supported and their role formalised within the reformed National Referral Mechanism.**

**The Commission recommends that the State explores avenues for providing family reunification to victims of trafficking.**

## Protection of Victims in the Criminal Justice System (Article 12.1)

### Article 12 Protection of victims of trafficking in human beings in criminal investigation and proceedings

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.

We note that Framework Decision 2001/220/JHA has been superseded by the Victims of Crime Directive (Directive 2012/19/EU). Therefore, the protections of victims in the criminal justice system required by the Anti-Trafficking Directive are in addition to the rights set forth in the Criminal Law (Victims of Crime) Act 2017, which transposed the EU Victims of Crime Directive.

The protections for victims of trafficking within the criminal justice system have remained largely unchanged since the last reporting period. As outlined in the First National Report, many of the rights victims of trafficking are entitled to receive are contained in the Criminal Justice (Victims of Crime) Act 2017,<sup>192</sup> as such, they are not in the strictest sense trafficking-specific. However, this strong piece of legislation provides a number of robust measures to protect the rights of victims of trafficking. This is evident once a victim has entered the criminal court system, but is considerably less evident before a prosecution has been initiated.

Practical assistance and support for victims of trafficking and their protection within the criminal justice system – during investigation and prosecution – are intrinsically linked. Limited, or insufficient assistance to victims before a criminal trial will have a tremendous impact on the victim's ability to participate fully in the criminal process.

Despite the positive reforms within the criminal court process, there are a number of areas that still require significant improvement in order to meet the EU and international human rights obligations owed to victims of trafficking.

192 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 105](#)

## Access to Legal Assistance without Delay (Article 12.2)

**Article 12.2** Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Legal assistance to victims of trafficking is extremely important for the trajectory and length of their recovery, as well as for making informed decisions about their future prospects. Legal assistance is especially important in Ireland, due to the specificity of the national anti-trafficking system, where rights to assistance are not based in law, and where (State) service access assessments involve discretionary decision-making. The availability of comprehensive legal assistance for some victims leads to divergent outcomes in similar victims' circumstances.



*“The solicitor I got from the legal aid was not interested in what I would say, even if you had a question about the paperwork or about the [International Protection] questionnaire. When you called the office they would tell you to book an appointment and you tried to book the appointment and they tell you maybe try call this time”.*

Survivor Quote

We welcomed the review of Civil Legal Aid and were pleased to provide the Review Group with a number of trafficking-specific recommendations which, we hope informs their work.

We raised serious concerns around the limited access to legal assistance for both adult and child victims of trafficking. Appendix 3 provides a detailed brief on the various reforms required to guarantee that victims receive the necessary legal support owed to them. Such assistance is essential to support victims as they navigate the complex legal, health and social support processes that are crucial not only to their own recovery but also as a means of enhancing the successful prosecution of traffickers.

Given the detail provided in Appendix 3, this section will briefly consider the pressing reforms necessary to secure victims' rights to legal assistance without delay.

The LAB provides an advice service on matters pertaining to immigration status, the Administrative Immigration Arrangements, information on compensation, on the criminal justice process and others.<sup>193</sup> LAB reported prioritising requests for legal assistance in order to ensure that potential victims of trafficking have access to legal services within a reasonable timeframe.

There are NGOs, such as the Immigrant Council of Ireland law centre that provide comprehensive legal assistance. Despite their limited resources, they provide legal representation in addition to advice to a notable number of victims (see Appendix 4).

Survivors of trafficking continue raise the extremely long waiting lists and difficulty in making contact with their solicitor as a particular barrier that needs to be addressed urgently.

Overall, the legal assistance is insufficient in Ireland. In its third assessment report from 2022, GRETA expressed concerned that access to legal advice is not available at an early stage and states:

*“The narrow interpretation of the obligation to provide legal assistance to victims of trafficking excludes the provision of legal aid to victims in vindicating their rights in relevant judicial and administrative proceedings, including in order to claim compensation. Few victims of trafficking have access to qualified lawyers with specialised knowledge of human trafficking.”<sup>194</sup>*

Recently the US TIP report in 2022, urged for increased resources for legal assistance, while GRETA’s third evaluation report of Ireland from 2022 recommended that:

*“legal assistance is provided systematically as soon as reasonable grounds are [established]’ and that ‘trafficking victims are appointed a lawyer with specialised knowledge of THB to represent them in judicial and administrative proceedings, including to claim compensation.’<sup>195</sup>*

Survivors of trafficking continue raise the extremely long waiting lists and difficulty in making contact with their solicitor as a particular barrier that needs to be addressed urgently.

**The Commission reiterates its recommendation that the Legal Aid Board is adequately resourced to ensure that waiting times are reduced.**

193 Legal Aid Board [Legal Advice for Potential Victims of Human Trafficking](#) [website]

194 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), para 56

195 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), para 57

**The Commission recommends that the State subsidises legal representation for victims of trafficking by providing dedicated expert services within the Legal Aid Board, and increasing funding for established independent law centres with trafficking expertise.**

**The Commission recommends that the Legal Aid Board offers legal assistance to potential and self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána. This must align fully with the new National Referral Mechanism.<sup>196</sup>**

**The Commission recommends that the Civil Legal Aid Act be amended to provide separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences) be extended to victims of sexual exploitation offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008.**

**The Commission recommends that the necessary reforms of the compensation avenues available to victims, along with the proposed expansion and reform of the Civil Legal Aid Scheme are fully incorporated into the reformed National Referral Mechanism, once enacted.**

**The Commission recommends that all potential victims of trafficking are proactively provided with adequate, early legal support. This is especially important in order to guard against criminal prosecution for offences that have been committed as a consequence of a person having been trafficked, and to ensure that victims can avail of an effective remedy and appropriate redress for any harm caused to them.**

**The Commission recommends that all State agencies working on trafficking maintain up to date websites with trauma-informed,<sup>197</sup> accurate information and working links, to assist and enable victims of trafficking to navigate the complex immigration process.**

The full list of Commission's recommendations on legal assistance are presented in [Appendix 3](#).

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196 *General Scheme Criminal Justice (Sexual Offences and Trafficking) Bill 2022*

197 Including quick 'exit buttons', careful consideration of images (do not use stock images that portray violence and can be triggering), ensuring that safety alerts and support services are unmissable, design with mobile and touchscreen capabilities such as 'call' buttons.

## Individual Risk Assessment (Article 12.3)

**Article 12.3** Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

Article 12.3 requires that protections be provided to victims of human trafficking on the basis of an individual risk assessment. Article 12(3) has been transposed by virtue of the Criminal Justice (Victims of Crime) Act 2017, which provides for distinct approaches to special measures for child and adult victims. Child victims are presumed to have protection needs<sup>198</sup> whereas adult victims will be assessed by a member of An Garda Síochána<sup>199</sup> to determine their protection needs.<sup>200</sup>

In accordance with s.14 of the Criminal Justice (Victims of Crime) Act 2017, individual assessments are completed by investigating personnel within Garda Síochána to identify whether a victim or witness will require any special measures, either during the investigation or, if the proceedings go to court. This may include special measures on where an interview is conducted or the use of video conferencing in courtrooms.

We are aware that an application was made to the Court for support and access to special measures in respect of two victim-survivors in the case of the Irish-based Brazilian organised crime group who, it is alleged, are responsible for the trafficking of females into and around the State for the purpose of sexual exploitation. We do not have details of the precise measures these victims received but is aware that in the trafficking cases that have gone to court every effort has been made to provide special measures. The difficulty is that many victims are not receiving the adequate assistance *before* the court process. As such, victim-survivors often do not have the capacity/resilience required to proceed with the investigation.

👂 *“I wish to have a place of my own, to feel safe again, have the privacy again. I could remember when I was moved here it was hell. Due to all the past experience I just want to die, let me end it all, I don’t want to live again. I was tired of live. Everything about me was negative, everything about life was negative.”*

198 *Criminal Justice (Victims of Crime) Act 2017, s. 15(7)(a)*

199 Or an officer of the Ombudsman Commission

200 *Criminal Justice (Victims of Crime) Act 2017, s. 15 (1)(2)(4)*

*I just kept telling myself I see no reason to be alive”.*

Survivor Quote

### **Protection from Secondary Victimization (Article 12.4)**

**Article 12.4** Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim’s private life.



*“They came last October or November to my room. I was surprised when they came and knocked. They introduced themselves that they are from the Gardaí, that my case was referred from the IPO to them. I said okay because at the time they came I did not report the incident to the Gardaí. That was when they [Gardaí] transferred the case to the HSE. I still had not met them because of my mental health. I’ve been down, depressed. My counsellor said I needed to be stable before we were able to meet with them [Gardaí]”.*

Survivor Quote





*“To add about the Gardaí , I think they do need some kind of training when it comes to dealing with us. We have been through things that sometimes you don’t even want to imagine that it actually happened, you want to tell yourself this did not happen. When you are here and you have to talk to them about something and you tell them this is not the right moment for me or I need some space, the way they give you feedback or talk to you sometimes breaks you. If they are not a bit careful with us, we think they are suppose to help us, protect us and if they do these kind of things, it just push us back into ourselves. Makes us not even want to talk to them or go to them for help because we are afraid”.*

Survivor Quote

There appears to be no material change in the measures that are made available to victims of trafficking to protect them from secondary victimisation. The requirements of Article 12(4) are echoed in the Victims of Crime Act 2017 requiring the State to ensure that measures exist within the criminal justice system to protect victims of trafficking from secondary and repeat victimisation and to safeguard:

*“the dignity of victims during questioning and when testifying.”<sup>201</sup>*

As previously noted, there are a number of special measures that a victim of trafficking may be able to avail of.

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201 “Protection measure” means a measure which is intended to safeguard the safety and welfare of a victim by limiting or preventing contact with, or repeat victimisation, retaliation or intimidation of, the victim by an alleged offender or any other person on his or her behalf and includes (a) advice regarding the personal safety of the victim; (b) advice regarding the protection of the property of the victim; (c) advice regarding safety orders, barring orders, interim barring orders and protection orders within the meaning of the Domestic Violence Act 1996; (d) advice regarding orders made under section 10 of the Non-Fatal Offences Against the Person Act 1997; Section 10 1 of the Criminal Justice Act 2006 and section 26 or 26A of the Criminal Justice Act 2007; (e) an application to remand the alleged offender in custody; and (f) an application that any admission of an alleged offender to bail be subject to conditions’. See *Criminal Justice (Victims of Crime) Act 2017*, s. 2 (1) (b). See also, [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), Art. 18

These include, although are not limited to:

- ▶ Victims of crime who are deemed to have a ‘specific protection need’, have a right to apply for the use of a screen (and other special measures) in a criminal trial under the terms of s. 19(2)(b) of the Criminal Justice (Victims of Crime) Act 2017, which permits, at the court’s discretion, the use of screens, regardless of the nature of the alleged offence.
- ▶ The application of specific safeguards to protect the private and personal life of the victim where to do so could cause secondary and repeat victimisation, intimidation or retaliation. This includes s. 21 of the 2017 Act in which the court may give such directions it considers just and proper regarding any evidence adduced or sought to be adduced and any question asked in cross-examination at the trial, which relates to the private life of a victim where this is unrelated to the offence.
- ▶ Section 16 of the Criminal Evidence Act 1992 (amended) provides that:
  - ▶ a video recording of any evidence in relation to a sexual offence (or certain other offences including trafficking) through a live television link in proceedings under Part 1A of the Criminal Procedure Act 1967,
  - ▶ a video recording of any statement made during an interview with a member of An Garda Síochána by a person under 18 years of age in relation to an offence of which he or she is the victim; and
  - ▶ a video recording of any statement made during an interview with a member of An Garda Síochána by a person under the age of 18 years, other than the accused, in relation to a sexual offence, a child trafficking, child pornography\* or human trafficking offence, shall be admissible at trial as evidence of any fact stated therein of which direct oral evidence would be admissible.

We welcome these reforms but would like to draw attention to a number of issues that continue to cause re-victimisation distress and trauma to victims of trafficking.

- ▶ Victim-survivors continue to raise the profound and compounding trauma they experience within the criminal justice and trial system;
- ▶ Victim-survivors continue to raise the impact of repeated and unscheduled interviews with An Garda Síochána;
- ▶ Victim-survivors of sexual exploitation continue to be excluded from the protections available to victims of other sexual crimes such as rape and serious sexual assault, namely around the introduction of evidence relating to their previous sexual experience.; and

- ▶ The disclosure of medical and counselling records<sup>202</sup> continues to be an issue for victims of trafficking and other sexual crimes.

We would also like to draw attention to a number of issues that appear to be systemic and which need to be addressed in order to guard against secondary and repeat victimisation:

- ▶ Inconsistency in support provided to victims of trafficking;
- ▶ Inconsistent and at times inadequate cultural understanding of the victim-survivors;
- ▶ Lack of awareness of the impact of unconscious bias, racialized and stereotyping of victims;
- ▶ Continued delegation to untrained and inexperienced Gardaí - not specialised approach; and
- ▶ Lack of understanding of the different forms of exploitation. In particular, forced labour and forced criminality.



*“If there was a solicitor that is provided by the system that if someone is a victim of trafficking this is the solicitor they talk to because they understand. There is a way they would talk to us and then there is a way we will talk to them, because we will know that they will understand what have happened. The kind of solicitor I got is the solicitor that can be offered to any person. He knows what it is to be trafficked but he doesn’t understand what it is, how it feels, what happened and what is the outcome, what is the effect of all those things that have happened to you”.*

Survivor Quote

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202 National Women’s Council of Ireland (2021) [Victim’s Testimony in Cases of Rape and Sexual Assault](#)

## THE CASE STUDY OF HELENA

This case illustrates that although significant progress has been made, trauma-informed approaches must be applied at all times and by all State agencies when they come into contact with victims/survivors of human trafficking.

Helena was running her own business when she was abducted, trafficked and forced into prostitution for a period of time in her home country. She believes that both her and her family were targeted for political reasons by her traffickers. When she was able to escape she did not return to her family fearing the consequences. She travelled to Ireland and applied for international protection. Whilst Helena was not detected as a victim of trafficking in her asylum application, she was referred to an NGO for specialising in supporting victims of sexual exploitation. After receiving support from the NGO she decided to report what had happened to her to Gardai. Although Ruhama sent a formal referral to the Gardai with Helena's consent, the organisation did not receive any acknowledgement or receipt the referral. A month after Ruhama's referral, Helena reported that two male Gardai came to her residence in the Direct Provision Centre one evening to speak with her. Helena was unprepared and found the experience stressful, not being able to proceed and communicating to the officers her wish to speak with her caseworker first. The two Gardai told Helena they would notify her in advance of returning to begin the report process and that she could request support from Ruhama for the next meeting. Helena communicated this to both her solicitor and caseworker in Ruhama. Ruhama contacted the AGS Anti-Human Trafficking unit to follow up with the appointment for Helena and was told to contact the local Garda station. However, when the caseworker contacted the local Garda station, she was told that there was no record of Gardai visiting the victim. Helena has not heard from the Gardai since and her mental health is deteriorating.

*(Case Study courtesy of Ruhama)*

## Access to Compensation (Article 17)

The lack of compensation remains an important area of concern for us, as Rapporteur. To date *no* victim of trafficking has received any form of compensation. That being said, we have welcomed the inclusion in Law Reform Commission's Fifth Programme of Law Reform project 'Compensating Victims of Crime'. We view this as an opportunity to effect profound positive reform for trafficking victims in regard to their right to compensation. We met with the LRC during the reporting period to further discuss the particular challenges faced by victims of trafficking in accessing compensation.

We have made a number of specific recommendations on the reforms necessary to ensure that the right to compensation is practical and effective, not theoretical and illusory. Owing to the importance of this area, analysis and recommendations relating to compensation are detailed in Appendix 2 of this report.

## Child Victims of Trafficking (Article 13-16)

Definition of a child: A child is any person who is under the age of 18 years



*“I was trafficked into Ireland at the age of nine. I was able to flee my trafficker who is still in Ireland. My name was not my name when the woman brought me in. I couldn’t prove this is who I am. It is definitely affecting my children because they don’t have a nationality, I don’t have nationality”.*

Survivor Quote

### Recent trends

The latest EU data on child trafficking shows that in 2019-2020, child victims represented 23% of all registered victims in the EU, with 75% of them being girls.<sup>203</sup> Of the identified children, the majority were EU citizens (85%), with 75% being citizens of the country in which they were identified.<sup>204</sup> On the forms of exploitation, 50% of children were trafficked for sexual exploitation, 17% trafficked for labour exploitation and 4% trafficked for forced begging.<sup>205</sup> In Ireland during the same three year period nine children were identified (seven girls and two boys) of a total of 81 victims (11%),<sup>206</sup> which shows the striking contrast between the EU and Irish average.

The European Commission draws attention to the fact that children have become more vulnerable to online recruitment and grooming and are especially vulnerable to forced criminality and forced begging in Member States, with data indicating that in 2019-2020, 47% of those identified as victims of forced begging were found to be children. Additional trends among Member States show children being advertised in dating and ‘escort’ websites as adults, and children being abused in clandestine settings

203 European Commission (2022) [Commission Staff Working Document Statistics and Trends in Trafficking in Human Beings in the European Union in 2019-2020 Accompanying the Document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight Against Trafficking in Human Beings \(Fourth Report\) SWD/2022/429 final](#), p. 6

204 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 6

205 Ibid

206 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 184

and public venues including hotels, restaurants, and night and striptease clubs.<sup>207</sup> The European Commission also highlights the trafficking of children through illegal adoption schemes.<sup>208</sup>

Children are among the most vulnerable victims of trafficking. The social, economic and personal cost from the trafficking crime committed against children is exceptionally high.<sup>209</sup> Despite the increased identification of child victims in 2022 (when compared to 2020 and 2021 where no children were identified), child trafficking remains one of the most hidden and least known form of trafficking in Ireland. We have continuously emphasised the need for particular attention and scrutiny be paid to child trafficking.

In our 2022 submission to the UN Committee on the Rights of the Child we highlighted a number of concerns surrounding the State’s lack of response to child trafficking.

In particular, we highlighted:

- ▶ The inadequate child identification process;
- ▶ The delays in progressing the establishment of a child-specific process within the new National Referral Mechanism;
- ▶ The persistent issues surrounding the classification of child exploitation cases;
- ▶ The insufficient collection of child trafficking data;
- ▶ The limited and delayed legal assistance and representation afforded to child victims of trafficking; and
- ▶ The inadequate procedures for ‘age estimate assessments’ for victims of trafficking.<sup>210</sup>

Following the submission, the UN Committee Concluding Observations echoed these concerns<sup>211</sup> and recommended that Ireland:

*“(a) Establish a national referral mechanism for the identification and referral of children who are victims of trafficking and ensure their access to psychological support, legal assistance and other support services,*

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207 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 6

208 Ibid, p. 7

209 European Commission (2020) [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#), p. 27 and 41

210 IHREC (2022) [Submission to the Committee on the Rights of the Child on Ireland’s combined Fifth and Sixth Periodic Report](#), p. 46

211 Ibid, pp. 46-47

*in line with the recommendations of the National Rapporteur on the Trafficking of Human Beings;*

*(b) Ensure that guardians ad litem, social workers and other relevant professionals receive training on trafficking;*

*(c) Investigate and prosecute cases of trafficking of children and ensure appropriate convictions for perpetrators”.*<sup>212</sup>

Following the proposed enactment of the new National Referral Mechanism, the Department of Justice announced their commitment to ratify the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>213</sup> We welcome this important step<sup>214</sup> as a means of strengthening the prevention and protection of child victims of trafficking.<sup>215</sup>

### Prevalence of Child Trafficking

Children can be victims of *all* forms of exploitation. Up to the year 2022, Ireland has encountered and identified children who were trafficked for labour exploitation (including forced labour in high-risk sectors or trafficking in the domestic sphere), for forced criminality (being forced to work in grow-houses), and for sexual exploitation (both in the real and online realms). Most recently it has come to light that organised human trafficking gangs are utilising social media platforms to groom children and young adults into acting as ‘money mules’ to launder money in exchange of payment, which children as young as 14 being targeted and involved.<sup>216</sup>

The upcoming third National Action Plan commits to improving data collection processes. We are awaiting the details of how this will be achieved and will be looking to identify concrete actions that clarify the type of data that will be collected, methods of collection, degree of disaggregation, responsibility for data coordination and collection, etc. We also await clear and comprehensive data collection protocol for child victims of trafficking.

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212 UN Committee on the Rights of the Child (2023) [Concluding Observations on the Combined Fifth and Sixth Periodic reports of Ireland](#), p. 15

213 Department of Justice (2023) [Written answer to Parliamentary Question: International Agreements](#) (20 April 2023); [UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography \(2002\)](#)

214 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 40

215 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*, p. 5

216 MacNamee G. (2023) [‘Human trafficking gangs luring young teens into laundering cash illegally’](#) *Extra.ie*, 12 June [accessed 22 June 2023]

**The Commission reiterates its recommendation that the Department of Justice disaggregates data on child victims of trafficking by type of exploitation, in all future Annual Reports.**

**The Commission reiterates its recommendation that the State works with An Garda Síochána and Tusla to develop a methodology for collecting uniform and reliable data on the scale and different forms of exploitation of children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.<sup>217</sup>**

As previously stated, the prevalence of child trafficking in Ireland is difficult to establish, due in part to the re-classification of collected data. From 2013 to 2022, a total of 39 children have been identified by An Garda Síochána as victims of trafficking, representing between 8% of all identified victims in Ireland in the preceding nine years.

The Council of Europe has raised concerns about the negative impact the reclassification of data since 2017 may have had on the identification of child victims of trafficking in the country, overlooking possible crimes against Irish children. As such, they have recommended a review of the legislative provisions.<sup>218</sup>

**The Commission reiterates its recommendation that the Department of Justice (as National Coordinator on Human Trafficking) achieves clarity on reporting of offences under Section 3(2) of the 1998 Act by distinguishing between cases that involve trafficking of children for sexual exploitation and those which involve sexual exploitation of children simpliciter (i.e. without any element of trafficking), as this is essential for allowing greater accuracy in recognising and reporting on child trafficking cases.**

### Identification of Child Victims

At present Ireland cannot be said to have a specific identification procedure for child victims of trafficking. However, when a child is identified as a potential victim they receive a one year recovery and reflection period and their temporary residence permits have a flexible duration – when that child is a third-country national. It is concerning that the identification mechanism solely applies to third-country nationals that have not applied for International Protection. There is a serious gap in protections

<sup>217</sup> UN Human Rights Council (2019) [Visit to Ireland: 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/40/51/Add.2](#), Para. 75

<sup>218</sup> GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#), para 210



and supports for Irish and other EU national children, including Roma children and those exploited in the online realm, as they are effectively excluded from the process of formal identification and the accompanying supports for child victims.

In 2016, in the second NAP, the Government committed to:

*“addressing the possibility of establishing a specific mechanism which takes into account the special circumstances and needs of child victims of trafficking.”<sup>219</sup>*

According to the Department of Justice, the expected NAP will include a specific action for the designated NRM Competent Authorities to develop Operational Procedures to identify child victims of trafficking, taking into account their specific needs.<sup>220</sup> Although the adoption of such procedures is welcome, we reiterate our recommendation that this is enshrined in law.<sup>221</sup>

The Commission reiterates its concerns of the inadequate identification process of child victims of trafficking.<sup>222</sup> A formalised and robust process is essential as it triggers all other child-specific assistance and protection measures available. Most recently, the Commission has repeated its call for a child-specific identification and assistance process within the National Referral Mechanism Bill 2022.<sup>223</sup>

**The Commission recommends that the National Referral Mechanism include a child-specific identification and assistance process.**

We have issued a number of detailed recommendations to the Joint Oireachtas Committee on Justice on the *General Scheme of the Criminal Justice (Sexual Offences*

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219 Department of Justice & Equality (2016) *Second National Action Plan to Prevent and Combat Human Trafficking*, p. 72

220 An Garda Síochána; Department of Justice Immigration Services; Department of Social Protection; the HSE; Tusla; the Workplace Relations Commission; Department of Children, Equality, Disability, Integration and Youth and International Protection Accommodation Services

221 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 126; IHREC (2021) [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 \(GRETA\)](#), p. 45

222 GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 49; 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*, pp. 8-9; IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 126; IHREC (2021) [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 \(GRETA\)](#), p. 45

223 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 11

*and Human Trafficking) Bill 2022* ([Appendix 1](#)) in relation to the explicit and almost complete absence of a child-specific identification process.

These include that:

- ▶ The Bill is amended to include express provisions for the identification of victims who lack capacity such as children or adults with diminished capacity.
- ▶ The term ‘Children’s Legal Advisor’ is included and defined in the interpretations section in the Bill;
- ▶ The Bill should contain a child-specific identification process;
- ▶ The findings of our First National Evaluation Report as the National Rapporteur on Human trafficking, GRETA 3rd evaluation report, the OSCE country report of 2020 are all taken into account for the development of a child-specific identification process in the Bill;
- ▶ All ‘Competent Authorities’ and ‘Trusted Partners’ undertaking mandatory child trafficking training and that this is included in the Procedural Guidelines;
- ▶ In relation to the definition of ‘child’, that the term ‘age assessment’ is included and defined in the Bill in regard to potential child victims of trafficking;
- ▶ Age estimation assessments should be carried out by Tusla, or another competent body, supported by strict policy-guidelines that are child-centred and adapted to the person’s specific needs (cultural, gender, etc.) and should not be based on a medical test;
- ▶ The guidelines should explicitly adopt the principle of the ‘benefit of the doubt’ regarding age estimation assessments of young applicants.
- ▶ The presumption of minority should be applied unless and until an age estimation assessment proves otherwise.<sup>224</sup>

Following this submission, in early 2023 we welcomed the recommendations of the Joint Committee on Justice, particularly those relating to child victims of trafficking:

*1. The Committee recommends that the legislation ensures that there is a specific identification process for child victims of trafficking, which should be victim-centred and child-specific.*

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224 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), pp. 2-4

16. *The Committee recommends that the Bill include express provisions giving Competent Authorities and Trusted Partners authority to refer to the Operational Committee for the identification of victims who lack capacity, such as children or adults with diminished capacity.*

19. *The Committee recommends that in relation to the definition of ‘child’, the term ‘age assessment’ be included and defined in the Bill in regard to potential child victims of trafficking. Age assessments should be carried out by Tusla, or another competent body, supported by strict policy-guidelines that are child-centred and adapted to the person’s specific needs (cultural, gender, etc.) and should not be based on a medical test.*

21. *The Committee recommends that child applicants should be appointed a ‘Children’s Legal Advisor’ at the earliest stage of the referral and identification process. The term ‘Children’s Legal Advisor’ should also be included and defined in the interpretations section in the Bill.<sup>225</sup>*

The Ombudsman for Children raised similar concerns about the lack of visibility of children in the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) 2022 Bill. He stated that further efforts are required to ensure the Bill is aligned to children’s rights. In particular, the Ombudsman has focused on the absence of a child-specific identification process, the criteria to identify victims and the lack of provision for children to access specific assistance and entitlements within the Bill.

Having previously recommended that the new National Referral Mechanism explicitly address the special identification and needs of child victims of trafficking, including within the broader system of protection of separated and unaccompanied minors,<sup>226</sup> we are disappointed that this has not been included in the General Scheme and looks forward to reviewing the full Bill, once published.

**The Commission reiterate its recommendation that all ‘Competent Authorities’ and ‘Trusted Partners’ undertake mandatory child trafficking training and that this be explicitly included in the Procedural Guidelines.**

225 Joint Committee on Justice (2023) [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), pp. 9-11

226 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 126

## Operational Response to Child Trafficking

Under the Child Care Act 1991 Section 3 and the Child and Family Agency Act 2013 Section 8, Tusla is responsible for the welfare and protection of children.<sup>227</sup> Our First Evaluation Report established that Tusla does not have a dedicated trafficking-specific procedure for children, which has not changed. While trafficking of children for sexual exploitation has been incorporated into the Child Sexual Exploitation Procedure<sup>228</sup> and the Protection and Welfare Practice Handbook 2,<sup>229</sup> the types of trafficking children may be subjected to are missing from these two main documents. To respond to child abuse and neglect in general, Tusla and An Garda Síochána have a Joint Working Protocol.<sup>230</sup> Although the Protocol is not specifically referring to child trafficking, it contains remarks on organised child sexual exploitation. To strengthen the liaison between the two State entities, a Tusla principal social worker is assigned and based in the Garda National Protective Service Bureau ('GNPSB').

We have been informed that in early 2021 some social workers, staff and fosters careers were trained to recognise and report concerns of child sexual exploitation.<sup>231</sup> According to Tusla's internal guidance, sexual exploitation includes minors:

*"being coerced into prostitution, or to produce child abuse imagery for older individuals or groups who were grooming them."*<sup>232</sup>

In 2022, staff in Tusla identified 27 suspected cases of child sexual exploitation, an increase of nine compared to 2021.<sup>233</sup> Of them, 24 involved girls and three involved boys. The children's ages ranged from 12 to 17 years. From these, 23 children were in the care of Tusla and the other four were residing in the community.<sup>234</sup> It remains the case that only unaccompanied minors are systematically screened for trafficking

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227 Source: Tusla 2023

228 Tusla (2021) Child Sexual Exploitation (CSE) Procedure

229 Tusla (2018) [Child Protection and Welfare Practice Handbook 2](#)

230 For more information see [Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison](#)

231 European Commission (2022) [Commission Staff Working Document Statistics and Trends in Trafficking in Human Beings in the European Union in 2019-2020 Accompanying the Document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight Against Trafficking in Human Beings \(Fourth Report\) SWD/2022/429 final](#), p. 6

232 Power, J. (2023) '[Nearly 30 cases of suspected child sexual exploitation reported last year](#)'. *The Irish Times*, 24 April [accessed 27 April 2023]

233 Ibid

234 European Commission (2022) [Commission Staff Working Document Statistics and Trends in Trafficking in Human Beings in the European Union in 2019-2020 Accompanying the Document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight Against Trafficking in Human Beings \(Fourth Report\) SWD/2022/429 final](#), p. 6

indicators using the Risk Assessment Matrix, as also reported in 2021.<sup>235</sup> While there is an increasing expertise in the field of child sexual exploitation there is a dearth of policy, procedure, knowledge and practice regarding other forms of trafficking such as labour exploitation and criminal exploitation. Comprehensive guidance and training that addresses *all* potential forms of child trafficking is therefore urgently needed.<sup>236</sup>

Important positive steps have been undertaken by Tusla in the area of operational improvement. We welcome the recent establishment of the Tusla Working Group on trafficking, aligned with the commitment in the draft NAP, aiming at the development of Child Anti-Trafficking National Strategy.<sup>237</sup>

The Working Group intends to do the following:

- ▶ Establish an effective identification system that takes into account the special circumstances and needs of child victims of trafficking to ensure the best interests of child victims of trafficking are a primary consideration in the provision of services by developing guidance for frontline personnel on awareness and indicators to identify and address concerns of child trafficking;
- ▶ Review the data collection regarding child victims of trafficking through appropriate metrics to report on the number of child victims of trafficking known to Tusla;
- ▶ Review procedures between An Garda Síochána and Tusla for the identification and provision of support to child victims by contemplating the possibility of revising the current notification system between both bodies (Child First notification) to add “suspected victim of trafficking” and the review of the Tusla-An Garda Síochána Joint Working Protocol emphasising the importance of a joint approach;
- ▶ Promote and develop an Equity in Care Policy by reviewing whether the equity of care principle regarding to the care provided to all children in care is included into relevant procedures which include supporting child victims by way of education; and
- ▶ Develop training in child trafficking by partnering with MECPATHS to develop a professional training program on child trafficking currently available and its review by the Tusla appropriate department to enhance its availability.

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235 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 126

236 Ibid, p. 123

237 Sources: Tusla 2023

It was reported in 2021 that the current case management system used by Tusla is unable to capture and report cases of trafficking. We have been informed that this system is currently being redeveloped.

**The Commission recommends that Tusla’s new case management system includes specific fields, outcomes and indicators that will allow for accurate reporting and case tracking on all forms of child trafficking, disaggregated by, at a minimum, age, nationality, and form/s of trafficking.**

It must be noted that child trafficking victims under Tusla’s care are usually placed in residential centres or foster care, ensuring their access to social workers and one psychologist from the HSE Anti-Human Trafficking Team (following referral from Tusla). A recent study revealed how children and young adults in residential care, particularly girls, are being targeted in an organised manner with the purpose of sexually exploiting them.<sup>238</sup> We welcome the recent announcement that DCEDIY and Tusla senior management will prioritise the review of the findings and recommendation of this relevant study during their review of child sexual exploitation for further action.<sup>239</sup>

**The Commission reiterates its recommendation to include human trafficking in the Child First Guidelines to ensure that those responsible for the care of children have the necessary understanding of trafficking.**

**The Commission recommends that the State urgently investigates the co-ordinated grooming of children, especially girls, under the care of Tusla.**

Tusla is among the agencies proposed to become a ‘Competent Authority’ within the new National Referral Mechanism. Despite the General Scheme not including a specific identification process for child victims, according to Tusla, they are fully committed to becoming a Competent Authority. The establishment of the Working Groups, as mentioned already, demonstrates this commitment and is welcomed by the Commission.<sup>240</sup>

**The Commission reiterates its recommendation that Tusla is provided with adequate staffing and expertise to ensure it can fulfil its obligations to detect and prevent**

238 Canning M., Keenan M. and Breslin B. (2023) [Protecting Against Predators: Scoping Study on the Sexual Exploitation of Children and Young People](#), pp. 59-60

239 Houses of the Oireachtas Dáil Éireann Debates (2023) [Ceisteanna – Questions: Child Poverty](#) (28 June)

240 Sources: Tusla 2023

**the trafficking of children, and to participate effectively in the new National Referral Mechanism.**

**The Commission reiterates its recommendation that a dedicated child-trafficking and exploitation team should be established by Tusla. This service should not only focus on third-country national children but all children who may be at risk.**

In addition to Article 11 relating to assistance and Article 12 on the protections in criminal proceedings, the EU Anti-Trafficking Directive makes some specific provisions for child victims. These pertain to unconditional assistance (Article 13), child assistance and support (Article 14), protection in the criminal justice system (Article 15) and special measures for unaccompanied children (Article 16).

### **Unconditional Assistance, Best Interest of the Child (Article 13.1)**

**Article 13** General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

Article 13.1 requires that the child's best interest is the primary consideration when applying the Anti-Trafficking Directive to child victims of trafficking,<sup>241</sup> which already is part of the operational practice of Tusla. Overall, the assistance, support and protection of child victims is dependent on their formal identification as special victims of crime, which continues to be a serious concern given the low number of identifications in Ireland when compared to the EU average of 25%.<sup>242</sup> In the absence of a dedicated child-specific policy for trafficked children, the response in Ireland is largely dependent on the application of the Administrative Immigration Arrangements, the International Protection system and the existing child protection process, or some combination of all three, without specific consideration of trafficking.

**The Commission recommends that Tusla develop separate procedures for the provision of assistance, support and protection to child victims of trafficking, irrespective**

241 Source: Department of Justice 2023

242 European Commission (2022) [Commission Staff Working Document Statistics and Trends in Trafficking in Human Beings in the European Union in 2019-2020 Accompanying the Document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight Against Trafficking in Human Beings \(Fourth Report\) SWD/2022/429 final](#), p. 6

**of their country of origin and/or application for International Protection, taking into account their gender and the type of exploitation they were subjected to.**

We are also mindful that the exclusive focus on trafficking for sexual exploitation of children perhaps overshadows other forms. This may be attributed to the dispersing of child trafficking offences between two pieces of legislation – trafficking for sexual exploitation in the Child Trafficking and Pornography Act 1998 and trafficking for other forms of exploitation in the Criminal Justice (Human Trafficking) Act of 2008.

**The Commission reiterates its recommendation that the State considers the need for a legislative amendment to remove the reference to trafficking in section 3 of the 1998 Act, and the insertion into section 2 of the 2008 Act to include trafficking for sexual exploitation.**

This would have the benefit of capturing all trafficking offences against children within the same section rather than the current situation whereby trafficking of children for sexual exploitation is addressed in section 3 of the 1998 Act while trafficking of children for all other forms of exploitation is covered by section 2 of the 2008 Act.

### Age Assessment (Article 13.2)

**Article 13.2** Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

There continues to be no functioning age estimation assessments procedure for young people who are referred to Tusla services by the International Protection Office. According to Tusla, their function is confined to assessing whether a person is ‘eligible to receive their services’ under Section 3 of the *Child Care Act 1991*.<sup>243</sup> There appears to be a confusion regarding the responsibility for age assessment with agencies simultaneously denying ownership of this duty.

A very high number (597) of unaccompanied or separated children were referred to Tusla in 2022 and according to them, they are unable to produce the final number of those that were confirmed to be children.<sup>244</sup> To illustrate the increase, just 115

243 Source: Tusla 2023; [Child Care Act 1991](#)

244 Malekmian S. (2023) ‘[Still No Guidelines for Assessing the Age of Young Asylum Seekers When There’s a Dispute](#)’, *Dublin Inquirer*, 1 March [accessed 27 April 2023]



unaccompanied children were referred to Tusla by the International Protection Office for age estimate assessments between 2016 and 2020, with 48 of them deemed to be children.<sup>245</sup>

The International Protection Office age (estimate) assessment procedure is outlined in Section 24 of the International Protection Act 2015, which establishes several minimum standards of protection - such as respect of dignity, consent, interpretation, and others. Section 24(3) requires Tusla's consent to carry out the age assessment when the applicant is an unaccompanied or separated minor without a responsible adult. According to the International Protection Office, unaccompanied minors encountered by immigration officers are referred to Tusla for determination of whether a person is 'eligible for child welfare protection' services.<sup>246</sup> If an applicant is found not to be eligible for child protection services, then such person is treated by the International Protection Office as an adult. If an unaccompanied or separated child is wrongly assessed, then the child is denied access to support and protection, and placed in State Adult Direct Provision accommodation. It goes without saying that such a scenario carries high risk and negative consequences for the young person.

In 2022, a sixteen-year-old asylum seeker was placed in State accommodation on his own, sharing a room with another adult man, even though he submitted his birth certificate to the International Protection Officers.<sup>247</sup> At the end of 2022, another young asylum seeker referred to Tusla for an age assessment by International Protection Officers was deemed to be an adult by a Tusla's social worker and placed in State accommodation sharing with adult men.<sup>248</sup> In 2023, this last applicant was able to provide government documentation proving that he was 16 at the time of the assessment.<sup>249</sup> As Tusla does not have an operational age estimation assessment procedure, there is no transparency, limited data, questionable oversight and no appeals process of these crucial decisions.

The Ombudsman for Children has formally expressed concerns on the performance of age assessments directly to the Chief International Protection Officer and the Director of Services and Integration in Tusla. The Ombudsman sought a joint response on how both Tusla and the International Protection Office intended to carry out their respective statutory duty.

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245 Ibid

246 Source: International Protection Office 2023

247 Malekmian S. (2023) '[Still No Guidelines for Assessing the Age of Young Asylum Seekers When There's a Dispute](#)', *Dublin Inquirer*, 1 March [accessed 27 April 2023]

248 Malekmian S. (2023) '[In just hours, with no guidelines, a Tusla social worker decided a young asylum seeker was an adult not a child](#)', *Dublin Inquirer*, 12 April [accessed 27 April 2023]

249 Ibid

According to the Minister for Children, Equality, Disability, Integration and Youth of Ireland, Tusla, DCEDIY and the International Protection office have developed a new protocol to assess the age of unaccompanied minors in order to ensure external oversight of Tusla social workers deciding on the age of applicants.<sup>250</sup>

We believe that given the increased numbers of vulnerable separated and unaccompanied minors, including potential victims of trafficking whose age is uncertain, the expected National Referral Mechanism must include and define ‘age estimate assessment’. Additionally, a clarity and certainty is needed in regards to the State agency responsible for age estimation assessments, while the Commission considers Tusla – an agency with a focus on children’s well-being- to be the appropriate body for this task. Following the achievement of such clarity, a detailed policy guidance and training must be provided to ensure that the human rights of those being assessed are upheld and maintained.<sup>251</sup>

**The Commission reiterates its recommendation that the term ‘age estimation assessment’ is included and defined in the National Referral Mechanism Bill.**

**The Commission reiterates its recommendation that age estimation assessments are carried out by Tusla and supported by strict policy-guidelines that are child-centred and adapted to the person’s specific needs (cultural, gender, etc.). They should not be based on a medical test and should include an appeal process.**

**The Commission reiterates its recommendation that the presumption of minority (unless and until an age estimation assessment proves otherwise) should be included in statute.**

## Article 14 Assistance and Support to Child Victims

### — Individual Assessment (Article 14.1)

**Article 14.1** Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child’s views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given

250 Dáil Éireann (2022) [Joint Committee on Children, Equality, Disability, Integration and Youth](#), p. 10

251 OSCE Handbook – see Age Estimation Assessments

assistance and support in accordance with Article 11, in accordance with their national law.

Article 14.1 mandates that every identified child victim is assisted in their recovery - both physical and psychosocial - following an individual assessment of the special circumstances of each particular child victim. This assessment must take into account the child's views and concerns with the ultimate aim of finding durable solutions, taking into account their circumstances, cultural context and specific needs.<sup>252</sup> The assessment should ensure the protection of the child victim from retaliation, intimidation and the risk of being re-trafficked,<sup>253</sup> and should have measures to avoid any secondary victimisation or re-traumatisation.<sup>254</sup>

Logically, Tusla is the authority responsible for carrying out the individual assessment of children. As noted above, current available policies and guidance (the Child Sexual Exploitation Procedure and the Protection and Welfare Practice Handbook 2) do not contain sufficient detail on how exactly an individual assessment is undertaken as required by the EU Anti-Trafficking Directive.

According to OSCE/ODHIR, the Best Interest of the Child Assessment must be applied to all child victims of trafficking irrespectively of their nationality, immigration status, family circumstances or form of exploitation.<sup>255</sup> A template containing the five components of the Best Interest of the Child ('BIC') assessment (child's key details, child immediate risk assessment, child's core BIC assessment, Child's ongoing safety and care plan), and template for recording of all assessments and reviews is available in the OSCE/ODHIR National Referral Mechanism Handbook.<sup>256</sup> This may be a helpful resource for Tusla to consider when developing their child-trafficking policies and procedures.

**The Commission reiterates its recommendation that Tusla develops an up-to-date child trafficking specific policy and procedures that capture the Directive's obligations to child trafficking victims in sufficient detail, either in a stand-alone document or as clear and distinct part of the existing policies and procedures.**

252 [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](#), Recital 18

253 [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](#), Recital 19

254 Ibid, Recital 20

255 OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 97

256 Ibid, pp. 341-371

### — Views of the Child (Article 14.1)

The Anti-Trafficking Directive requires that assistance and support measures be provided to all victims, including child victims, on a consensual and informed basis.<sup>257</sup> Article 12 of the UN Convention on the Rights of the Child also requires that States Parties ensure that children capable of forming their own views have the right to express those views freely in all matters that affect them in accordance with their age and maturity. The maturity of a child to express their view on a specific matter:

*“must be judged on a case-by-case basis, each child being treated as an individual in their own right.”<sup>258</sup>*

In their latest concluding observations of Ireland, the Committee on the Rights of the Child issued a number of recommendations on the views of the child that would of course apply equally to child victims of trafficking, including:

*“Ensure the right of all children to express their views and to have them taken into account in all decisions affecting them, including in the courts and in all forms of family law proceedings, and that they are given adequate support to engage an expert to present their views at no cost to them or their family; and*

*Ensure that teachers, childcare professionals and other professionals working with and for children systematically receive training on the right of the child to be heard, including on the implementation of recent legislative and policy reforms such as the Child Care (Amendment) Act 2022 and the child and youth participation strategy;”<sup>259</sup>*

To ensure that the views and best interests of the child are taken into consideration during their assistance and protection, we have recommended that child victims have access to a Children’s Legal Advisor. This measure is separate and in addition to the appointment of a legal guardian, where Tusla is acting *in loco parentis*<sup>260</sup> and the Guardian *ad Litem* system.<sup>261</sup>

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257 [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](#), Recital 21

258 A. Parkes, C. Shore, C. O’Mahony and K. Burns (2015) [‘The Right of the Child to be Heard? Professional Experiences of Child Care Proceedings in the Irish District Court’](#), p. 431

259 UN Committee on the Rights of the Child (2023) [Concluding Observations on the Combined Fifth and Sixth Periodic reports of Ireland](#), p. 5

260 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 27

261 A Guardian ad Litem is a person appointed to a child to ensure their best interest and wishes are respected specifically during the care proceedings

Potential and identified child victims of trafficking are in need of an experienced and specialist children rights advocate that can ensure their views and best interest are respected at all times and throughout the stages of the processes. Access to such Child Legal Advisor has to occur without delay.

Children’s Legal Advisors must be accredited and/or a recognised professional, with detailed and demonstrable knowledge of the National Referral Mechanism (from pre-identification or referral to protection and assistance after the legal proceedings), the criminal law, child law, family reunification, immigration law, among others and as relevant, that can act as an intermediary for the child throughout the process.<sup>262</sup> The Children’s Legal Advisor must apply child-centred and trauma informed working methods, building a relationship of trust with the child victim, recording relevant information to understand the child’s unique circumstances and needs, supporting the child’s informed participation in all procedures, accompanying the child to all appointments, assisting the child to access services and advocating on behalf of the child, where necessary.<sup>263</sup>

**The Commission recommends that every child victim be appointed a ‘Children’s Legal Advisor’ at the earliest stage of the referral to the National Referral Mechanism to ensure that the identification, assistance and protection during the process respects the views and best interest of the child.**

**The Commission reiterates its recommendation that Tusla must ensure that any professionals (including guardian ad litem, social workers, guardians, intermediaries, lawyers, judges) who come into contact with a child victim of trafficking are trained to work with child victims of trafficking.**

### — Education for Child Victims (Article 14.1)

Article 14.1 establishes the right to access education for child victims of trafficking. It is understood that the article refers to, at a minimum, primary and secondary education.<sup>264</sup> Adult and further education in Ireland includes a range of options such

<sup>262</sup> OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), pp. 94-95

<sup>263</sup> Ibid

<sup>264</sup> In Ireland is itself a Constitutional right that requires education to be free and appropriate, based on need and/or until the child reaches the age of eighteen children in Ireland (irrespective of their immigration status, country of origin, or care arrangements) have access to primary and post-primary education until the age of 18. When difficulties in enrolling children in a school arise, Tusla’s Education Support Service (TESS) will assist them. TESS ensures that all children seeking International Protection are enrolled and attending schools as soon as possible following their arrival. Department of Education and Skills (2022), [Written Answer to Parliamentary Question: School Facilities](#) (15 September 2022)

as Education Training Board programmes (technical and practical education including routes to higher and third-level education), Vocational Training Opportunities Scheme (education for adults), Youth Reach (literacy and basic education), and Apprenticeships (on-the-job training and off-the job education), among others.

Only victims of trafficking who have been granted some form of International Protection or those who have been seeking asylum and residing in the State for three years, are eligible for assistance in accessing further and third level education supports in Ireland.<sup>265</sup> Under the current National Referral Mechanism, identified victims of trafficking (including children) that have been granted temporary residence permission (distinct from humanitarian leave to remain and refugee status) under the Administrative Immigration Arrangements are *not* eligible for this support.

From our engagement with survivors', we have been made aware of the numerous benefits that accessing education has for the recovery of victims. It increases their self-esteem, independence and self-sufficiency. Several participants spoke about education helping them to momentarily forget about their ordeal by focusing on learning and creating a better future for themselves and, in some cases their children. Many of the survivors hoped to gain, or have already gained qualifications that will lead to employment, with many of them pursuing and achieving successful careers in the care, IT and community sectors. While these participants were adults, it demonstrates the positive impact education can have in recovery, acting as a crucial element in their exiting from the exploitation they endured.

**The Commission reiterates its recommendation that child victims of trafficking are afforded the same access and supports to education, training and employment as Irish Nationals.**

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265 Those in the International Protection system can apply for the International Protection Student Scheme under the Department of Further and Higher Education, Research, Innovation and Science (DFHERIS) if they can meet certain criteria. For information on the 2022-2023 term please see Department of Further and Higher Education, Research, Innovation and Science (2022) *International Protection Student Scheme (for FE/HE Students) 2022/2023*. The Higher Education Authority also has a "Free Fees Initiative" that offers tuition fees for full-time undergraduate students undertaking approved courses when they fulfill certain criteria. These criteria includes holding refugee status, being a family member of a refugee, having permission to remain, being granted humanitarian leave to remain and being granted permission to remain among others. For more information please visit the [Higher Education Authority website on Free Fees Initiative](#). Yet, students eligible for this "Free Fees Initiative" are still required to pay a contribution charge of €3,000 per year (2022/2023 academic year), which might be covered by the SUSI grant but is also based on eligibility criteria. For more information please visit [SUSI website on Eligibility Criteria](#)

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### — Appointment of a Guardian (Article 14.2)

Article 14.2 Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

Article 14.2 requires that a guardian and/or representative be appointed from the moment a child has been identified as a potential victim - in the event that the child has no suitable parents or is an unaccompanied or separate minor. The guardian must ensure the 'best interest of the child' and safeguard their rights to assistance and protection. According to the Directive, this guardian or representative must also protect the best interest of the child during legal proceedings, in accordance with Article 15.1 and discussed in [section 3.1 Representative for the child in criminal proceedings \(Article 15.1\)](#) of the report.

Child victims are not a homogenous group. Some child victims will be in the care of their parent/guardian but will have been/are being exploited by another person. Others are or may have been trafficked by their parent/guardian. Yet for others their traffickers, or those implicated in their trafficking may be posing as their parent/guardian/partner/husband for the purpose of claiming International Protection on the child's behalf or to avoid detection by child protection services. Equally, child victims may be unaccompanied or separated from the parent/guardian completely. Respectively, policy, law and procedure must be capable of capturing all of these different scenarios and responding accordingly to the different care and protection requirements.

In our Submission on Part 3 of the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022, we recommended that the new National Referral Mechanism clearly outlines the nature and extent of the protection measures children are entitled to.<sup>266</sup> The future Criminal Justice (Sexual Offences and Trafficking) Act must clearly set out the specific obligations owed in cases where a child victim is in the care of a safe parent/guardian – where that parent/guardian is not implicated in the trafficking of the child - and when the State (Tusla) is the legal guardian and/or acting in *loco parentis*. The law must be comprehensive in regards to the appropriate supports needed for each situation, ensuring the immediate access to statutory services, support and protection for all potential child victims of trafficking.<sup>267</sup> It is important to note that there is a distinction between legal guardianship and a *guardian*

<sup>266</sup> IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 35

<sup>267</sup> Ibid

*ad litem*. Despite the similar terminology, a *guardian ad litem* is not a child’s guardian, their role is to represent the views and best interest of the child in specific setting – the care proceedings.<sup>268</sup>

Where a child victim is in the care of their legal parent/guardian and that person is not implicated in their trafficking, one or both will be the legal guardian. However, where there is doubt as to whether the person presenting as a legal parent/guardian is not in fact the legal parent/guardian, or when the child is unaccompanied or separated from their parent/guardian, an obligation arises to appoint an appropriate guardian from the moment the child is identified. The duty arises in general but for present purposes, the need is compounded when the child is potentially a victim of trafficking.

Section 15 of the International Protection Act 2015 remains a concern for the Commission. Children cannot apply for International Protection in their own right; a person over eighteen years that is ‘taking responsibility’ for the care and protection of the child must make the application. There is no requirement for the adult to demonstrate a legal or factual basis to assume the carer role for the child. The absence of protections is neither child nor victim-centred and may greatly hinder the early identification and protection of child victims.<sup>269</sup> Again, we highlight the real risk that children in the International Protection system face, these inadequacies have the potential to seriously undermine the child’s fundamental right to, inter alia, a legal guardian who can safeguard their needs and interests.<sup>270</sup>

Concerns also arise with the inherent ambiguity in Section 14 of the *International Protection Act*. Section 14 requires (IPO) officers<sup>271</sup> notify Tusla where it appears to them that a person who has not reached the age of 18 (potential unaccompanied minors) is seeking to lodge an application. There is a lack of guidance and training for officers to recognise when the person is in fact a child seeking asylum (children might seem older than their real age or might have been coached by traffickers to pose as young adults). The inability to identify a person is a child risks limiting, or extinguishing their access to child-specific assistance and protection measures required by the Directive.

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268 Child Care (Amendment) Act 2022 was signed into law on 19th July 2022. Once commenced, the 2022 Act amends legislation concerning child care proceedings (under the Child Care Act 1991), special care proceedings (under the Child Care (Amendment) Act 2011), and the detention of children in an approved centre (under the Mental Health Act 2001). Primarily the 2022 Act provides for a system of regulation and appointment of guardians ad litem and provides that the best interests of the child are the paramount consideration for courts. It also sets out that children’s views in a matter should be heard.

269 Immigrant Council of Ireland (2016) [Child Migration Matters: Children and Young People’s Experience of Migration](#), p. 174

270 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 135

271 “immigration officer” has the meaning it has in section 3 of the Act of 2004



For unaccompanied minors Tusla’s Child Protection Handbook 2 requires that any child arriving into Ireland from overseas who is unaccompanied or separated from their parent/guardian (including those arriving in the care of adults without documents demonstrating the relationship with the child), becomes the responsibility of the Tusla team under the Child Care Act 1991.<sup>272</sup> Tusla becomes responsible for providing care, assistance and protection to unaccompanied or separated children. Of course, this is dependent on them being identified as being children and whether they are legitimately ‘accompanied’.

These issues are closely related to Age Estimate Assessments, which was explored in detail above under [Age Assessment \(Article 13.2\)](#).

**The Commission reiterates its recommendation that specific guidelines on the criterion officers use to determine when a person may be a child and when an adult is entitled to ‘take responsibility’ for a child are drawn up to provide clarity on sections 14 and 15 of the International Protection Act 2015. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training.**

**The Commission reiterates its recommendation that any appointed guardian to children who are potential victims of trafficking are specifically and regularly trained, as well as availing of professional supervision.**

#### — Child Victim’s Family (Article 14.3)

**Article 14.3** Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

The EU Anti-Trafficking Directive also recognises the special needs of children, whose circumstances require the extension of assistance and support to the family of the child victims. According to the European Commission, the decision of victims to seek help is greatly influenced by the access to services their family members receive.<sup>273</sup> Ireland

272 Tusla (2018) [Child Protection and Welfare Practice Handbook 2](#), p. 75

273 European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), p. 34

is one of the countries that has not fully transposed Article 14.3 by failing to adopt specific measures for the family of child victims of trafficking.<sup>274</sup>

Tusla does not have any specific measures directed to the assistance and support of the family of a child victim of trafficking. We have previously highlighted that legal assistance should be extended to the parent/guardian of suspected child trafficking victims<sup>275</sup> and have recommended that such avenues be included in the new National Referral Mechanism for victims to pursue family reunification.<sup>276</sup> Tusla continues to offer a ‘search’ and ‘family reunification’ service for separate and unaccompanied minors following a referral by immigration officers. All children referred to the service see a social worker and are individually assessed, which might include DNA testing. The assessment determines whether the child is returned to parents/guardians accompanying the child, or the child is taken into the care of the State when there are concerns about safety and welfare. Increased expertise is needed to protect children from being reunited with family members who might be their traffickers. Facilitating family reunification may be an important element in the assistance to child victims of trafficking. Some EU countries offer rights to the family members of child victims.<sup>277</sup>

**The Commission recommends that specific rights be extended to the family of child victims, as an integral part of child victim assistance.**

### Protection of Child Victims in Criminal Proceedings (Article 15)

We reiterate the importance of the recommendations contained in the O’Malley Report related to the child sexual exploitation offences created by sections 3 to 7 of the *Criminal Law (Sexual Offences) Act 2017*.<sup>278</sup> These include bringing new child sexual exploitation offences within the free legal aid scheme, extending legal aid to parents/guardians of child victims, and ensuring that all victims received the same level of support irrespective of their location.<sup>279</sup>

274 Ibid, p. 108

275 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 15

276 Ibid, p. 36

277 Identified victims in Romania have the right to be treated with respect, professionalism, to benefit from individualised protection and support, financial compensation and restoration for rights, with family members of the victims enjoying the same rights. European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), p. 107

278 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 137; O’Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), p. 45

279 O’Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), pp. 91-118

Irish legislation recognises the specific vulnerability of child victims regarding their need to a high level of protection. As such, Section 14 of the Criminal Justice (Victims of Crime) 2017 Act establishes the obligation to carry out individual assessments to recognise any protection needs a victim may have, protection measures to safeguard the safety and welfare of the victim and any special measures during investigations and court proceedings.<sup>280</sup> Child victims of trafficking in judicial processes are always presumed to have protection needs, with their best interest always governing any assessment that is carried out.<sup>281</sup>

## Protection of Child Victims of Trafficking In Human Beings in Criminal Investigations and Proceedings (Article 15)

### — Representative for the Child In Criminal Proceedings (Article 15.1)

**Article 15.1** Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

According to Section 26 of the *Child Care Act 1991*, a *guardian ad litem* may be appointed for a child by the court but this is limited to only certain legal proceedings, such as in the making of a care order or in custody cases. The role of the *guardian ad litem* is not only to ensure that the best interests of the child are respected, but also to present their views during the proceedings.<sup>282</sup> The 1991 Act provided little guidance on the appointment of the *guardian ad litem*, including a distinct lack of provisions to govern the functions and required qualifications to fulfil the role.<sup>283</sup> However, we note that the enactment of the Child Care (Amendment) Act 2022, aims to reform the previously largely unregulated *Guardian ad litem* system.

We welcome the Act's presumption in favour of appointment of a *guardian ad litem* in child-care proceedings, and urge the State to prioritise the enactment and implementation of this legislation, taking full account of stakeholder views on the reforms required.

<sup>280</sup> Source: Department of Justice 2023

<sup>281</sup> Ibid

<sup>282</sup> A. Parkes, C. Shore, C. O'Mahony and K. Burns (2015) '[The Right of the Child to be Heard? Professional Experiences of Child Care Proceedings in the Irish District Court](#)', p. 433

<sup>283</sup> Ibid, p. 438

**The Commission recommends that adequate resources are allocated for the full and prompt implementation of the Child Care (Amendment) Act 2022, to establish a child-centred, rights-based, independent, accessible and sustainable Guardian ad litem service and ensure that children’s views and best interests are fully considered in child care proceedings.<sup>284</sup>**

Tusla has informed us that identified child victims of trafficking are usually subject to full care order and are appointed a legal guardian. Most often, this is a social worker who acts in *loco parentis* to support the child during the investigation and legal proceedings.<sup>285</sup> Despite the identification of five child victims of trafficking in 2022, Tusla has not provided information to us on the assistance, support and protection offered to these children, including whether the appointment of a guardian to act in *loco parentis* was required.

To ensure the full application of Article 15.1, it is our view that every child victim, either under the care of Tusla acting *in loco parentis* or whether they are under the care of a parent/guardian must have access to a Children’s Legal Advisor, as mentioned elsewhere in the report. The Children’s Legal Advisor would represent and advocate for the best interest for the child and ensure their highest level of protection and support. The new National Referral Mechanism should define what is meant by a Child Legal Advisor and mandate their appointment for child victims at the earliest stage of the referral and identification process.<sup>286</sup>

#### — Legal Assistance to Child Victims (Article 15.2)

**Article 15.2** Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

Child victims have equal access to Civil Legal Aid as adult victims. This is provided for in section 26(3)(b) of the *Civil Legal Aid Act 1995*. As the section applies equally to all victims, irrespective of whether or not they are a child, it cannot be said to be child-specific.<sup>287</sup> This implementation does not give effect to the higher protection afforded

284 IHREC (2022) [Submission to the Committee on the Rights of the Child on Ireland’s combined Fifth and Sixth Periodic Report](#)

285 GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), p. 40

286 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 14, p. 27

287 *Ibid*, p. 14

to child victims under article 15.2. Importantly, the 1995 Act does not provide legal aid to parents/guardian of children (where they lack the sufficient maturity to give instructions).<sup>288</sup> Additionally, for children under the care of the State, Tusla is not obliged to seek legal aid on behalf of a child victim. As such, the lack of child-specific legal aid is of deep concern and requires consideration.

As raised in our First National Report and echoing again the recommendations of the O'Malley Review, Section 26(3A) of the Civil Legal Aid Act 1995 should be amended to provide legal advice to a parent/guardian of a child victim of trafficking, except where the parent/guardian is implicated in the trafficking or abuse of that child.

Although in a different context,<sup>289</sup> an example of a statutory obligation to ensure a child has legal advice and representation can be found in section 23D(5)(b) of the Child Care Act 1991. This section requires Tusla to provide the child in their care with access to a solicitor or a representative.

During 2022, the Legal Aid Board did not received referrals for any child victims of trafficking. This is despite the fact that five children were identified as being potential victims of trafficking. The Legal Aid Board has informed us that they offer unaccompanied and separated children a holistic legal advice service to assist them in applying for International Protection. Of course, they rely on a referral from Tusla. According to the LAB, every unaccompanied minor that is referred by Tusla or registers for this service has a consultation with a solicitor from the Board before applying for International Protection.<sup>290</sup> The Board also receives direct referrals from An Garda Síochána about child victims of trafficking.

Although no child trafficking victim was referred to the Legal Aid Board in 2022, we continue to lack sufficient information to ascertain whether it is part of Tusla's procedures to seek early legal advice for child trafficking victims as mandated by the Anti-Trafficking Directive. We are aware that Tusla is undertaking a review of its approach to child trafficking from training to procedures, with reference to the upcoming Third National Action Plan and the new National Referral Mechanism. We see this evaluation as an opportunity for Tusla to update its policies regarding the engagement with legal professionals for child victims of trafficking, including the appointment of Child Legal Advisors. These improvements would ensure compliance with Article 15.2 and increase the assistance and protection of child victims by guaranteeing them free legal counselling without delay including for the purpose of seeking compensation.

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288 Ibid

289 Relating to where a child is in the care of the State and they have committed an offence

290 The Legal Aid Board has 'Unaccompanied Minors' Unit in Dublin.

As previously raised, the new National Referral Mechanism should incorporate the obligation to provide each child victim of trafficking with a ‘Children’s Legal Advisor’<sup>291</sup> to ensure that all child victims receive the child and trafficking specific legal assistance that they are entitled to by virtue of Article 15.2.

**The Commission reiterates its recommendation that Tusla amends its policies to ensure the engagement of legal professional for legal advice and representation in cases of suspected child victims without delay, as required in the Directive, including for the purposes of claiming compensation.**

**The Commission reiterates its recommendation that Tusla considers the mandatory appointment of a Children’s Legal Advisor to every child suspected of being a victim of trafficking at the earliest stage.**

#### — Interviews with Child Victims (Article 15.3)

**Article 15.3** Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
- (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
- (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;
- (f) the child victim may be accompanied by a representative or, where appropriate, an

<sup>291</sup> IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#), p. 14

adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

Children being interviewed by law enforcement are particularly vulnerable and should be treated in an age-appropriate way, using child-friendly communication techniques, and offering explanations and information to the child.<sup>292</sup> Research shows that good practice among An Garda Síochána interviewing children includes members making significant efforts to adapt their approach by modifying their language to ensure the child's understanding and adapting the environment or interview room in which the interview is carried out.<sup>293</sup> The research also highlights existing specialised expertise and experience among An Garda Síochána<sup>294</sup> as well as significant progress achieved in recent years.

In relation to Article 15.3(b), Ireland has a number of specialised and victim-centred facilities to carry out interviews with vulnerable victims. These are located separately from Garda stations, across the country in Letterkenny, Sligo, Galway, Limerick, Cork, Waterford and Dublin.<sup>295</sup> Children and young people that have experience sexual abuse also have access to Barnahus, although the service is currently only available in the West of Ireland. The service brings together Tusla, An Garda Síochána and the HSE in the same child-friendly facility, providing specialist interviews, medical assessments and child therapy.<sup>296</sup>

Specialist interviewers are trained to interview child victims involved in cases of sexual abuse, violence or threatened violence<sup>297</sup> in relation to Article 15.3(c). The Garda College provides a training programme and over 100 Gardaí have received this training to interview children between 2018 and 2021.<sup>298</sup> In regards to the avoidance of repeated interviews observed in Article 15.3(e) of the Directive, Irish law allows for the use of recording technologies with the Criminal Evidence Act 1992.

Article 15.3(f), which refers to the need for child victims to be accompanied by a representative or adult of their choice during the interview for criminal investigation and proceedings unless this is unfeasible, is set out in Section 17 of the Criminal Justice (Victims of Crime) Act 2017.<sup>299</sup> Section 17 establishes that in the absence of

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292 Kilkelly U. and Force L. (2020) [Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána](#), p. 46

293 Ibid, p. 47

294 Ibid

295 An Garda Síochána, [Crime and Specialist Training within An Garda Síochána](#)

296 Tusla - [Barnahus](#)

297 [Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison](#), p. 23

298 See Department of Justice (2021) [Written answer to Parliamentary Question: An Garda Síochána](#) (30 November 2021)

299 The Criminal Justice (Victims of Crime) Act 2017 transposes into Irish law Directive 2012/29/EU establish-

a parent, guardian or other authorised person, the relevant authority shall arrange for another appropriate person to accompany the child victim during any interview or court proceedings at which the victim is required to be present. We believe that an appointed Child's Legal Advisor would be the most appropriate figure to fulfil this function according to best practice,<sup>300</sup> in addition to an adult of the child's choice, if different from the Advisor.

**The Commission reiterates its recommendation that all child trafficking victims, irrespective of the form of exploitation they were subjected, are included in the 'Barnahus model' already operating in the State.**

#### — Video Recorded Evidence (Article 15.4)

**Article 15.4** Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Article 15.4 requires that all interviews with child victims and/or child witnesses of human trafficking offences related to criminal investigations are recorded and such recordings made available to be used as evidence during court proceedings. Section 16 of the Criminal Evidence Act provides for the use of video recording as evidence at trials. Child victims under 14 years can have their statement video recorded during interview with An Garda Síochána and it may be admissible in court as evidence, so long as certain conditions are met. As noted above, since 2008 and in accordance with the Criminal Evidence Act 1992, An Garda Síochána trains specialist interviewers to conduct interviews with victims/complainants under 14 years and those with an intellectual disability for evidential purposes in cases involving sexual and/or violent offences.<sup>301</sup>

Given the limited number of identified cases involving children in recent years it is difficult for us to comment on the specific treatment child victims received in regards to investigation interviews. That being said, we recognise and commend the attention paid to protecting the rights of child victims within the criminal justice system. However, we are still concerned about the lack of knowledge surrounding

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ing minimum standards on the rights, support and protection of victims of crime.

300 OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), pp. 94-95

301 An Garda Síochána, [Crime and Specialist Training within An Garda Síochána](#)



the trafficking of children for criminal exploitation. In that case, child victims may themselves be criminalised and will not therefore receive the supports required for victims. We look forward to obtaining additional data on the experience of child victims of trafficking and their protection in criminal proceedings.

#### — Court Hearings in Child Trafficking Cases (Article 15.5)

**Article 15.5** Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

- (a) the hearing take place without the presence of the public; and
- (b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

Article 15.5 seeks to protect child victims of trafficking during the court proceedings through requiring that cases be heard *in Camera* as well as by allowing the child victim to participate and be heard during the process remotely through the use of communication technologies. The provision strengthens the general protections in court hearings required for all victims of trafficking contained in Article 12 of the Directive.

There has been no relevant development on court hearings in child trafficking cases. Section 257 of the Children Act 2001 allows for the court to exclude all persons (with a few exceptions)<sup>302</sup> from the hearing when a child is called as a witness and child victim witnesses can give evidence via video link in criminal trials under Section 13 of the *Criminal Evidence Act 1992*, as reported in the First Evaluation Report.<sup>303</sup>

We are satisfied that there are a range of supports available to child victims within the court process but would again raise our concerns that the reality is that most children are not identified and are thus not receiving these supports and may in fact be criminalised themselves.

<sup>302</sup> Officers of the court, persons directly concerned in the proceedings, bona fide representatives of the press and such other persons (if any) as the court may in its discretion permit to remain.

<sup>303</sup> IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 141

## Measures for Unaccompanied Minors (Article 16)

### Article 16 Assistance, support and protection for unaccompanied child victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.
3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.
4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.
5. This Article shall apply without prejudice to Articles 14 and 15.

Where a child presents as, or it is suspected that they are an unaccompanied or separated minor, a needs-based assessment is conducted by a Social Worker from the Separated Children Seeking International Protection (SCSIP) unit in Tusla. As reported in our First Evaluation Report,<sup>304</sup> the Social Workers use a specific risk assessment matrix for unaccompanied and separated children at risk of trafficking.

The assessment matrix contain actions regarding a range of issues such as:

- ▶ the first contact with the child;
- ▶ the intake assessment (includes indicators for trafficking);
- ▶ the placement (type, location and safety);
- ▶ age disputes;
- ▶ legal advice/representation;

304 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

- ▶ health checks (including emotional and psychological); and
- ▶ education among others.

Almost six hundred (597) unaccompanied or separated children were referred to Tusla in 2022 for an age assessment.<sup>305</sup> As noted above, according to the DCEDIY, as of January 2023, a total of 208 unaccompanied children were under the care of Tusla, including those seeking International Protection and those that had obtained temporary protection.<sup>306</sup> 81 of these children were placed in residential care, 46 were in special emergency accommodation arrangements (temporary unregulated placements) and 71 in family placements (statutory and non-statutory fostering and supported lodgings placements).<sup>307</sup> From January to June 2022, 343 unaccompanied minors were referred to Tusla by immigration officers, of which 163 came from Ukraine.<sup>308</sup> In May 2023, it was further revealed that the State is unaware of the location of 52 unaccompanied children who have been reported missing from the State since 2017, with seven of them reported in 2023 alone. Overall, Ireland has 247 children seeking International Protection in the care of the State, of whom 71 are Ukrainian nationals.<sup>309</sup>

We welcome the specific actions to increase efforts to locate and protect children who are missing from State care, which are included in the draft Third National Action Plan according to the Department of Justice. These children are particularly vulnerable to human trafficking and/or re-trafficking. This will be achieved through the:

*“review of the existing procedures and with the involvement of law enforcement, Tusla and the Health Service Executive.”*

We strongly welcome this review but remain deeply concerned by the high numbers of children who continue to go missing from Tusla’s care.

It is of particular relevance that the UN Committee on the Rights of the Child issued a number of recommendations on the special protection needs for unaccompanied children in Ireland. We echo these recommendations and call for their full implementation.

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305 Malekmian S. (2023) [‘Still No Guidelines for Assessing the Age of Young Asylum Seekers When There’s a Dispute’](#), *Dublin Inquirer*, 1 March [accessed 27 April 2023]

306 Department of Children, Equality, Disability, Integration and Youth (2023), [Written Answer to Parliamentary Question: Unaccompanied Minors and Separated Children](#) (9 February 2023)

307 Ibid

308 Department of Children, Equality, Disability, Integration and Youth (2022), [Written Answer to Parliamentary Question: Unaccompanied Minors and Separated Children](#) (29 June 2022)

309 Moloney A. (2023) [“‘Deeply concerned’ – State unable to locate 52 minors missing from care”](#) *Extra.ie* (19 June)

**The Commission recommends that the State ensures that vulnerability assessments for all unaccompanied children are conducted in a child-friendly manner by trained professionals, within 3-days of their arrival, and that applications for legal residency are promptly processed.**

**The Commission recommends that section 24 (2) (c) of the International Protection Act 2015 is amended to allow for multidisciplinary assessments of unaccompanied persons' maturity and level of development to determine their age, and in cases of doubt ensures respect for the principle of the benefit of the doubt.**

**The Commission recommends that the State develops national guidelines on ensuring the rights of unaccompanied children.**

**The Commission recommends that the State reviews its system of family reunification involving unaccompanied children, with a view to broadening the definition of "family member", simplifying application procedures to ensure that the best interests of the child are a primary consideration in all related decisions.<sup>310</sup>**

As previously reported, in 2022 five children were formally identified as being potential victims of trafficking. Regrettably, we do not have further details on the specific circumstances of these child victims, including whether or not they were/are 'unaccompanied' or 'separated' children, whether the risk assessment matrix detected that the children were victims of trafficking, or what level and type of support and protection they received.

**The Commission reiterates its recommendation that the new National Referral Mechanism removes the need for unaccompanied child victims of trafficking (15 years of age or younger) to wait three years prior to their application for a more durable residence status, in the spirit of the Directive.**

**The Commission reiterates its recommendation that Tusla ensures that any decision regarding application for International Protection on behalf of a minor unaccompanied trafficking victim is taken only after a consultation with a qualified lawyer/ Children's Legal Advisor.**

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310 UN Committee on the Rights of the Child (2023) [Concluding Observations on the Combined Fifth and Sixth Periodic reports of Ireland](#), p. 14

The section below on Article 18 outlines the efforts to prevent child trafficking in Ireland, offering a comprehensive update on the measures taken by State agencies and Civil Society Organisations such as Mecpaths (a unique NGO working exclusively for the prevention of child trafficking in Ireland in high risk sectors such as the hospitality or aviation industries) during 2022. In addition to the recommendations outlined in the aforementioned section and given the increased vulnerability of children to human trafficking, we reiterate the recommendation issued on the First Evaluation Report and call for a multi-faceted strategy that is specifically designed for the prevention of child trafficking in Ireland.<sup>311</sup>

## **Prevention of Human Trafficking (Article 18)**

### **Article 18 Prevention**

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.
3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.
4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation

311 Such a strategy must include:

- a victim-centred and trauma-informed approach that takes into account the gender-specific concerns of girls and boys;
- increased prosecution of citizens for serious sexual crimes against children;
- education and awareness-raising amongst the private sector and civil society;
- strengthened co-operation and co-ordination among relevant authorities;
- prosecute the misuse of ICT to recruit or facilitate access to children;
- promote age and consent verification technologies;
- encouraging ICT to prevent the distribution of and take down Child Sexual Abuse content online;
- specialized training on ICT for frontline workers to combat all forms of child trafficking and broaden the scope of frontline responders to identify child victims of trafficking and other sexual exploitation.

as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

Prevention measures are essential to combating trafficking and are a priority aim within the EU Strategy on Combatting Trafficking in Human Beings 2021-2025.<sup>312</sup>

The proposed reform of the EU Anti-Trafficking Directive introduces multifaceted efforts to reduce the demand that fosters all forms trafficking and exploitation through measures such as:

- ▶ the criminalisation of the knowing use of services of trafficked persons;
- ▶ due diligence within supply chains; and
- ▶ education, training and awareness raising.

There is also a growing emphasis on the need to address technology-facilitated trafficking in all such efforts.

### Awareness Raising

Information and awareness raising campaigns are essential in educating the community and in reducing the risks of people, especially women and girls, of becoming victims of trafficking. From 2013 to 2022, over 70% of all victims identified in Ireland (512) were women (342) and girls (30).

The draft of the Third NAP contains several actions aimed at informing and raising awareness on the indicators or signs of trafficking with the aim of increasing the identification of victims of human trafficking. The Department of Justice commits to collaboration with and allocation of funding to CSO's for the development of campaigns, which includes initiatives aimed at 'hard to reach' communities and victims, identifying trends and making use of new technologies. State Agencies such as An Garda Síochána, the Workplace Relations Commission, the Department of Transport and Department of Agriculture, Food and the Marine commit to participate in the prevention and facilitation of the detection of victims through actions such as updating guides and leaflets on human trafficking, and the translation of these materials into languages of recognised countries of origin of victims. Additionally, there is a further commitment to provide specific information on the indicators of human trafficking aimed at migrant communities that will be made available at entry points to the State.

In 2022, the State continued the Blueblindfold campaign that includes a dedicated website (<https://www.blueblindfold.ie/>) containing awareness raising information, resources for training, and available services for victims. This also includes a

312 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. Brussels: European Union, p. 6

dedicated email address that is monitored by An Garda Síochána Human Trafficking and Investigation and Co-ordination Unit ('HTICU'). While not exclusively trafficking-related there is also a confidential hotline number where anyone can report crime anonymously also monitored by law enforcement and available for 12 hours per day. The TIP 2023 called on the State to establish a national hotline for all forms of trafficking.<sup>313</sup>

**The Commission recommends that the Government explores the feasibility of establishing a dedicated 24/7 hotline to report all forms of human trafficking crimes, including seeking information and support. One such way may be through expanding and resourcing existing 24/7 services to meet this need.**

IOM Ireland launched 'Anyone Deceived' on 18th October 2022, a media awareness raising campaign, which ran throughout the month. The campaign was funded by the Department of Justice as part of PROTECT II project. The website [www.anyonetrafficked.com](http://www.anyonetrafficked.com) - part of the same project - continues to operate and also provides information on the range of support services available to victims of trafficking - both State and non-state supports.<sup>314</sup> The campaign and short film reached approximately 1.13 million people through newspaper media (approximately 75% readers) and TV (approximately 25% viewers). Social media including Twitter, Facebook, Instagram, and LinkedIn was also utilised for the campaign.<sup>315</sup> Approximately 50 people attended the launch in October and a further 50 people viewed the trailer at a related event on 'inclusion' organised by Dublin City Council in November.<sup>316</sup>

Specialist anti-trafficking organisations also carried out projects aimed at preventing and raising awareness of human trafficking. A good example of this was the Ruhama and UCD SERP conference 'Breaking the Silence: Examining the hidden sexual violence and sexual exploitation of women in the Irish and global sex trade', which was hosted in December 2022. This large conference had 24 distinguished experts presenting including a number of survivors.<sup>317</sup> MECPATHS also held a panel discussion on 'The EU Anti-Trafficking Directive and its impact for victims of Child Criminal Exploitation in Ireland' in December 2022. The panel included four experts that explored the extent of criminal exploitation of children in Ireland. Attendees included representatives from

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313 US State Department (2023) [Trafficking in Persons Report](#)

314 Source: Department of Justice 2023

315 Source: IOM Ireland 2023

316 Ibid

317 Source: MECPATHS and MRCI 2023

Tusla, the European Parliament, the Oireachtas, ICI, MRCI and the US Embassy, among others.<sup>318</sup>

Specialist frontline organisations contributed significantly to the overall awareness raising endeavour to combat trafficking. ICI delivered several anti-trafficking and gender-based violence awareness sessions/training to frontline personnel, communities and the general public during 2022 with almost 600 participants.<sup>319</sup> MECPATHS delivered numerous workshops, awareness sessions, conference presentations and community group workshops that resulted in over 8,500 people educated on child trafficking.<sup>320</sup> MRCI and MECPATHS provided awareness raising/training in child, labour and criminal exploitation to more than 80 members of the ICON network<sup>321</sup> in North Inner City Dublin. Ruhama raised awareness/trained several frontline professionals in 44 sessions with over 900 participants.<sup>322</sup>

In addition to the Department of Justice funded activities, other state agencies have also contributed to prevention efforts. For example, in 2022, the Workplace Relations Commission provided information on employment rights via phone to almost 60,000 people (increase of 11% compared to 2021)<sup>323</sup> and more than 700,000 people visited their website.<sup>324</sup> The website provides information on employment rights and redress options in 132 languages,<sup>325</sup> and had 5,544 referrals from Twitter (increase of 93% from 2021) and 3,474 from LinkedIn (increase of 78% from 2021).<sup>326</sup> Those at most risk of exploitation such as fishers or domestic workers have access to specific guidance in the most common language of the workers.<sup>327</sup>

In 2022, the Workplace Relations Commission resumed their outreach activities and provided 31 information sessions on employment rights to relevant groups.<sup>328</sup> Following the identification of seasonal work as a high risk sector for exploitation, the Workplace Relations Commission has created a dedicated webpage,<sup>329</sup> a leaflet on 'Employment Rights of Seasonal Workers in Ireland',<sup>330</sup> and has participated in

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318 For more information <https://mecpaths.com/mecpaths-hosts-roundtable-with-maria-walsh-mep/>

319 Source: ICI 2023

320 Source: MECPATHS 2023

321 For more information <https://www.iconnetwork.ie/about/>

322 Source: Ruhama 2023

323 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 13

324 Ibid, p. 7

325 Source: Department of Justice 2023

326 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 15

327 Source: Department of Justice 2023

328 Ibid

329 Workplace Relations Commission – [Seasonal Workers](#)

330 Workplace Relations Commission (2021) [Employment Rights of Seasonal Workers in Ireland](#)



information campaigns for fair and safe conditions for seasonal workers employed in the EU #Rights4AllSeasons Campaign.<sup>331</sup> Additionally, the WRC also participated in the EU-wide campaign ‘Road to Fair Transport’ in late 2022, supporting fair and safe working conditions for transport workers.<sup>332</sup> As a response to the invasion of Ukraine, a leaflet with information on employment rights and employment law for Ukrainian nationals in both Ukrainian and Russian is also available on their website.<sup>333</sup>

Funded training on Anti-Human trafficking for those that might encounter victims, those working at the frontline, and those in State Agencies with a mandate to provide services and protection to victims is a key prevention measure that also has the potential to increase the number of victims detected/identified. We are pleased to report a notable recognition of the need and a willingness to increase training among frontline workers and professionals. Furthermore, we welcome nationwide initiatives such as the regularisation scheme for undocumented migrants that go some way to reducing the risk of human trafficking.

It is recognised good practice to evaluate awareness raising campaigns in terms of the number of persons reached, the funding spent, etc., by way of demonstrating and measuring a campaign’s efficacy and to improve future initiatives. Although we recognise the efforts by the State and Civil Society Organisations on raising awareness, we note a lack of initiatives aimed at combatting child trafficking during the reporting period, and the limited number of campaigns aimed at younger audiences or hard-to-reach communities such as migrant workers.

We welcome the commitment by the Department of Justice to increase the prevention and awareness raising efforts on human trafficking. This is best illustrated in the draft of the Third National Action Plan where there are clear commitments to collaboration.

**The Commission recommends that the Department of Justice develops annual, nationwide campaigns that are directed to hard-to-reach sectors and vulnerable groups such as children, young people and migrants.**

**The Commission recommends that dedicated multi-annual funding is made available to Civil Society Organisations to develop awareness raising campaigns in their areas of expertise and/or encourage the utilisation of their expertise in the development of such campaigns.**

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331 For more information <https://www.ela.europa.eu/en/campaigns/rights-for-all-seasons>

332 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 15

333 For more information see Workplace Relations Commission – [Employment Rights in Ireland – Information for Ukrainian Nationals \[website\]](#)

## Days of Action

### — Operations Focused on Sexual Exploitation

The following section reports on national actions and campaigns by An Garda Síochána at national level, and these are in addition to those Actions/Campaigns in which the law enforcement body participated during 2022 in collaboration with other countries and which are detailed in the [Jurisdiction section \(cross-border cooperation\)](#) of the report.

In November, as part of the 16 Days of Activism Campaign, An Garda Síochána conducted targeted operations on the sex industry across sixteen Garda Divisions to strengthen the link between those in the sex trade and law enforcement through increased trust and awareness raising on services available. The operations resulted in 46 people being identified as alleged sex buyers, 65 safeguarding visits, 112 individuals contacted by officers for welfare advice, and over €3,000 seized from a male individual suspected of being involved in organised prostitution.<sup>334</sup> This illustrates the efficacy of prevention measures.

An Garda Síochána also launched a text message safeguarding campaign in November to offer confidential support to those in the sex trade by sending details of services available in English, Romanian, Spanish and Portuguese. Additionally, An Garda Síochána have two dedicated telephone numbers which they share with those in the sex trade that can be used to not only report a crime but also seek advice.<sup>335</sup> Over 6,000 text messages had been sent with NGOs reporting a positive reaction from the receivers.

In September, An Garda Síochána ran a second operation with the Workplace Relations Commission focused on organised prostitution and trafficking for sexual exploitation that consisted of four unannounced visits to massage parlours in Dublin, from which extensive intelligence was obtained.<sup>336</sup>

**The Commission reiterates its recommendation that the State must proactively implement the relevant provisions of the Criminal Law (Sexual Offences) Act 2017 to reduce the demand that fosters trafficking for sexual exploitation, alongside increased support for exit pathways for people affected, including potential victims of trafficking. This must include as a minimum:**

- ▶ **Legal, psychological and medical support;**
- ▶ **Access to exit programmes;**
- ▶ **Emergency and social housing;**

334 Source: Department of Justice 2023

335 Ibid

336 Ibid

- ▶ **Financial assistance;**
- ▶ **Regularised immigration status with the right to work;**
- ▶ **Access to training and employment.**

### — Operations Focused on Labour Exploitation

Over 2022, the Workplace Relations Commission conducted 5,820 inspections and closed 3,943 inspection cases.<sup>337</sup> Of the 3,943 closed inspections, 45% were unannounced (approximately 1,780) and all were performed on an in-person basis, resuming their normal activity after the lifting of Covid-19 restrictions.<sup>338</sup> High-risk sectors for labour exploitation and trafficking for labour exploitation were also monitored during 2022, including 49 inspections in agriculture, 83 in construction, 280 in nail salons and massage parlours and over 1,600 in hospitality (89 in hotels, 1,390 in food service and 156 in beverage service).<sup>339</sup> Overall, the Workplace Relations Commission conducted over 2,000 inspections in high-risk sectors including car washes and domestic work.<sup>340</sup>

The Workplace Relations Commission conducted 273 joint inspections during 2022 with other State Agencies.<sup>341</sup> Seventy joint inspections were carried out in Dublin and the Northeast region with An Garda Síochána, Revenue and the Department of Social Protection. 103 joint inspections were conducted with An Garda Síochána, 113 with the Department of Social Protection and 57 with officers of the Revenue Commissioners.<sup>342</sup>

In June, multi-agency EMPACT Days of Action/campaign on Labour Exploitation operations were conducted during five days with twenty-three premises inspected and persons working in the premises assessed for human trafficking indicators, with no victim identified but intelligence gathered in high-risk sectors including massage parlours, car washes, nail bars and restaurants. This is an example of cross-agencies collaboration in which the Workplace Relations Commission, the Department of Social Protection and Revenue Commissioners also participated, led by An Garda Síochána and its specialised units (HTICU, OPIU and GNIB).<sup>343</sup> 172 inspections were conducted during the campaign and 17 contraventions of legislation detected.<sup>344</sup> Other violations

337 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 17

338 Source: Workplace Relations Commission 2023

339 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 20

340 Source: Workplace Relations Commission 2023

341 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 54

342 Ibid, p. 19

343 Source: Department of Justice 2023

344 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 25

included social protection fraud, non-registration of employment and immigration offences that were dealt by the relevant authorities.<sup>345</sup> However, relevant monitoring bodies have reported a lack of consistency in screening for trafficking indicators among foreign nationals before referring them to immigration authorities. This raises concerns about labour inspectors not having a sufficient understanding of trafficking for labour exploitation and the difference between immigration and labour enforcement.<sup>346</sup> We expect that with the enactment of the new National Referral Mechanism and the Third National Action Plan, this issue will be addressed by the Workplace Relations Commission becoming a Competent Authority with comprehensive understanding.

In September, EMPACT Days of Action against Labour Exploitation linked to Agricultural Sector were conducted, with the HTICU, WRC and Revenue performing searches and interviewing thirty-five staff from different nationalities in Dublin, Meath and Cavan, with no offences disclosed to the officers.<sup>347</sup> The inspections included forestry, fruit and vegetable farms and livestock farms (animals and poultry), with 28 unannounced inspections and 17 contraventions of employment legislation detected.<sup>348</sup>

Regarding the fishing sector, the Workplace Relations Commission has 15 specialised inspectors that are led by a Regional Manager, all trained and available for deployment on fisheries compliance operations.<sup>349</sup> In 2022, the number of inspectors increased by 50% compared to 2021.<sup>350</sup> These inspectors were responsible for enforcing the former Atypical Worker Permission Scheme for Non-EEA Workers engaged on Irish-registered whitefish fishing vessels and ensuring compliance of employment law obligations by employers.<sup>351</sup> 34 inspections were carried out on the fishing sector last year,<sup>352</sup> with 18 investigations completed and 11 individual contraventions of employment legislation detected.<sup>353</sup>

Sectors such as domestic work and the meat processing are also monitored, and the Workplace Relations Commission rolled out new initiatives during 2022. The Workplace and Relations Commission conducted a pilot inspection in the Personal Household Services Sector to identify best practices for inspections and compliance patterns.<sup>354</sup> The pilot aimed to inform the planning of future campaigns and resulted in

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345 Source: Workplace Relations Commission 2023

346 US State Department (2023) [Trafficking in Persons Report](#)

347 Source: Department of Justice 2023

348 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 25

349 Ibid, p. 22

350 Ibid

351 Ibid

352 Ibid, p. 21

353 Ibid, p. 22

354 Source: Workplace Relations Commission 2023

33 unannounced visits and 44 contraventions of employment law detected.<sup>355</sup> Of these contraventions, 60% or 27 of them were related to failure to keep working time records and failure to issue or incorporate the correct particulars in terms of employment.<sup>356</sup> We welcome the commitment by the Workplace Relations Commission to follow up with specific awareness raising campaigns and look forward to seeing the results of such initiatives. On the meat processing industry, the Workplace Relations Commission conducted a consultative process in late 2021 with operators to perform compliance checks, raise awareness and ensure compliance with legislation during 2022.<sup>357</sup> Eighty-five operators responded to the consultation, with 29% of them confirming their use of intermediaries to employ workers or source employees (services of employment or work placement agencies).<sup>358</sup> In 2022, the Workplace Commission carried out 23 inspections and found that 78% of employers (18) were in breach of employment law.<sup>359</sup>

On seasonal employment, the Workplace Relations Commission recognises this type of employment as open to labour exploitation and conducts inspections and awareness raising initiatives on employment rights and entitlements of seasonal workers<sup>360</sup> details of which are included in the awareness raising section of the report.

#### — Operations Focused on ‘Novel’ Forms of Exploitation

During 2022, the Human Trafficking Investigation and Coordination Unit (HTICU) committed to participate in 21 EMPACT<sup>361</sup> Operational Actions Plans to combat human trafficking organised by EUROPOL.<sup>362</sup> Relevant Operational Action Plans were focused on emerging and novel forms of exploitation including commercial surrogacy and selling of babies, exploitation linked to short stays facilities, identification of children on the move at risk, labour exploitation in the agricultural sector, and victim awareness and support related to labour exploitation among other issues.<sup>363</sup> We have no further details on the outcome of these operations.

#### Education in Schools and Further Education Institutions

Research shows that educating younger people can reduce the demand that fosters trafficking and is an effective means of combating trafficking. Such programmes must

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355 Ibid

356 Ibid

357 Ibid

358 Ibid

359 Workplace Relations Commission (2023) [Annual Report 2022](#), p. 24

360 Source: Workplace Relations Commission 2023

361 European Multidisciplinary Platform Against Criminal Threats

362 Source: Department of Justice 2023

363 Ibid

challenge attitudes, beliefs and behaviours and apply a gendered perspective<sup>364</sup> to be effective, especially with regard to preventing sexual exploitation.

The educational outreach in primary, post primary and tertiary education is essential to prevent all forms of trafficking and exploitation amongst the youngest population in Ireland. The draft of the Third NAP illustrates a commitment from the Department of Justice in collaboration with the Department of Further and Higher Education, Research, Innovation and Science and the Department of Education to liaise with educational institutions to raise awareness throughout the 2024/2025 academic year.

The Government’s Wellbeing Policy Statement and Framework for Practice provides:

*“an overarching structure... including the Aistear: the Early Childhood Curriculum Framework and Social Personal and Health Education (SPHE) curriculum at the primary level, and the Junior Cycle Wellbeing Programme at the post primary level”.*<sup>365</sup>

One of the strategic actions is to:

*“Provide for an aligned, comprehensive and easily accessible programme of support for all schools and centres for education to address school-identified wellbeing promotion needs.”*

This includes the review of the content and delivery of relationship and sexuality curriculum to recommend areas of attention, which is due by the end of 2023.<sup>366</sup>

A key action of the Third National Strategy on DSGBV is the commitment to the overhaul of the Relationships and Sexuality Education curriculum.<sup>367</sup> The Departments of Education and Further and Higher Education, Research, Innovation and Science will be responsible for the reforms of the relationships, sexuality and consent education and training.<sup>368</sup> One of the expected outcomes of the Third National Strategy on DSGBV is for all education curriculums to include inputs on healthy relationships, gender equality and consent that are age-appropriate.<sup>369</sup>

### — Third and Further Education

Some notable efforts to raise awareness on human trafficking in third level educational courses are already underway. Training and educating emerging professionals that

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364 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2021) [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#), p. 56

365 Government of Ireland (2019) [Wellbeing Policy Statement and Framework for Practice 2018-2023](#), p. 5

366 Ibid, pp. 29- 30

367 Government of Ireland (2022) *Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026*, p. 7

368 Ibid, p. 23

369 Ibid, p. 46

may encounter potential victims of trafficking is considered a key prevention strategy to ensure that frontline staff are equipped to spot indicators and identify victims of trafficking. MECPAHTS<sup>370</sup> is one of the organisations working to educate professionals including social workers, educators and medical staff among others at third level institutions. In 2022, MECPATHS trained social work masters students in University College Cork, Trinity College, Maynooth University and University College Dublin.

Although Maynooth University is currently the only Irish university offering an accredited module on Human Trafficking, partly delivered by MECPATHS for Social Science, Law, International Justice and Criminology master students, MECPATHS also delivers a non-accredited module on child trafficking to University College Cork masters students of Social Work, Business and Law.

Shannon College of Hotel Management, South East Technological University, Munster Technological University, Waterford Technological University, Technological University Dublin and Griffith College Dublin are further examples that illustrate MECPATHS partnership with educational institutions training emerging professionals of the hospitality and tourism industries in Ireland in combating child trafficking. For the medical industry, MECPATHS delivered a number of workshops in the Mercy University Hospital, Cork University Maternity Hospital and South/Southwest Hospital Group to medical social workers.<sup>371</sup>

A group of professionals dedicated to Health Care and Anti-Trafficking work has joined efforts and has formed the 'Health and Social Care Human Trafficking Education Forum'. The Forum, which is multidisciplinary and includes members from the voluntary, statutory and professional sectors, aims to effect legislative change to ensure that those working in the health care sector receive adequate training and education to prevent and detect victims of human trafficking. International research demonstrate that 90% of victims have reported accessing health care services during their trafficking ordeal and shortly thereafter.<sup>372</sup> We are delighted to hear about the initiative that has the potential to prevent human trafficking by assisting in the identification and support of suspected victims of human trafficking at a very early stage. The WHO recommends that prevention efforts by the health system be rights-based, trauma informed and survivor centred, with special attention being paid to building resilience and mitigating the risks to those most at risk of being harmed, including by re-trafficking.<sup>373</sup>

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370 For more information visit <https://mecpaths.com/>

371 Source: MECPATHS 2023

372 WHO Regional Office for Europe (2023) [Addressing Human Trafficking Through Health Systems: a Scoping Review](#), p. 8

373 Ibid, p. 11

**The Commission reiterates its recommendation that accredited trafficking training must be embedded into professional education programmes of relevant courses such as medicine, social work, and law.**

**The Commission recommends that the actions that correspond to the SPHE and RSE programmes proposed in the Third National Action Plan are urgently progressed and implemented.**

**The Commission reiterates its recommendation that awareness raising campaigns aimed at younger audiences within educational institutions are developed and rolled out nationwide.**

### **Training government officials (Article 18.3)**

**Article 18.3** Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

### **THE CASE STUDY OF OSCAR**

This case illustrates the ongoing need for adequate training for government officials to recognise signs of trafficking in human beings and also the urgent need for robust firewalls between labour and immigration officials when carrying out joint inspections.

Oscar was promised work in Ireland. After he arrived he was kept in appalling living conditions and received very little money in return for his work. Oscar has a young family in his country of origin and this kept him from leaving his situation, as his family depended on the little money he received. He also feared being undocumented and subject to deportation. Although the WRC inspected his work premises, they did not recognise any of the signs of trafficking. Gardaí also failed to detect any labour abuses during the joint inspection. When Oscar received a deportation order local immigration Gardaí informed him that he could not apply to be identified as a victim of trafficking. Oscar then contacted MRCI for assistance and was supported by the organisation until he decided to report his trafficker and was referred to the NRM for formal identification as a victim of trafficking for labour exploitation. Oscar continues to recover from his ordeal and is now working in decent employment, seeking better opportunities and hoping to eventually bring his family to Ireland through family reunification.

(Case Study courtesy of MRCI)



In 2022, we continue to observe disparities between training of frontline service providers resulting in inconsistencies and differing outcomes. However, we have also observed a strong commitment among professionals, bodies and agencies to increase the training efforts to better meet the needs of the people they work with.

In particular, we note that the draft Third NAP includes the goal of:

*“delivering professional training (including NGOs) by those with competency and experience on human trafficking in Ireland to all those officials that might encounter victims of human trafficking.”*

To fulfil their obligations on training, several State Agencies including the Department of Justice, An Garda Síochána and DCEDIY, will develop a training framework, which will be coordinated and monitored.<sup>374</sup> We welcome the addition of training to the NAP draft as well as having consideration for the cultural sensitivities of victims.

The following section outlines the efforts by difference State entities in 2022 to train relevant personnel on recognising and responding to trafficking. We note that NGOs play an important role in building capacity among State practitioners, and also that such efforts are funded to a considerable extent by the Department of Justice.

#### — An Garda Síochána

The draft Third NAP includes a specific action on adequate anti-trafficking training for members of An Garda Síochána and the continuation of trafficking in the curriculum for new recruits. Members of An Garda Síochána receive training on indicators of human trafficking on a regular basis through the Garda College, including on awareness raising, relevant legislation and the specific responsibilities of An Garda Síochána, as well as through training organised by the Garda Human Trafficking Investigation and Coordination Unit (‘HTICU’).<sup>375</sup> However, in comparison with 2021, HTICU did not delivered specialised training on human trafficking.<sup>376</sup> In 2022, members of the HTICU participated in a range of workshops, conferences and webinars from relevant organisation including Homeland Security, CEPOL, PSNI, Ruhama, Criminal Assets Bureau, OSCE, EMPACT, INTERPOL, IOM, or the US Department of Justice.<sup>377</sup> These trainings covered several topics associated with human trafficking, such as international partnership, Ukraine, persons engaged in prostitution, child trafficking, digital model of human trafficking, finance and asset recovery, technology and human trafficking, victim protection, document fraud, labour exploitation, forced criminality, forced begging, and victim-centre approaches in investigations.

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375 Source: Department of Justice 2023

376 US State Department (2023) [Trafficking in Persons Report](#)

377 Source: Department of Justice 2023

It is expected that in 2023, a new bespoke training will be offered through the Garda Learning Management System, with mandatory completion for all sworn members of An Garda Síochána. The training will deliver standardised learnings on trafficking in human beings such as policies, procedures, roles and responsibilities to assist in a comprehensive and uniform response to the crime from the law enforcement agency. This is a welcomed development and we look forward to learning from the outcomes of this mandatory training.

#### — Health Service Executive

HSE staff operating in CityWest Convention Centre (Transit Centre for asylum seekers and those arriving from Ukraine) received training on the dangers of human trafficking and the grooming of vulnerable people.<sup>378</sup> HSE staff also received training from MECPATHS on the identification of child victims of trafficking and training from Ruhama on trafficking for sexual exploitation.<sup>379</sup> The HSE Anti-Human Trafficking Team is also considering the addition of mandatory training and trafficking screening tools.<sup>380</sup>

#### — International Protection Office

All personnel from the International Protection Office receive basic UNHRC training, which contains information on human trafficking. The IPO has a designated training officer and a comprehensive training programme for all officers, and especially those that work directly on casework.<sup>381</sup>

#### — IPAS

Personnel from the International Protection Accommodation Services did not receive formal training on human trafficking during 2022. Ruhama offered training to some team members of the Resident Welfare Team that work on complex cases. The Resident Welfare Team, Assessment Officers and other IPAS staff also attended a presentation delivered by An Garda Síochána. There are plans in place to develop bespoke training for those responsible to carry out vulnerability assessments and responsible for complex cases that are part of IPAS Resident Welfare Team.<sup>382</sup>

#### — Office of the Director for Public Prosecutions

Personnel in the Human Trafficking unit of the office undertook training in human trafficking delivered by IOM on strengthening capacity and raising awareness, as well as attending conferences and seminars in relation to trafficking including on asset seizing,

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378 Ibid

379 Ibid

380 Source: HSE AHTT 2023

381 Source: International Protection Office 2023

382 Source: IPAS 2023

human trafficking trends in the US and financial investigations and asset recovery. Staff were also trained on the six-week course ‘Cultural Competency and Understanding’ delivered by IOM.<sup>383</sup>

#### — Port Authorities and the Border Management Unit (BMU)

In 2022, Irish Port Authorities received a presentation from a Garda National Protective Service Bureau Detective Sergeant on the role that BMU officers have in responding to human trafficking. A cohort of twenty BMU officials were selected to undertake the three-day course on Safeguarding and Modern Slavery delivered by the UK Border Force.<sup>384</sup>

#### — The Legal Aid Board

Staff from the Legal Aid Board attended a number of relevant conferences and seminars throughout 2022, including counter trafficking training organised by IOM. Training highlighting trafficking indicators was provided to new members of the International Protection Panel. On the other hand, the Legal Aid Board organised training to recognise the indicators of human trafficking for the Private Practitioner panel members and in-house LAB solicitors working on International Protection cases. The training was delivered by the Immigrant Council of Ireland. The Legal Aid Board recognises the value of such training, the role of specialised organisations and seeks to strengthen links with NGOs to continue providing awareness raising and education to those working in International Protection cases.<sup>385</sup>

#### — Tusla

During 2022, approximately 600 staff, mainly frontline practitioners of the Child and Family Agency attended training on Child Trafficking delivered by MECPATHS. The training specifically focused on awareness raising and the recognition of indicators of trafficking among the youngest population. Tusla has approximately 5,000 total staff, with 1,500 social workers and 1,300 social care staff. Around 56% of Tusla personnel are frontline professionals or social workers and social care staff (approximately 2,800 of 5,000). Personnel trained in human trafficking by MECPATHS in 2022 represent 21% of Tusla’s frontline personnel and 12% of Tusla’s total staff. According to Tusla, the training was well received by their staff and it was agreed that it should be extended to other practitioners during 2023 through a series of webinars. Work is also underway to provide all staff with online training through Tusla’s online learning platform. Tusla’s Workforce Learning and Development team are working on identifying the best platform to also deliver training to key third-party partners such as foster carers. The

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383 Source: Department of Justice 2023

384 Ibid

385 Ibid

challenge is that the online training platform (HSELand) is only accessible to Tusla and HSE staff.<sup>386</sup>

### — Workplace Relations Commission

By the end of 2022 the Workplace Relations Commission had a total of sixty-three inspectors and approval to recruit ten more inspectors during 2023. The Irish Labour Inspectorate provided training in the identification of indicators of human trafficking to new inspectors. All (sixty-three inspectors) have previously received the training or have participated in the ‘refresher’ session delivered by An Garda Síochána during 2022.<sup>387</sup> We welcome and acknowledge that the Workplace Relations Commission has fulfilled its commitments from 2021 on training of all inspectors in the indicators of human trafficking.

### — Other State Agencies

To greater support prevention efforts we have identified a number of State Agencies who should receive training on recognising the signs of human trafficking. Agencies employing officials and/or inspectors that are likely to encounter victims of human trafficking such as Agricultural Inspectorate Staff (Department of Agriculture, Food and the Marine),<sup>388</sup> Revenue Inspectors (Department of Finance),<sup>389</sup> and Social Welfare Inspectors (Department of Employment Affairs and Social Protection)<sup>390</sup> should look to establish screening mechanisms, and plan targeted awareness/trainings. We also recommend that the judiciary are trained on the specificities and complexities of human trafficking cases, including to ensure that a victim-centred and trauma-informed approach are applied up to the trial.

While we acknowledge the overall efforts made by the statutory agencies outlined above, we note that there is a distinct lack of systematic and coordinated training on human trafficking during 2022. It is noteworthy that most agencies were unable to provide exact numbers of staff trained and that several of these bodies have plans to develop and carry out training during 2023, but there is limited information on the nature, scope and reach of such training. Efforts to create bespoke training for those in contact with victims of trafficking are welcomed but we recommend implementing a systematic, formal and, when necessary and depending on the role of the staff, mandatory training approach.

Civil society continued to raise concerns regarding the lack of judicial training. NGOs and GRETA recommended training for law enforcement, prosecutors, and the judiciary

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386 Source: Tusla 2023

387 Source: Workplace Relations Commission 2023

388 [Written answer \(Question to Agriculture\) to Parliamentary Question: Human Trafficking \(21 March 2023\)](#)

389 [Written answer \(Question to Finance\) to Parliamentary Question: Human Trafficking \(22 March 2023\)](#)

390 [Ibid](#)

regarding the complexities of commercial sex and sex trafficking to ensure victims were not inappropriately penalized solely for unlawful acts committed as a direct result of being trafficked.<sup>391</sup>

**The Commission recommends that law enforcement, prosecutors, and judges are trained on a victim-centred, trauma-informed approach to law enforcement efforts and trials, including the sensitization of judges to the severity of human trafficking crimes, as called for by the US State Department.<sup>392</sup>**

### **Training of Authorities Comprising the Proposed National Referral Mechanism Committee**

The new National Referral Mechanism enshrined in the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 proposes that An Garda Síochána, Tusla the Child and Family Agency, the Health Service Executive, the Minister for Children, Equality, Disability, Integration and Youth, the Minister for Justice, the Minister for Social Protection and the Workplace Relations Commission be designated as ‘Competent Authorities’ for the purpose of identifying victims of human trafficking, and will form part of the NRM Operational Committee.<sup>393</sup> We are of the view that given the significance of the assigned functions that all members of the Competent Authorities and Trusted Partners whom will form the Operational Committee be required to undertake mandatory, regular and comprehensive training on all forms of trafficking in human beings. We have strongly called for all those involved in the National Referral Mechanism to receive appropriate training that is victim-centred, and gender and culturally aware to ensure a level of expertise among those responsible for all aspects of the anti-trafficking response.

**The Commission reiterates its recommendation that all members of the new National Referral Mechanism Operational Committee receive mandatory Anti-Trafficking training.**

**The Commission reiterates its recommendation that all statutory bodies with responsibilities towards victims and survivors of human trafficking adopt a formal, coordinated, systematic and mandatory approach to training their staff.**

391 US State Department (2023) [Trafficking in Persons Report](#)

392 Ibid

393 [Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022 General Scheme](#), Head 13

## Reducing the Demand that Fuels Human Trafficking by Targeting the ‘User’

**Article 18.4** In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

As stated above, there is no one measure that can tackle demand that fuels trafficking. Instead, a tailored approach is required for each different form of trafficking. For example, the primary creators of demand in the sex industry are the ‘end users’ (the buyer). Organised crime groups operate based on the basic economic principle of high demand driving their activities. Demand fosters all forms of exploitation of people in vulnerable situations, which traffickers take advantage of.<sup>394</sup> This demand necessarily involves the ‘direct and intimate contact’ of the ‘end user’ (the buyer) with the victim.<sup>395</sup> In addition to the primary creators of demand (sex buyers and traffickers), there is also what has been termed ‘derived demand’, the recruiters, travel agents, owners of brothels, venues, massage parlours, landlords, website owners and pornographers who are also generating income from the exploitation.<sup>396</sup> Thus tackling demand requires measures targeting at all levels of the sexual exploitation chain. In contrast, the ‘user’ of exploited services in the context of trafficking for labour exploitation is often many degrees separated from the trafficking victim. Thus tackling demand in this context requires, among other things, enforcement of labour and employment rights, transparent and fair employment permits system, due diligence within supply chains and a prohibition of products of forced and exploited labour.

Reflecting the need for this multifaceted approach the European Commission’s proposed reform of the EU Directive calls on Member States to:

- ▶ Enhance both legislative and non-legislative measures to combat demand;
- ▶ Improve electronic and non-electronic evidence collection to prove users’ awareness of exploitation; and

394 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](#), p. 6

395 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2021) [Discouraging the Demand that Fosters Trafficking for the Purpose of Sexual Exploitation](#). Vienna, p. 15

396 Aronowitz, A. and Koning, A. (2014) [‘Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation.’](#) *International Review of Penal Law* 85, p. 674

- ▶ Improve awareness raising and education efforts that target potential users.<sup>397</sup>

We support these proposals and believe that for efficient implementation, the burden should rest with the service user/defendant to prove they did *not* have knowledge that the services were extracted from a trafficked person, instead of being on the State to prove that the person did ‘knowingly’ use the services.

The responsibilities owed by companies and businesses as legal persons in the prevention and reduction of demand for human trafficking within their activities and supply chains is being considered. The European Commission’s proposal for a Directive on Corporate Sustainability Due Diligence and the proposal for a Regulation prohibiting products of forced labour in the EU<sup>398</sup> have the potential to significantly bolster the anti-trafficking response. This was discussed in relation to articles 5 and 6 above ‘Liability and Sanctions Against Legal Persons’ and is further detailed in Chapter 3 below.

Traffickers and organised groups are highly adaptable to changing circumstances such as during the Covid-19 pandemic, where criminals employed digital operations for all aspects of their trafficking operation.<sup>399</sup> It is recognised that the digital elements of the crime will continue to increase.<sup>400</sup> The use of technology by traffickers in all forms of exploitation represents a challenge for law enforcement and judicial authorities – Chapters 3 and 4 address the technology-facilitated nature of both labour and sexual exploitation, in detail along with specific recommendations.

Ireland’s legislative measures to tackle demand are currently limited to trafficking for sexual exploitation. Article 18.4 of the Anti-Trafficking Directive has been transposed into national law through the Criminal Law (Sexual Offences) Act 2017, which criminalises the paying for sexual services with a person that is in prostitution or is a victim of human trafficking. Importantly, the Act also decriminalises the selling of sexual services. The provisions contained in Part IV of the Act have the potential to disrupt the demand for such services and increase the State’s ability to tackle organised prostitution. The findings of the review of Part 4 of the 2017 Act are awaited and we look forward to reviewing the findings. Another mechanism for disrupting demand

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397 European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#), p. 21

398 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 10

399 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](#), p. 11

400 Europol (2021) [European Union Serious and Organised Crime Threat Assessment. A Corrupting Influence: the Infiltration and Undermining of Europe’s Economy and Society by Organised Crime](#), p. 70

is the recently enacted Online Safety and Media Regulation Act 2022. This Act has the potential to be an extremely effective means of tackling technology-facilitated trafficking by assisting in the investigation, prosecution and conviction of this crime that often contains technological and digital elements.

We have welcomed the aim of the Employment Permits Bill 2022<sup>401</sup> to improve the efficiency of obtaining employment permits for both employees and employers, and the consolidation of the highly complex body of legislation. The Bill has significant relevance to human trafficking and related vulnerability to exploitation in two aspects in particular, employment mobility for permit holders and the new provisions for the seasonal work permit. The Joint Committee on Enterprise, Trade and Employment, in their pre-legislative scrutiny of the Employment Permits Bill 2022 issued a number of recommendations<sup>402</sup> relevant to preventing human trafficking and which have not been sufficiently reflected in the draft legislation.

**The Commission recommends that the Joint Committee on Enterprise, Trade and Employment Pre-Legislative Scrutiny Report Recommendations are included in the Employment Permits Bill.**

**The Commission recommends that the State considers all avenues to disrupt, criminalise and target the demand that fuels trafficking, including the measures to address all aspects of technology-facilitated trafficking.**

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401 [Employments Permits Bill 2022](https://www.oireachtas.ie/en/bills/bill/2022/91/?tab=bill-text) <https://www.oireachtas.ie/en/bills/bill/2022/91/?tab=bill-text>

402 Joint Committee on Enterprise, Trade and Employment (2021) [Report on the Pre-Legislative Scrutiny of the General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#)



## Funding for the Prevention of Trafficking in Human Beings

In 2022, the Department of Justice provided funding to specialist NGOs (Doras, Immigrant Council of Ireland, MECPATHS, Migrants Rights Centre Ireland and Ruhama) to develop and deliver training on the identification of victims of trafficking and awareness raising. The training targeted frontline professionals in government and public services, and those in the private sector industries such as hospitality or the aviation sectors.<sup>403</sup> Civil Society Organisations also delivered considerable educating and training programmes to a number of sectors including: private companies, migrant communities, service providers, students and emerging professionals. These specialist organisations not only run training and awareness raising programmes but also are essential in providing support and direct services to victims and survivors of trafficking, also receiving funding from the Department of Justice to cover this fundamental work.

The Department of Justice's total allocation of funding to support victims of crime, including victims of human trafficking, in 2022 amounted to €4.6m, representing an increase of over 20% from 2021 (€3.8m) that was distributed among more than sixty organisations.<sup>404</sup> From this amount, approximately €250,000 was directed to training and awareness raising related to Domestic, Sexual and Gender-Based Violence. Regarding relevant and specialist organisations that support victims, offer training and raise awareness on human trafficking and exploitation, the following amounts were granted: in 2022, the government provided €550,807 to NGOs for anti-trafficking public awareness campaigns and victim assistance training, a significant increase compared with €280,000 in 2021.<sup>405</sup>

The government continued to make efforts to reduce the demand for commercial sex by arresting and prosecuting alleged procurers of commercial sex; however, unlike the prior year, the government did not report providing any funding for demand reduction, a decrease compared with €106,050 (\$113,300) in 2021 and €96,050 (\$102,620) in 2019 and 2020.<sup>406</sup>

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403 Source: Department of Justice 2023

404 Ibid

405 US State Department (2023) [Trafficking in Persons Report](#)

406 Ibid

<b>Funding to specialised service organisations</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	
Ruhama	€350,000	€433,060	€609,868	€705,217	Services to victims of trafficking for sexual exploitation <sup>407</sup>
				<i>16% increase</i>	
MRCI	€84,500	€88,754	€83,500	€114,962	Services to victims of trafficking for forced labour and criminal activities
				<i>38% increase</i>	
Immigrant Council of Ireland	0	0	€120,000	€120,667	Legal services for victims of trafficking and GBV
IOM Ireland	unknown	unknown	€250,000	€535,807	Cultural mediator service, benefitting the international protection process
				<i>114% increase</i>	
	Total for 2019 (known)	Total for 2020	Total for 2021	Total for 2021	
	€434,500	€521,814	€1,063,368	€1,476,653	*It is noted that the increase for the IOM did not solely benefit victims of trafficking. Therefore, of interest remains the specific increase benefitting victims of trafficking.
		Increase of 17%	Increase of 50%	Increase of 27% *	

407 An additional funding of €27,620 was granted for provision of Exit Pathways from the sex trade.

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## Chapter 2: Technologically Facilitated Trafficking for Sexual Exploitation

### Introduction

The development of technology has had a significant impact on the crime of trafficking in persons, presenting both challenges and opportunities.<sup>408</sup> *The online world is vast, with an abundance of websites, blogs, online review sites, chatrooms, and other platforms that are used to facilitate human trafficking criminal operations. Traffickers use technology and the internet to recruit victims, advertise services, communicate with clients, and coordinate their operations. The need to keep pace with a constantly changing landscape of online platforms and technologies presents a significant challenge to law enforcement agencies, governments, and NGOs in their efforts to detect and investigate human trafficking activity.*

According to research by the OSCE, there are hundreds if not thousands of websites and platforms implicit in human trafficking that are based in or accessible within the European Union. Moreover, these platforms do not have meaningful safeguards in place to prevent trafficking, which makes them attractive to exploiters who operate with immunity. In its recent submission on the amendment of the EU Anti-Trafficking Directive, the OSCE states:

*“One of the more obvious example of the misuse of technology, is the advertisement of children and adult for prostitution on sexual service websites and social media. Although the images in these posts may or may not be inherently sexually explicit, when they involve victims of trafficking, they propose transactions that are exploitative, illegal and tantamount to rape. Yet despite these negative features, these advertisements for sexual services are now central to the human trafficking business model.”<sup>409</sup>*

Trafficking in human beings is a highly profitable activity generating profits of over \$150 billion on a global scale. Trafficking for sexual exploitation, which disproportionately affects women and girls, is the most prevalent form of trafficking generating \$99 billion of these profits.<sup>410</sup> This is a market of supply and demand – the supply being primarily

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408 UN (2020) [Trafficking in women and girls: Report of the Secretary-General](#)

409 OSCE (2022) Proposal for strengthened provisions on combating tech-facilitated THB and on reducing demand fostering trafficking for sexual exploitation

410 ILO (2014) [Profits and Poverty: The Economics of Forced Labour](#), p. 15; EC (2020) Study on the Data Collection of Human Trafficking, p. 16; ‘[T]rafficking for the purpose of sexual exploitation was reported as the main form of exploitation in the EU-27... Close to two thirds (60 %) of the registered victims were trafficked for sexual exploitation in the EU-27’

children, young girls and women who are targeted, recruited coerced, and trafficked to meet demand – the buyers of sex. However:

*“between supply and demand is distribution and the distributors in the context of sex trafficking are sex traffickers.”<sup>411</sup>*

The development of information and communications technology (‘ICT’)<sup>412</sup> in recent years has created an ‘unprecedented boom’ for traffickers in the context of the commercial sex trade extending their global reach and business opportunities.<sup>413</sup>

In this chapter, we examine how not only traffickers, but multiple actors are implicated in this criminal distribution chain including recruiters, pimps, prostitution agencies, and websites advertising the ‘products’ to the consumers, who are profiting from the sexual exploitation of others. We also explore how the revolution in ICT has enabled these profiteers to expand their business and maximise their profits with fewer risks incurred in the virtual environment than in the offline market, which allows them to operate for the most part with impunity. Specific to Ireland, we examine how ICT has facilitated the expansion of the indoor commercial sex trade, including via sex trafficking, and has created the opportunity for a variety of profiteers to co-operate in the chain of distribution. We show that commercial sex trade websites, also known as sexual exploitation advertising websites (SEAs)<sup>414</sup> are deeply implicated in promoting the demand that fuels trafficking for sexual exploitation. Despite these challenges, the use of technology also provides opportunities to support the investigation and ultimately the successful prosecution of sex trafficking cases. Therefore, we include case study examples demonstrating the role that technology plays in the online Irish sex trade. We conclude by outlining the States’ obligations under the various human rights and trafficking instruments that underpin the responsibility of the Irish State to address prostitution advertising websites and outline a number of recommendations to further meet these obligations.

This chapter is limited in scope, our aim is to demonstrate the role technology plays in facilitating and combatting trafficking for sexual exploitation. However, it is important to highlight the dangers in perpetuating the false dichotomy between categorising people as either ‘exploited’ or as ‘freely choosing’ to enter and remain in the sex industry. The reality is far more complex; a more accurate framing of the industry is to view people along the continuum of exploitation. A person’s position on the continuum is neither static nor fixed. Equally, there is a worrying tendency to view child sexual

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411 Bouché V. and Shady S. (2017) [‘A Pimp’s Game: A Rational Choice Approach to Understanding the Decisions of Sex Traffickers’](#), *Women & Criminal Justice*, 27:2, 91-108, p. 92

412 Often simply referred to in current times as technology or technologies.

413 L’Hoiry, X., Moretti, A. and Antonopoulos, G.A. (2021) [‘Identifying sex trafficking in Adult Services Websites: an exploratory study with a British police force.’](#) *Trends in Organized Crime*

414 Cross-Party Group on Commercial Sexual Exploitation (2021) [Online Pimping – An Inquiry into Sexual Exploitation Advertising Websites](#)

exploitation separate from adult sexual exploitation.<sup>415</sup> The continuum of exploitation includes both adults and children; sexual exploitation and all forms of sexual and gender-based violence.<sup>416</sup> As we will show, those who control sexually exploited victims rely on these (inaccurate) separations. On one hand, they perpetuate the classification of people as either ‘exploited’ or ‘freely choosing’, or ‘adult’ and ‘child’ to avoid criminality. On the other, they erode these boundaries to maximise profits.

From the outset, it is also worth stating that the presence of indicators of control and/or exploitation does not, in itself, denote exploitation, but may instead indicate the likelihood of such, thus warranting further investigation, intervention and support. It follows that where indicators are not present, it cannot be inferred that the person is not being controlled/ exploited and is therefore ‘freely choosing’, thus not warranting investigation, intervention and support.

## **How ICT Facilitates Trafficking for the Purposes of Sexual Exploitation**

There is extensive evidence that traffickers are using technology at all stages of their criminal activity, including recruitment, movement, control, advertising and exploitation of victims.<sup>417</sup> The internet is a much faster and more efficient way than traditional offline means to target and recruit vulnerable people, especially girls and women, to market them in destination countries and to reach a large number of potential buyers. To maximise profits, traffickers need to constantly extend their customer base and ensure they have fresh supply to meet the demand created. Men who buy sex are the primary ‘creators of demand’ generating the financial incentive which lies at the root of trafficking for sexual exploitation.<sup>418</sup> Traffickers know that buyers of sex are indiscriminate regarding the origin or circumstances that lie behind entry to the sex trade. Therefore, integrating victims of trafficking into the mainstream online market is the optimum mechanism for making them available to an unlimited number of potential buyers. In addition to the primary creators of demand (sex buyers), there is also what has been termed ‘derived demand’, which lies at two stages of the chain of exploitation – at source, there are recruiters, travel agents and transporters, and at destination, there are owners of brothels/venues/massage parlours and pornographers who are generating income.<sup>419</sup> Clearly, the profits generated

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415 Coy, M. (2016) [Joining the dots on sexual exploitation of children and women: A way forward for UK policy responses](#). *Critical Social Policy*, 36(4), 572–591

416 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#)

417 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking, (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#). Vienna

418 OSCE (2021) [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#). Vienna

419 Aronowitz, A. and Koning, A. (2014) [‘Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation.’](#) *International Review of Penal Law* 85, p. 674

for traffickers and pimps by women who are controlled are limitless in the sense that they can market them multiple times, unlike for example illegal drugs or arms, which can only be sold to the consumer once. Whilst traffickers know buyers are not *explicitly* seeking to buy trafficked women, there are possibly ‘unique selling points’ for buyers’ demand for minors, very young women, malleability, compliance with any sexual acts and the fact that victims of trafficking are often marketed as ‘low-cost products’.<sup>420</sup>

Within this virtual environment, ‘cybercriminal’ organisations are formed which:

*“are continuously balancing security risk with operational necessity to engage with the demand side of the market.”<sup>421</sup>*

Unlike traditional street prostitution, ICT also affords a far safer environment for traffickers and pimps who can remain less visible to law enforcement. The sheer volume of ads online makes monitoring by law enforcement difficult and as anyone can post ads on the sites, while traffickers and pimps can post ads which appear to be posted by the person themselves.<sup>422</sup> Furthermore, traffickers, organised crime groups and pimps can avoid the cost of creating a visible ‘criminal infrastructure’ that is often inevitable with street-based prostitution.<sup>423</sup>

Technology-facilitated trafficking is becoming:

*“more diffuse and extending beyond specific online platforms such as online classified ads.”<sup>424</sup>*

Mobile phones now play a critical role in pimping and trafficking as:

*“criminal networks rely heavily on mobile connectivity for operational and coordination purposes.”<sup>425</sup>*

Smart phones create ‘a fluid environment’ where traffickers can recruit, groom, upload photographs, move people around, and use tracking systems to monitor the movements of the women and girls.<sup>426</sup> ICT is also enabling traffickers and pimps to offer innovative new ‘services’ in particular:

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420 Ibid, p. 678

421 Ibanez, M. and Gozam, R. (2016) [Virtual Indicators of Sex Trafficking to Identify Potential Victims in Online Advertisements](#). IEEE/ACM ASONAM 2016, August 18-21. San Francisco, CA, USA 978-1-5090-2846-7/16, p. 818

422 Ibid

423 Latonero, M. (2011) [Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds. Los Angeles: University of Southern California](#), p. 18

424 Ibid

425 Ibanez, M. and Gozam, R. (b). (2016). [Detecting sex trafficking circuits in the U.S. through analysis of online escort advertisements](#). IEEE/ACM ASONAM 2016, August 18-21. San Francisco, CA, USA 978-1-5090-2846-7/16, p. 892

426 Hughes, D.A. (2014) [Trafficking in Human Beings in the European Union: Gender, Sexual Exploitation, and Digital Communication Technology](#), p. 4

*“live streaming of sexual acts, including of child sexual abuse...a form of cybersex trafficking.”<sup>427</sup>*

Child sexual abuse is not a new crime, but the proliferation of child sexual abuse on the internet, including livestreaming of sexual acts with children, has multiplied by a hundred-fold, according to some estimates.<sup>428</sup> Technology and digitalisation has enabled the production and ‘commercialization at a massive scale of pornography made of trafficking victims’, allowing perpetrators to deliver this abuse online to a much broader customer base with an exponential increase in profits.<sup>429</sup> The production and commercialisation of pornography made of trafficking victims means there is a record of the sexual violation of victims on the Internet even after a woman has managed to escape.

## **Advertising Victims of Trafficking: Sexual Exploitation Advertising Websites**

When using the term ‘advertising of human trafficking victims’ the OSCE states that it:

*“refers to the placement of information on public or private online platforms about certain services delivered for payment, such as ‘escort’ and sexual services, massage, dancing etc.’ and that ‘traffickers usually do not advertise human trafficking victims per se but create the appearance of services being delivered willingly by the victim.”<sup>430</sup>*

Just as in the offline market, victims of trafficking are:

*“hidden within mixed populations of independent, exploited and coerced prostitutes.”<sup>431</sup>*

Victims are marketed on mainstream sites and forced to appear compliant and willing which is what buyers demand. They are advertised and made available on online classified sites such as *Craigslist*, *cityvibe.com*, *eros.com*, *humaniplex.com*, *myredbook.com*, *sugardaddyforme.com* and social media such as Facebook and Twitter.<sup>432</sup>

427 ILO (2014) [Profits and Poverty: The Economics of Forced Labour](#). Geneva, p. 13

428 NCMEC - [Our Work. NCMEC data](#) [website] (accessed 8 May 2023).

429 Hughes, D.A. (2014) [Trafficking in Human Beings in the European Union: Gender, Sexual Exploitation, and Digital Communication Technology](#), p. 13

430 Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking, (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#). Vienna, p. 20

431 Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J. and Tunte, M., (2016) [Study on the Gender Dimension of Trafficking in Human Beings – Final Report](#). Luxembourg: European Commission.

432 Wang H., Cai C., Philpot A., Latonero M., H. Hovy E., and Metzler D. (2012) [Data integration from open internet sources to combat sex trafficking of minors](#), *Proceedings of the 13th Annual International Conference on Digital Government Research*, p. 247

Traffickers do not need to use the dark web; prostitution advertising websites have become the ‘key conduit’ for the exploitation of victims of trafficking, operating in plain sight and acting with impunity profiting from the sexual exploitation of others.<sup>433</sup> Minors are also advertised on these sites using:

*“deceptive and clandestine language to avoid detection.”<sup>434</sup>*

Age is falsified but:

*“codes may be embedded in ad text or images to notify the demand side that the provider is indeed a minor, which is often a key selling point.”<sup>435</sup>*

Interviews with 260 US survivors of human trafficking found that 75% were advertised online for sexual services and that online advertising of minors in the indoor market is increasing while advertising on the street is decreasing.<sup>436</sup> Federal cases in the US reveal numerous instances of the use of social networking sites and online classified ads by pimps and traffickers involving the targeting and grooming of vulnerable minors, holding them captive, posting them online with photos presenting them as 18, in particular on Craigslist and previously on Backpage, and forcing them to engage in prostitution with multiple buyers.<sup>437</sup> The profitability of child victims to pimps has meant criminal networks have turned from other illicit activity because:

*“Internet advertising and web-enabled cell phones have aided pimps in reaching a larger client base; they can schedule more sexual encounters per child.”<sup>438</sup>*

### **Demand: Benefits to Users/Buyers of Sex**

The internet is the perfect location for men seeking sexual access to people, especially women and girls for payment. The sites are expedient and accessible, affording buyers safety and anonymity, where they can view an unlimited number of potential women and girls for purchase. Purchasing sex on the street poses the risk of detection by law enforcement whereas as:

*“online-sex-ad customers remain out of (physical) sight of law enforcement while soliciting for sex, the arrangements are made by*

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433 L’Hoiry, X., Moretti, A. and Antonopoulos, G.A. (2021). [‘Identifying sex trafficking in Adult Services Websites: an exploratory study with a British police force.’](#) *Trends in Organized Crime*, p. 1

434 Ibanez, M. and Gozam, R. (2016) [Virtual Indicators of Sex Trafficking to Identify Potential Victims in Online Advertisements](#). IEEE/ACM ASONAM 2016, August 18-21. San Francisco, CA, USA 978-1-5090-2846-7/16

435 Ibid, p. 819

436 Thorn and Bouche V. (2018) [Survivor Insights: The Role of Technology in Domestic Minor Sex Trafficking](#). Los Angeles: Thorn, p. 7

437 Latonero, M. (2011) [Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds](#). Los Angeles: University of Southern California, p. 19

438 Ibid, p. 15



*phone or e-mail, and the sex exchange is done in private in a hotel, brothel, or private home.”<sup>439</sup>*

Transactions can be conducted without ever coming in direct contact with the organisers, traffickers or pimps, maintaining the illusion for buyers of an independent and consenting person they are buying access to. Sites provide a detailed and often searchable description of the woman including age, ethnicity and body measurement alongside a list of sexual acts on offer, where buyers can browse and consider what is available and how much it costs, deciding in advance what demands for sexual gratification they want met. This gives buyers access to ‘a virtual catalogue of women’ that they can view in the discreet and anonymous comfort of their homes.<sup>440</sup> A wide range of ethnic and racial characteristics are provided to meet the demand for the exotic and diverse tastes of the buyer.<sup>441</sup>

The internet also provides opportunities for buyers and potential buyers to review the women, after the ‘use of service’. They can share their experience, rate the services they received and express dissatisfaction about women and the sexual acts; and they can seek verification by previous buyers in order to ‘validate the “legitimacy” of the product.’<sup>442</sup> It is important to note that these men are ‘knowingly or unknowingly’ using technology:

*“to access, watch, record and disseminate information about victims of trafficking.”<sup>443</sup>*

Studies consistently show that men may be aware that women are controlled and trafficked on the sites, but this is not a deterrent.<sup>444</sup> Research indicates that buyers are indiscriminate when it comes to who they purchase and will choose to see women as consenting adults even where there are clear signs of exploitation.<sup>445</sup> They adopt what has been called ‘a stance of conscious non-responsibility’ with their primary concern

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439 Roe-Sepowitz D., Bontrager Ryon S., Hickle K., M. Gallagher J. and Hedberg E. C. (2016) [‘Invisible Offenders: Estimating Online Sex Customers,’](#) *Journal of Human Trafficking*, 2:4, 272-280, p. 274

440 Ibanez, M. and Gozam, R. (2016) [Virtual Indicators of Sex Trafficking to Identify Potential Victims in Online Advertisements.](#) IIEEE/ACM ASONAM 2016, August 18-21. San Francisco, CA, USA 978-1-5090-2846-7/16, p. 820

441 Aronowitz, A. and Koning, A. (2014) [‘Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation.’](#) *International Review of Penal Law* 85, p. 678

442 Ibanez, M. and Gozam, R. (2016) [Virtual Indicators of Sex Trafficking to Identify Potential Victims in Online Advertisements.](#) IIEEE/ACM ASONAM 2016, August 18-21. San Francisco, CA, USA 978-1-5090-2846-7/16, p. 820

443 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking, (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools.](#) Vienna, p. 16

444 Farley, M., Bindel, J., and Golding, J., (2009) [Men Who Buy Sex: Who They Buy and What They Know.](#) London: Eaves and San Francisco: Prostitution Research and Education

445 Keegan, E., & Yonkova, N. (2018). Stop traffick: Tackling demand for sexual services of trafficked women and girls. *Social Work and Social Sciences Review*, 19(3), 42-60.

being a sense of entitlement to have their sexual demands met regardless of the history or circumstances of the women they buy.<sup>446</sup>

## **The Technological Challenges and Opportunities in Trafficking for Sexual Exploitation**

### **Challenges**

According to Council of Europe's study,<sup>447</sup> the challenges posed by technology to the investigation of sex trafficking cases *include*:

- ▶ Data Encryption – web developers use encryption techniques to obfuscate data, thereby making investigation more technical.
- ▶ The large volume of data requiring analysis, from both current and historic website archives.
- ▶ The substantial increase in online advertisements. The scale of the problem is such that the data cannot be analysed without technical knowledge.
- ▶ Requesting data and sending Mutual Legal Assistance Requests are time consuming.
- ▶ Obtaining data from social media companies can take more than eighteen months for the data to be provided. In many cases the investigation cannot be progressed until this data is received.
- ▶ Recent rulings by the European Court of Justice has shortened the period for data retention, which will result in electronic evidence not being available to investigators where an offence is reported outside the permitted time period.
- ▶ The html markup language used by web developers can be easily changed. This means that investigators need to constantly monitor sites for such changes.
- ▶ Webpages and their content can be deleted or removed, either intentionally or accidentally, and this can result in evidence or investigative leads being destroyed. This is especially true for websites that are not archived or backed up regularly. It's important for

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446 Immigrant Council of Ireland (2018) [Comparative Report: Disrupt Demand](#). Dublin: Immigrant Council of Ireland, p. 20

447 Campana P. (2022) [Online and Technology-Facilitated Trafficking in Human Beings](#). GRETA, Council of Europe

investigators to act quickly to preserve any online evidence that may be relevant to an investigation, and to be aware of the potential for webpages to be deleted or changed over time.

- ▶ GDPR obligations (EU General Data Protection Regulation) can hinder the gathering, sorting and processing of information obtained with technological investigative techniques (such as web crawling).<sup>448</sup>

### Opportunities for Investigation

It is not useful to distinguish between technology-facilitated trafficking and “traditional” trafficking, as the latter is becoming increasingly rare without a technological component. Instead, we should acknowledge technology as a new reality and an inherent aspect of human trafficking in our modern world. The complexity, inter-jurisdictional and cross-platform nature of sex trafficking requires a multi-stakeholder response. Knowledge sharing between law enforcement agencies, government bodies, NGO’s and academic researchers is paramount to combatting the trafficking of vulnerable persons.

The use of artificial intelligence (‘AI’) and machine learning (‘ML’) in sex trafficking investigations can significantly reduce the workload of investigators. AI models can be trained to process and analyse vast amounts of data, including historic data, to identify patterns and predict the movement of people. By automating certain aspects of the investigation process, investigators can focus their efforts on specific leads and potential victims, rather than spending countless hours manually analysing data.

Overall, the use of AI and ML in human trafficking investigations has the potential to greatly enhance the effectiveness and efficiency of law enforcement efforts to combat this crime. However, it is important to ensure that these technologies are used ethically and in compliance with privacy and data protection laws. It is also important to ensure that safeguards are built in to limit, as far as possible, implicit biases and perpetuation of false dichotomies, as explained above.

Automated aggregation and analysis of websites and data (‘AAAWD’) can be a powerful tool in identifying potential instances of sexual exploitation and trafficking. One real-world example of this is the partnership between the National Centre for Missing & Exploited Children (‘NCMEC’)<sup>449</sup> and Microsoft, which uses AI to identify and analyse images and videos of child sexual abuse. The technology, known as PhotoDNA,<sup>450</sup> can identify and categorise known and suspected child sexual abuse material, which can help law enforcement agencies quickly identify and rescue victims.

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448 [Data Protection Act 2018](#)

449 [National Center for Missing & Exploited Children](#)

450 [Microsoft and National Center for Missing & Exploited Children Push for Action to Fight Child Pornography](#) (December 2009)

Another example is the use of AI in identifying potential human trafficking hotspots. Polaris,<sup>451</sup> a non-profit organisation that works to combat human trafficking, has developed an AI-powered tool that analyses data from online ‘escort’ ads to identify potential indicators of trafficking. The tool, called “Operation Compass,” uses machine learning to identify patterns in the data and identify potential cases of trafficking. This can help law enforcement agencies focus their efforts on specific areas and cases where exploitation and trafficking is most likely to be occurring.

In addition to identifying potential cases of trafficking, AAAWD can also help investigators build cases against traffickers. For example, the Royal Canadian Mounted Police (‘RCMP’) used a tool called Web Identity Search Tool (‘WIST’)<sup>452</sup> to search the internet for information on individuals. The tool was able to identify social media accounts, phone numbers, and other information that could be used as evidence in court. However, Facebook issued a cease-and-desist order for WIST, which resulted in the RCMP no longer having access to a valuable investigative tool, which raises further questions in itself.

Overall, the use of automated aggregation and analysis of websites and data has the potential to greatly enhance the effectiveness of law enforcement efforts to combat sexual exploitation and trafficking. By leveraging the power of AI and machine learning to facilitate aggregation and analysis, investigators can quickly analyse vast amounts of data and identify potential cases of exploitation and trafficking, which can help rescue victims and bring traffickers to justice.

Scientists can play their role by contributing research that generates valuable information, such as the Sexual Trafficking Identification Matrix (‘STIM’) developed by Sheffield University.<sup>453</sup> The matrix describes a series of ‘risk indicators’ on ‘Adult Sex Websites’ that may indicate trafficking activity, exploitation and/or control.

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451 Polaris (<https://polarisproject.org/>)

452 Carney B (2020) ‘RCMP Confirms it Bought a Tool that ‘Unlocks’ Hidden Facebook Friends’. *The Tyee* (November 23)

453 L’Hoiry, X., Moretti, A. and Antonopoulos, G.A. (2021). ‘Identifying sex trafficking in Adult Services Websites: an exploratory study with a British police force.’ *Trends in Organized Crime*

— **Table 2. Indicators of the Sexual Trafficking Identification Matrix (STIM)**


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Sexual Trafficking Identification Matrix (STIM)

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<ul style="list-style-type: none"> <li>▶ Age explicitly under 18 or implied</li> <li>▶ If over 18, subject no older than 24 years old</li> <li>▶ Subject's weight/size &lt; 110lb/50 kg</li> <li>▶ Subject's nationality/ethnicity matches local marketplace</li> <li>▶ Multiple subjects in one photo</li> <li>▶ Background looks like non-private residence (hotel, etc)</li> <li>▶ Background is familiar</li> <li>▶ Neutral expression or subject showing distress</li> <li>▶ Low quality / resolution image</li> <li>▶ Use of 's/he' / 'they' / 'we' instead of 'I'</li> <li>▶ Same contact number in different ads</li> <li>▶ Same poster/user ID across multiple ads</li> <li>▶ Same/similar text as other ads for different subjects</li> <li>▶ References to being new: 'new in town' / 'just arrived' / 'new for you'</li> </ul>	<ul style="list-style-type: none"> <li>▶ Poor grammar and misspellings in the text</li> <li>▶ Inconsistencies in username or age or 'story'/location</li> <li>▶ Use of emojis e.g.: peach/cherries</li> <li>▶ References to youth: 'young and cute' / 'sweet' / 'fresh' / 'candy'</li> <li>▶ Little or no further information in Q&amp;A section</li> <li>▶ In-calls only</li> <li>▶ Long list of services offered in ad e.g.: 10 or more services</li> <li>▶ Specific services: bareback / anal / OWO (oral without a condom)</li> <li>▶ Additional services at no extra price or very low price</li> <li>▶ Services offered at an 'All Inclusive' price</li> <li>▶ Multiple subjects available e.g.: 'duo services'</li> <li>▶ Availability in multiple locations</li> <li>▶ Low price</li> </ul>
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## Investigating Websites: Existing Tools for Investigating Trafficking

In the following section, we give examples of just some of the tools used to investigate technology-facilitated trafficking for sexual exploitation. This is just a snap-shot of the available tools and is limited to the aim of identifying potential victims and in assisting in criminal investigations. A thorough analysis of the use of technology in trafficking was undertaken by the OSCE in 2020 detailing some 305 available tools. The report also addressed how different stakeholders, including law enforcement, civil society, businesses and academia can take advantage of technology to advance the fight against the human trafficking crime. The report provided a number of significant recommendations to governments and organizations funding technology projects on how to maximize the value of technology-based solutions.<sup>454</sup> Some of the most common tools, such as Traffick Jam, Wayback Machine and Wget, will be presented here.

### — Traffic Jam

The manufacturers of Traffic Jam<sup>455</sup> are the US based technology company Marinus Analytics, which has over six years of operational and user support experience. To date, it has partnered with more than 80 law enforcement agencies around the world.

Mr. Valiant Richey, former Special Representative and Co-ordinator for Combating Trafficking in Human Beings in the Organisation for Security & Co-operation in Europe ('OSCE'), identified Traffic Jam as one of the effective tech-tools used to combat sexual exploitation. Traffic Jam innovates towards victim-centred, trauma-informed policing, with a focus on the most serious forms of sexual exploitation. It uses AI and ML to assist law enforcement to identify and target organised crime groups and potential victims who are being, or who have been sexually exploited. In 2019, Marinus Analytics reported that Traffic Jam was used to identify an estimated 3,800 potential victims of sexual exploitation.

Traffic Jam is a suite of tools that uses AI to analyse and aggregate real-time information. Globally, Traffic Jam copies more than 300,000 new online advertisements every day. It can be accessed online via any generic web browser and can run on laptops and mobile phone; no additional administrator rights or privileges are required. The Traffic Jam servers are based in the US and run on the Amazon Web Services [AWS] cloud infrastructure.

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454 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking, (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#). Vienna

455 Traffic Jam (<https://www.marinusanalytics.com/traffic-jam>)

### — Table 3. Suite of tools of ‘Traffic Jam’

- ▶ **Phone Search:** search for a telephone number linked to advertised ‘escort’ services
- ▶ **Search Functions:** search based on keywords, date ranges, email addresses, geographical areas
- ▶ **Watchlists:** add images, phone numbers and keywords to watchlists which will notify you when they appear in future advertisements
- ▶ **SimSearch:** search for non-facial images and find similar imagery in other data sources eg similar backgrounds like beds, curtains etc
- ▶ **FaceSearch:** same as SimSearch except it’s a search for similar facial imagery
- ▶ **Simple/Advanced Trail:** shows results for all advertisements based on common phone numbers or imagery and assists in the identification of OCGs
- ▶ **First Appearance:** identifies unique new advertisements for a geographic area specified by the investigator.

A recognised advantage of this tool is that all data storage and management is handled by Marinus Analytics. All indicators developed by Sheffield University are included.<sup>456</sup> The user-friendly Graphical User Interface (‘GU’I) is easy to use and requires less technical knowledge. Investigations can be conducted over numerous prostitution advertising sites. The tool also uses facial and background recognition software although, this is of course subject to national and EU Law GDPR. Despite these advantages, there are also a number of disadvantages. Scheduled scraping of websites is determined by software provider. The data is not contemporaneous and, importantly, the software is designed for intelligence gathering purposes and not for the attribution of evidence.

### — Wayback Machine

The Wayback Machine<sup>457</sup> is an online service that was created by the Internet Archive in 1996. Since 2001, it is free of charge and performs periodic crawls of websites, taking snapshots of them at various time intervals. These snapshots are then stored in an archive, which serves to preserve the history of the Internet.

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456 L’Hoiry, X., Moretti, A. and Antonopoulos, G.A. (2021) [‘Identifying sex trafficking in Adult Services Websites: an exploratory study with a British police force.’](#) *Trends in Organized Crime*

457 Gunnell, M. (2022) [‘What is the Whyback Machine, and Why is It Important?’](#) *How-to Geek* (April 19)

The significance of the Wayback Machine is evident, as it not only helps in preserving the history of the Internet, but it also provides access to the original content source to enable comparison with updated versions. This feature is particularly valuable in an era where information is frequently updated and it allows investigators to view how the content appeared before changes were made.

The Wayback Machine is an extremely useful resource for conducting investigations.<sup>458</sup> In cases where a complaint or investigation references a website, and the site owners remove data or the entire site, the information may be lost permanently if it has not been previously archived. An investigator can use the Wayback machine to take a snapshot of a site on the day they are investigating, and may preserve the site for future evidence. Put simply, it is important to understand that the Wayback Machine may not have a saved snapshot of every website on every day. In other words, there may be some websites or specific dates for which no snapshot is available in the archive.

The advantages of the Wayback machine is there is no interaction by the investigator with the target website, minimising the possibility of the administrator of the website being alerted to the investigation. Additionally, all indicators of trafficking can be applied to the original website, before any evasion or alterations were made. However, the snapshots downloaded using Waybackpack may not look exactly like the original website design because the CSS (Cascading Style Sheets) file is not included in the download. The software also requires considerable technical knowledge.

#### — Wget<sup>459</sup>

The wget is a free, non-interactive file downloader command. ‘Non-interactive’ means it can work in background when a user is not logged in. This allows the user to disconnect with the system while wget finishes its work. It can download an entire website as a local version of remote websites, fully recreating the structure of original website. In short, you can mirror an entire website with wget. Wget is a freely available package and the command works on all operating systems including MAC OS and Windows.

One of the advantages of wget is that it can be customised to mimic human interaction with a website, minimising the possibility of the administrator of the website being alerted to the investigation. Another is that Wget can be scheduled as a “cron job” which is a scheduled task that runs automatically at specific intervals. As the original website is preserved, it can be analysed using trafficking indicators. Wget is robust and automatically starts downloading the file from where it was left. This may be

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458 Graham M. (2021) [‘Tips for Using the Internet Archive’s Wayback Machine in Your Next Investigation’](#) (May 5)

459 [Wget - GNU Project - Free Software Foundation](#)



particularly useful in the event of network failure. However, as with many of these programmes, it requires specialist technical knowledge.

As can be seen, there is a growing awareness that tackling these sites is a critical part of combating trafficking for sexual exploitation and addressing the demand which fuels it. Technological tools are being developed on a global scale to support law enforcement on the identification of adult and child victims on the sites. A consensus is developing on what may indicate vulnerability, risk, coercion, control, organisation and trafficking and how those indicators can facilitate police to identify and investigate potential cases of trafficking. In relation to the war on Ukraine, the OSCE for example recommend the proactive monitoring of high-risk platforms using data scraping and analysis software for indicators of human trafficking.<sup>460</sup>

As noted above, it is important to consider some of the dangers of this approach. Firstly, distinguishing characteristics of trafficking and vulnerability may exacerbate the false dichotomy between trafficked/vulnerable women and ‘others’ who are, by default, deemed to be at less risk of harm and somehow complicit in their victimisation. Secondly, as police begin to use the sites for the purpose of investigation into trafficking, they become invested in and often reliant upon them rather than moving towards the goal of dismantling them. Furthermore, some argue that if they take one site down, others will spring up in their place. However, disrupting the business model of trafficking demands far more than monitoring of sites to ensure some individual cases of coercion and trafficking are identified and a minimum number of prosecutions are successful. It is critical to recognise that prostitution advertising websites are not only complicit in trafficking but are also directly fuelling the demand which leads to more and more girls and young women being targeted, recruited and coerced into the sex trade.

## **Indicators of Exploitation in the Online Irish Sex Trade**

Evidence of the organised nature of the sex trade and the use of ICT was exposed in an investigative report by RTE in 2011.<sup>461</sup> The Investigation also exposed the highly mobile nature of the sex trade;<sup>462</sup> demonstrated the demand for very young women, and;

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460 OSCE (2022) [Recommendations on enhancing efforts to identify and mitigate risks of trafficking in human beings online as a result of the humanitarian crisis in Ukraine](#)

461 A year-long intensive investigation of the Escort Ireland website for the RTE (Irish national broadcaster) documentary *Primetime: Profiting from Prostitution* (2012) uncovered high levels of organisation and management behind the movement of women across Ireland for the purpose of prostitution.

462 The researchers trailed hundreds of women who were being moved all over Ireland on a daily basis indicating a high level of organised, controlled and forced movement right across the country. On average, during the period in question when they were monitoring the Internet, 438 women either moved or were moved every week. They witnessed rapid and forced movement of groups of migrant women by third parties in the early hours of the morning and the constant presence of pimps. Another indicator of the level of organisation involved comes from the evidence gathered on mobile phones. During the 12-month period of the investigation they found via online means

presence of the significant levels of control and coercion.<sup>463</sup> More than a decade on from the Primetime investigation, it is clear that the overall profile of the key ‘actors’ in the Irish sex trade has remained largely the same. 94% of women in prostitution in Ireland are migrants, many are young, vulnerable and entered the trade as a result of poverty, coercion or some combination of these two factors.<sup>464</sup> They are caught in a highly mobile sex trade, dominated by organised crime gangs, both domestic and international, in which women are moving or being moved constantly from location to location across the island of Ireland to meet the demand of sex buyers.<sup>465</sup> These buyers are mainly Irish, employed and with above average incomes.

There is ample evidence that technology plays a more crucial role than ever in the operation of both the supply and the demand sides of the sex trade, in the Irish context.

Reflecting that the international evidence technology is widely used as a tool to facilitate:

- ▶ the recruitment of women, including victims of sex trafficking, into the sex trade;
- ▶ supplying women in prostitution to meet the demand created by sex buyers;
- ▶ advertising prostitution – thereby providing sex buyers with a direct and discreet means to purchase sexual access to women in prostitution, including victims of sex trafficking; and
- ▶ organising and controlling prostitution for gain.

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that in excess of 7,300 mobile phone numbers were being used and that there was a linkage between 5,168 of these phones. In some cases, they had multiple users at different times and there were multiple profiles. In other cases, despite being used at different ends of the country - one in Cork and one in Belfast or Dublin, for example – the mobile numbers were just two digits apart. Mobile phone operators said that SIM cards are sold in packs of ten with sequential numbers. Statistically, the odds of two numbers one or two digits apart appearing at different ends of the country are astronomically high. It does not make sense that two numbers from the same pack of ten SIM cards, two digits apart, are used for prostitution and one appears in Cork a couple of days later. This was a pattern is repeated across the country. In a statement to the same Committee Superintendent Fergus Healy stated that organised prostitution had advanced, with the expansion of technology to the extent that the majority of the industry relies on the Internet and mobile phone technology to facilitate the smooth running of illicit operations. An analysis of Garda special operations targeting the sex trade concluded that mobile telecommunications advances had contributed significantly to the expansion of the industry. Brothels and ‘escort’ agencies advertise their services on numerous sites and provide their contact details, usually mobile phone numbers through these sites. The Gardaí expressed the view that without these phones the majority of brothels would cease to function.

463 The investigators found that most of the women they interviewed or otherwise researched were being controlled by a pimp or some kind of organiser.

464 Breslin, R., Latham, L., and O’Connor. M., (2021) [Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women’s Health Service](#). Dublin: SERP

465 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#). Dublin: SERP

There is unequivocal evidence of the severe levels of violence women experience in the Irish sex trade, primarily perpetrated by sex buyers, pimps, traffickers and other criminals.<sup>466</sup> It is clear that advertising websites such as Escort Ireland are vectors for this violence, given the easy access they provide to any perpetrator bent on violence against vulnerable and marginalised women.

### Websites Implicated in Violence and Human Trafficking

Recent years have seen a significant number of perpetrators of serious violence against women in prostitution brought to justice. The following are just some examples of such cases, and a common thread here is that all of these perpetrators initially found and made contact with their victims via their advertising profile online:

- ▶ [Nolan McKeon](#) – jailed for 14 years for the rape and violent assault of two women in prostitution he contacted through an ‘escort’ website;<sup>467</sup>
- ▶ [Gheorghe Goidan](#) – jailed for 20 years for the rape and violent assault of two women in prostitution he contacted and ‘booked’ through Escort Ireland;<sup>468</sup>
- ▶ [Liam Vickers](#) – received a fully suspended two-year sentence (which was later [reactivated](#) and he was jailed) for a knife attack on a woman in prostitution who he contacted via Escort Ireland;<sup>469</sup>
- ▶ [Wojciech Kazmierczak](#) – jailed for ten years for robbery and violent assault of two women in prostitution he contacted via an advertisement on an ‘escort’ website;<sup>470</sup>
- ▶ [Buti Sashi](#) – jailed for ten years for robbery and violent physical and sexual assault of two women in prostitution he contacted on Escort Ireland;<sup>471</sup>
- ▶ [John Doolan](#)<sup>472</sup> – jailed for one year for the physical and sexual assault of two women in prostitution who were advertised on Escort Ireland.<sup>473</sup>

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466 Ibid; Breslin, R., Latham, L., and O’Connor. M., (2021) [Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women’s Health Service](#). Dublin: SERP

467 Brennan D. (2020) [‘Security guard jailed for 14 years for rape and violent assault of two sex workers’](#) *The Journal* (16 March)

468 Brennan D. and McLean S. (2019) [‘Judge jails man for 20 years for ‘vicious’ rapes of two prostitutes’](#) *The Irish Times* (31 July)

469 Hoban B. (2021) [‘Man \(23\) given suspended sentence for knife attack on escort’](#) *The Irish Times* (22 January); McLean S. and Ferguson F. (2021) [‘Man who sexually assaulted woman 12 days into a suspended sentenced is jailed’](#) *The Irish Times* (6 December);

470 Wicklow People (2021) [‘Rathnew man who attacked two escorts jailed for 10 years’](#) *Independent.ie* (28 July)

471 Breen S. (2022) [‘I thought he would kill me, I get panic attacks, says sex worker targeted by former rugby star’](#) *The Irish Sun* (23 October)

472 Dillon E. (2023) [‘Sex worker assaulted by Kerry farmer said ‘you never think it will happen to you’’](#) *Sunday World* (27 March)

473 Dillon E. (2023) [‘Sex worker assaulted by Kerry farmer said ‘you never think it will happen to you’’](#) *Sunday World* (27 March)

Prostitution websites such as Escort Ireland have been unequivocally implicated in the facilitation of trafficking for the purpose of sexual exploitation. In the Irish context, there are multiple examples of women who have been trafficked being advertised on sites such as EI, thereby facilitating buyers to gain and purchase sexual access to the bodies of trafficked and exploited women, whilst simultaneously enhancing traffickers' profits.

One case in point is that of [Florin Ghinea](#) (alias Ghenosu), a Romanian national, who is alleged to have run a €2 million '[sex trafficking ring](#)'<sup>474</sup> where Romanian women were forced to travel to Ireland, Finland and Dubai for the purpose of prostitution. It is alleged that he began advertising women on 'escort' websites in Ireland in 2008 and sending women from Romania to Dublin and Galway and into prostitution. He was jailed for seven years for assault, blackmail and cloning credit cards, but associates continued his criminal operations on his behalf. Following Ghinea's release from prison, Gardaí worked with police in Romania and uncovered €200,000, sent mainly from Galway to his accounts in Romania. He was eventually arrested in the UK by the National Crime Agency and extradited back to Romania in February 2020. The Ghenosu gang identified Ireland as an attractive destination because of the opportunities for prostitution and the profits that could be made in such an economically developed country. It was reported in the Irish media, that they also like the appeal of the Escort Ireland website and considered replicating the prostitution portal in the major Italian market.<sup>475</sup>

In 2021, [Alicia Edosa](#) and Edith Enoghaghase, both from Nigeria, were each found guilty on two counts of trafficking women from Nigeria into Ireland, on dates between 2016 and 2018, for the purpose of sexual exploitation.<sup>476</sup> Four victims gave evidence in the case, which resulted in the first successful trafficking conviction of its kind in Ireland.

In sentencing the judge noted the seriousness of the offences against the victims, who he said had been treated like 'indentured slaves':

*"They coerced the victims into a sustained and degrading period of prostitution which did great harm to all victims for financial gain."<sup>477</sup>*

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474 ["Most wanted' Florin Ghinea extradited to Romania'](#), *BBC News* (14 February 2020); Conlon O. (2020) '[Sex Ring. Pimp alleged to have forced women to work as prostitutes in Ireland extradited to Romania on human trafficking charges'](#) *The Irish Sun* (15 February)

475 Breslin, R., Latham, L., and O'Connor. M., (2021) [HYPERLINK "https://www.ucd.ie/geary/static/publications/Confronting\\_the\\_Harm.pdf"](https://www.ucd.ie/geary/static/publications/Confronting_the_Harm.pdf) *Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women's Health Service*. Dublin: SERP

476 Breslin, R., Latham, L., and O'Connor. M., (2021) [HYPERLINK "https://www.ucd.ie/geary/static/publications/Confronting\\_the\\_Harm.pdf"](https://www.ucd.ie/geary/static/publications/Confronting_the_Harm.pdf) *Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women's Health Service*. Dublin: SERP

477 McCárthaigh S. (2021) '[Two women given jail sentences in excess of five years for human trafficking offences'](#), *The Journal* (28 September)

The judge also called for the better regulation of prostitution advertising, and referring to Escort Ireland noted that:

*“It makes it ridiculously easy to advertise the services of people who are compelled to engage in prostitution against their will.”<sup>478</sup>*

It was reported that Enoghaghase had been sexually exploited in prostitution as child in Ireland, while Edosa, according to press reports:

*“began working in prostitution in 2017 with Escorts Ireland when she felt it was the only way to earn a living after her residency permit to remain in Ireland had expired.”<sup>479</sup>*

In a more recent case, Eurojust (the European Union Agency for Criminal Justice Cooperation) released some of the [details](#) of a joint operation by law enforcement authorities in Romania and Ireland targeting an organised crime group (‘OCG’) involved in the trafficking of Romanian women for:

*“sexual exploitation, pimping, trafficking of high-risk drugs and money laundering.”*

As a result of this joint action in April 2023, six suspects were detained and 38 searches were carried out.

The OCG in question had allegedly developed a prostitution network that facilitated the sexual exploitation of more than 30 women:

*“The victims were recruited in Romania and transported to various locations in Ireland where they were accommodated in rented properties. The sexual services were advertised through advertisements posted on profile sites on the internet. The suspects also used the victims to sell drugs to clients.”<sup>480</sup>*

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478 Dillon E. (2022) [‘Sex-slave traffickers who forced migrants into prostitution in Ireland appeal sentences’](#) Sunday World (3 January)

479 McCárthaigh S. (2021) [‘Two women given jail sentences in excess of five years for human trafficking offences’](#), *The Journal* (28 September)

480 Eurojust (2023) [‘Crackdown on criminal human trafficking network in Romania and Ireland’](#) (26 April)

## Snapshot Analysis of the Advertising in Ireland

In this section, we include the findings of a snapshot analysis conducted in April 2023. The aim of this analysis was twofold. First, to demonstrate how technology can be utilised to provide detailed insights into the Irish online sex industry. Second, to apply the STIM indicators<sup>481</sup> to identify potential victims of sexual exploitation. As previously outlined, Escort Ireland is Ireland's largest prostitution advertising platform, which continues to dominate the market. For the purposes of this study, the site was closely monitored over the course of a three-week period in the Spring of 2023 to gather evidence regarding its role in the facilitation of trafficking and sexual exploitation.

Data was systematically gathered and analysed from the site in relation to the following variables over ten separate dates in April 2023:

- ▶ Total number of profiles advertised on the site
- ▶ Age of individual in each profile
- ▶ Nationality of individual in each profile
- ▶ The prices being charged<sup>482</sup>
- ▶ The sex acts being provided.

In addition, the site was monitored over three weeks in April to gather snapshots of the following:

- ▶ The profile descriptions of women advertised on the site, with a focus on young women, women advertised at a 'low price' and those advertised as 'duos'.<sup>483</sup>
- ▶ The photographs used in women's profiles, with a focus on how the subject is presented and posed, the location and setting.

While the snapshot approach is not systematic, it nevertheless proved useful in providing some sense of the nature of the advertising activities. In this process, profiles of concern were very quickly identified and then cross-referenced with STIM.

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481 The Sexual Trafficking Identification Matrix is a tool developed by Sheffield University which sets out a series of 'risk indicators' for sex trafficking that appear on prostitution advertising websites; L'Hoiry, X., Moretti, A. and Antonopoulos, G.A. (2021) '[Identifying sex trafficking in Adult Services Websites: an exploratory study with a British police force.](#)' *Trends in Organized Crime*

482 Prices on the site are typically presented according to length of 'booking' – 30 minutes, 45 minutes, first hour, additional hours, half day etc.

483 Two people, usually women, that can be 'booked' together at the same time.

The development of STIM indicators involved synthesising evidence from the international literature and the professional experiences of expert interviewees drawn from law enforcement, the legal professional, NGOs and academia. STIM lists 27 indicators of potential sex trafficking that may feature on prostitution advertising websites. During the short three-week monitoring period in question, over half of these indicators (16 in total) were clearly detected on Escort Ireland, as Table 4 shows. It is very likely that nearly all STIM indicators can be found on this website, if monitored for a longer period of time.

— **Table 4. Presence of 16 STIM Indicators on Escort Ireland website**<sup>484</sup>

Indicator	Present on EI	Details
<b>Age/Youth</b>		
Age explicitly under 18 or implied	Y	Language & imagery implies extreme youthfulness
If over 18, subject no older than 24 years old	Y	21% aged 18-25; some 18- and 19-year-olds
References to youth: 'young and cute' / 'sweet' / 'fresh' / 'candy'	Y	'Young', 'cute' and 'sweet' used often
<b>Nationality/New to Ireland/Language</b>		
Subject's nationality/ethnicity matches local marketplace	Y	Nationalities match local market – Latin American, Western European and Eastern European
References to being new: 'new in town' / 'just arrived' / 'new for you'	Y	'New in town', 'new for you' used often
Poor grammar and misspellings in the text	Y	Found in the majority of profiles
<b>Risky sex acts</b>		
Long list of services offered in ad e.g.: 10 or more services	Y	'Full service' profiles list a minimum of 15 sex acts

484 This Table is based on the first iteration of STIM by L'Hoiry et al, drawing on their exercise in synthesising evidence from the international literature and the professional experiences of expert interviewees. See L'Hoiry, X., Moretti, A. and Antonopoulos, G.A. (2021) '[Identifying sex trafficking in Adult Services Websites: an exploratory study with a British police force.](#)' *Trends in Organized Crime*. The STIM was subsequently modified slightly by a local UK police force to suits the needs and features of their own local sex trade.

Specific services: bareback / anal / OWO (oral without a condom)	Y	Many risky acts widely available including OWO (52% of profiles) and anal (28% of profiles)
<b>Organisation and control</b>		
Low price	Y	35% of profiles at low price with 11% less than €80 for 'full service' and some as a low as €50
In-calls only	Y	Some profiles
Same/similar text as other ads for different subjects	Y	Some profiles show use of near identical text
Availability in multiple locations	Y	Some profiles show availability in different locations at the same time
<b>Other indicators of exploitation</b>		
Multiple subjects available e.g.: 'duo services'	Y	On average 5-10 profiles per day
Multiple subjects in one photo	Y	Used in 'duo' profiles
Background looks like non-private residence (hotel, etc)	Y	Found in many profiles
Low quality / resolution image	Y	Found in some profiles
Over the course of the monitoring period the average number of advertising profiles featured on the Escort Ireland website each day was 752.		

## Recruitment

Recent studies on the nature and operation of the sex trade in Ireland have uncovered evidence of the use of ICT in the recruitment of women into prostitution, including victims of trafficking.<sup>485</sup> Recruitment may commence when the woman is contacted online whilst still in her country of origin.

A common theme is the way in which online means are used to deceive victims of trafficking into travelling across borders or within the jurisdiction to pursue the promise of a 'better life' including a legitimate job or accommodation. ICT provides groomers

485 See for example Breslin, R., Latham, L., and O'Connor, M., (2021) [Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women's Health Service](#). Dublin: SERP



and recruiters with highly accessible, but also relatively discreet means to build a relationship of trust with their victims, to tap into their vulnerabilities and offer them what appears to be a way out of a difficult situation in their lives.

### Online “Shopping”

The ‘shop window’ of the Irish sex trade can be found online, primarily on prostitution advertising websites, otherwise described as sexual exploitation advertisements (SEAs). These sites are key in centralising the demand in a single online space – they connect prostitution organisers, pimps and traffickers with their ‘customer base’ in an incredibly fast, accessible, low-cost, yet discreet way.

The vast majority of prostitution in Ireland is advertised online, primarily via the Escort Ireland website,<sup>486</sup> which continues to dominate the market.<sup>487</sup> The advertising of prostitution remains illegal in Ireland but the company that operates EI circumvents this legislation by basing its operations outside the jurisdiction. On a typical day in 2023, over 700 individual ‘profiles’ advertise or are advertised by a third party on EI.

In this ‘shop window’ sexual access to a woman’s body is the ‘product’ that is for sale. As with other forms of online shopping, this virtual shop window is purposely designed to allow buyers to search and select the ‘product’ based on a range of key features, including their photographs, sex,<sup>488</sup> nationality, age, ethnicity, location, physical appearance, price and the sex acts they provide, amongst many other variables.

Having selected the woman of their choice they can use the mobile phone number provided on the site to contact her or her ‘booker’ directly. It is clear that a site such as this facilitates and indeed promotes the demand for prostitution by providing such ready access to women in the sex trade, while allowing buyers to remain anonymous online. Indeed, this contrast is stark – women are advertised in a very public way using titillating or explicit photos, most of which clearly show the women’s faces and other identifiable features such as tattoos, alongside very specific details such as their height, dress size, breast size, hip size, shoe size., and even their sexuality, while all the buyer must provide is a first name and mobile phone number once he makes a ‘booking’. This is yet another dimension of the power imbalance in the sex trade transaction.

Despite the cloak of anonymity offered to buyers by websites such as EI, a careful analysis of the advertising of prostitution in Ireland nevertheless reveals some important insights into the harms and exploitation that lie beneath the enticing profiles of the ‘independent escorts’ that feature online. Through analyses of prostitution

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486 [www.escort-ireland.com](http://www.escort-ireland.com)

487 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#). Dublin: SERP

488 Sex buyers on EI can select from the following categories: female, TS (‘transsexual’), TV (‘transvestite’), male and duo (two people that can be ‘booked’ together).

advertising, several recent studies have identified a broad range of risks and harms women in prostitution are experiencing at the hands of sex buyers in the Irish context,<sup>489</sup> many of which are also considered, in the international literature, to be indicators of sexual exploitation and indeed potential trafficking.

Using the STIM to examine websites that advertise ‘escort’ services in Ireland, indicators of trafficking can be found in the data further detailed in the following section. To analyse prostitution advertisement websites offering ‘services’ in Ireland, a custom web crawler and analysis tools are needed. The tool would not replace the tradecraft of law enforcement agencies working in this area, but rather serve as a support for intelligence-led policing. It is in this way that academic researchers can support the law enforcement community.

### — Indicator: Youth

The advertising of very young women online for the purpose of prostitution is widely accepted to be a potential indicator of exploitation, particularly the advertising of 18- and 19-year-old women who have only just reached adulthood. A previous snapshot analysis of the EI website revealed that on average, one third (33%) of those advertised were aged 25 and under, including a number of teenagers.<sup>490</sup> Further analysis in the same study of the reviews posted by sex buyers reveals the fact that youth is highly prized among them, and that regardless of a woman’s actual age, some buyers’ demands appear to relate to extreme youth in appearance or behaviour.

Relevant indicators:

- ▶ Age explicitly under 18 or implied;
- ▶ If over 18, subject no older than 24 years old; and
- ▶ References to youth: ‘young and cute’ / ‘sweet’ / ‘fresh’ / ‘candy’.

These STIM indicators point to the presence of very young women on advertising websites who are potentially being exploited or trafficked. The youngest person advertised on EI during the monitoring period in this study was 18 and the oldest was 67.<sup>491</sup> The median age was 30-31 years old. However, on average 21% of those advertised were between the ages of 18 and 25. Teenage women feature regularly on

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489 Breslin, R., Latham, L., and O’Connor, M., (2021) [HYPERLINK “https://www.ucd.ie/geary/static/publications/Confronting\\_the\\_Harm.pdf”](https://www.ucd.ie/geary/static/publications/Confronting_the_Harm.pdf) Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women’s Health Service. Dublin: SERP

490 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform.](#) Dublin: SERP

491 It must be borne in mind that to attract buyers, women are sometimes advertised as being younger than they actually are.

the site –over the monitoring period of three weeks there were seven 18 and 19-year-olds advertised each day.

A review of young women’s profiles on EI also reveals regular use of language employed to describe or imply extreme youthfulness – again an indicator of potential exploitation.

Terms/descriptors identified during the monitoring period, include:

- ▶ ‘small girl’
- ▶ ‘very naughty and friendly girl’
- ▶ ‘young, sensual and feminin’
- ▶ ‘playful’
- ▶ ‘I am a super cute little pocket rocket’
- ▶ ‘Girlfriend style, slim and natural body with small breasts’
- ▶ ‘I am a nice, warm, sweet, very cute’
- ▶ ‘...always laughing, dreamy girl, sweet and down to earth’
- ▶ ‘i m a good girl...I wait you in my place to have fun’
- ▶ ‘I’m a 19 year old girl just out of school’

As previous research has demonstrated, some sex buyers greatly prize youth, regardless of their own age, so advertising young women in this way is designed to meet this particular demand. Many of the young women advertised as 18 or 19 on EI appear extremely youthful in their profile photos and are sometimes posed, including their facial expressions, in a childlike way. However, EI clearly takes some care to avoid being accused of advertising girls under 18 – over the short monitoring period one teenager’s profile was altered to remove a reference to ‘school’ and some of her more youthful/childish looking pictures were removed from her profile. That said, there is intelligence related to the sex trade that suggests other clues can appear in profiles which indicate there may be younger girls available at the same location or via the same contact details. One such example is featuring children’s teddy bears/soft toys or candy in profile photos – during the three-week monitoring period, four profiles were identified in which women held teddy bears or they appeared close by, whilst a fifth featured a young woman with a bow in her hair and a large lollipop, and a sixth was wearing a costume styled like a girl’s school uniform.

### — Indicator: New to Ireland

Relevant indicators:

- ▶ Subject’s nationality/ethnicity matches local marketplace
- ▶ References to being new: ‘new in town’ / ‘just arrived’ / ‘new for you’
- ▶ Poor grammar and misspellings in the text

These STIM indicators broadly refer to the presence on advertising websites of migrant women, new to the country and with limited knowledge of the local language who could potentially be exploited or trafficked. This very clearly reflects the previous findings of a detailed study of the Irish sex trade which found that 94% of women in prostitution in Ireland are migrants, primarily from Latin America and Central and Eastern Europe and many are new to Ireland – with 56.6% of the sample in Ireland less than six months, and 18% in the country for only four weeks or less. Many have very limited English, particularly when they first arrive.<sup>492</sup> This profile is also echoed quite closely on EI – during the monitoring period, the top five nationalities in terms of profiles advertised were:

- ▶ Brazilian – an average of 21% of all profiles
- ▶ Spanish – an average of 12% of all profiles<sup>493</sup>
- ▶ Czech – an average of 8% of all profiles
- ▶ Italian – an average of 6% of all profiles<sup>494</sup>
- ▶ Colombian – an average of 4% of all profiles.

These top five nationalities represent just over half of all those advertised on EI.

Buyers’ preferences indicate ‘new girls’ are always in demand,<sup>495</sup> women are advertised to meet this demand, as the following language – again indicating potential exploitation – identified during the monitoring period suggests:

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492 Breslin, R., Latham, L., and O’Connor, M., (2021) [Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women’s Health Service](#). Dublin: SERP

493 Frontline support providers note that some women from Eastern Europe and Latin America are often advertised as Italian, Portuguese or Spanish, either because this is deemed to be more ‘attractive’ to buyers, or to avoid bringing attention from immigration authorities to women who may not have the official immigration permission to be in Ireland. It is therefore likely that the number of Western European women is overstated here.

494 As above.

495 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade](#)

- ▶ ‘New4for you’ (this profile contains no other text)
- ▶ ‘Hi I m new in town’ (this profile contains no other text)
- ▶ ‘First time in Ireland. New in town for you...’
- ▶ ‘First time in the beautiful city.’

The vast majority of profiles on EI contain vocabulary that indicate English is not the poster’s first language or emphasise the exotic aspects of migration. As discussed previously, migration, which is prevalent among women compound their vulnerability and susceptibility to exploitation.

#### — Indicator: Demand for Risky Sex Acts

Irish sex buyers’ typical demands also relate to a variety of sex acts, often known as ‘favourites’ or ‘favs’ in the trade. ‘Favourites’ are advertised in women’s profiles on EI as a list of their favourite sex acts to ‘perform’, but in reality they refer to what buyers typically want and expect women to provide. Buyers will often select women on the basis of the advertised acts they require.

The most popular demands that feature in the buyer reviews include FK (French kissing), OWO (oral sex without a condom), CIM (cum in mouth, without a condom) and A (anal sex). It is worth noting that many of these acts carry the risk of sexually transmitted infections, and as such, the availability of these acts has been identified as an indicator of potential exploitation, suggesting that the women in question may have limited control over the acts that present health hazards.

A number of interviewed women in prostitution in 2021 described how the sex buyer review system on Escort Ireland was often used against them, particularly by sex buyers who wrote or threatened to write negative reviews about women if their particular demands were not met.<sup>496</sup>

In addition to some of the harmful behaviours and demands described above, the buyer reviews posted on Escort Ireland further reveal the gamut of ill treatment that women in prostitution must contend with, from a lack of care about their wellbeing and circumstances to risky and sometimes apparently non-consensual acts.

A notable number of buyers complain in their EI reviews that the woman made ‘no effort’ during their time together, that she failed to ‘engage’ with them, that the experience felt impersonal or not ‘special’ Indeed, a constant refrain throughout the

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[in the Context of Prostitution Law Reform](#). Dublin: SERP

496 Breslin, R., Latham, L., and O’Connor, M., (2021) [Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women’s Health Service](#). Dublin: SERP

negative reviews on EI in particular was that the ‘service’ received was ‘mechanical’, that the women did not really interact - did not make eye contact or did not want to be touched.<sup>497</sup> The literature suggests that the lack of eye contact and a mechanistic approach of ‘going through the motions’ are potential indicators of dissociation – a coping mechanism commonly used by women in prostitution to detach themselves from stressful situations or traumatic experiences.<sup>498</sup> It is very likely that behaviours such as these raise the issue of consent about unwanted, intrusive and exploitative acts.

Direct evidence of non-consensual acts has also been detected on Escort Ireland – in their responses to negative reviews that they have received on the site, women describe buyers being verbally or physically aggressive towards them, pressuring them into sex acts they do not accept, attempting to take explicit photographs or video of them without their consent and ‘stealthing’ (an act when a buyer removes the condom during a sex act without the woman’s consent).

Relevant indicators:

- ▶ Long list of services offered in ad e.g.: 10 or more services
- ▶ Specific services: bareback / anal / OWO

Earlier research has already documented Irish sex buyers’ demands for sex acts which carry increased risk of sexually transmitted infections.<sup>499</sup> The number of sex acts on offer and the availability of riskier acts have been identified within the STIM matrix as indicators of potential exploitation because they imply that the women in question may have limited control over the number and nature of acts they are required to provide to buyers to meet their demands. Virtually every profile on EI that is providing ‘full service’ (i.e. penetrative sex acts of all kinds), lists a minimum of 15 sex acts that they provide to buyers as ‘favourites’, well above the number STIM indicates should be cause for concern. Risky acts, including those without condoms, or that carry the risk of physical injury/harm are also extremely common on the site, as the following analysis from the monitoring period demonstrates:

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497 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#). Dublin: SERP

498 Lewis Herman, J. (1992) *Trauma and Recovery: From Domestic Abuse to Political Terror*. London: Pandora.

499 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#). Dublin: SERP; Breslin R. (2020) [Exploitation ‘as usual’. Emerging Evidence on the Impact of Covid-19 on Ireland’s Sex Trade](#). Dublin: SERP

— **Table 5. Risky sex acts as advertised on Escort Ireland**

Sex act	Percentage of profiles offering each act
Deep throat	55%
OWO	52%
French kissing	50%
Anal receiving	28%
CIM	26%
Being submissive	25%

### — Indicator: Organisation and Control

An analysis of the buyer reviews provides clear indicators of the involvement of prostitution organisers in advertising women online and arranging ‘bookings’ with buyers. Typically, when a buyer makes a ‘booking’ they agree the timing, price and sex acts the woman will provide in advance. Yet, in their reviews, a striking number of buyers note that the woman they purchased sexual access to had very limited or no English, which they only discovered once they met her in person.

This begs the question of how an ‘independent escort’ (as women are typically described and advertised on EI) can, often within a matter of days, have travelled to Ireland, rented an apartment, organised an Irish mobile phone number, advertised her own profile (in English) on EI, arranged bookings (in English) with buyers and given them detailed directions to her location when she does not speak any English and may be very unfamiliar with her surroundings. In their reviews, sex buyers themselves conclude that the ‘escort’ they spoke to on the phone to make a booking had good English and therefore could not have been the woman they actually purchased sexual access from, who could not speak English at all.<sup>500</sup>

Indeed, a very common complaint from buyers was that the woman they selected from her profile on EI was ‘not the girl in the pictures’ when they arrived to meet with her. It is possible that this is because organisers use individual profiles as a ‘front’ for the prostitution of more than one woman, thereby saving on advertising costs, or because the woman advertised is ‘booked’ or otherwise unavailable at that time, but organisers are loathe to turn buyers away.

500 O’Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#). Dublin: SERP

Similarly, many buyers complain in their reviews that women refused to perform the sex acts ('favourites') they apparently offer in their profile on EI. This suggests that some women do not have full control over their own profiles. In some cases, it would seem that women were not even aware of the contents of their profiles at all and therefore the basis on which they are being advertised and what buyers are likely to expect of them.

In terms of indicators of exploitation by prostitution organisers, these reviews raise many red flags in this regard. It is suggested that for many of the women advertised on EI, their lack of English language skills, and in some cases lack of control over how they are advertised, is likely to seriously constrain their ability to safely and confidently negotiate what they are and are not willing to do with buyers.

Furthermore, all evidence points to the presence of prostitution organisers who 'manage' migrant women's EI profiles and bookings. The reviews also contain evidence of women who are clearly under pressure to see as many buyers as possible. There are multiple complaints about women who were 'double-booked' when the buyer arrived to see them, or who were already 'on the road' to an outcall or another brothel when the buyer turned up late. Another common complaint amongst many dozens of buyers in this context is that the 'service' they received was 'rushed' and focused on achieving a fast turnover of buyers.

Clearly the extensive evidence provided through prostitution advertising – the existence of bookers, profiles that are not their own, women who speak almost no English, women who do not have control over how they are advertised online or the acts they are described as providing and women who are under pressure to see as many buyers as possible – all denote indicators suggestive of the organisation and indeed exploitation of vulnerable, mainly migrant women within the Irish sex trade. All of this evidence certainly brings into question how many women profiled on Escort Ireland can truly be 'independent' in this context, even when so many are advertised as such.

Relevant indicators:

- ▶ Low price
- ▶ In-calls only
- ▶ Same/similar text as other ads for different subjects
- ▶ Availability in multiple locations

These STIM indicators relate to the presence on advertising websites of women subject to the influence or control of prostitution organisers, including pimps and traffickers. Prices being charged that are lower than average for the local market are understood



to indicate a method used by organisers to attract as many buyers as possible in a short space of time. On Escort Ireland buyers can search by price category – a ‘low price’ on the site is typically €100 or less for 30 minutes of ‘full service’. During the monitoring period, approximately 35% of profiles were charging this lower rate, with approximately 11% charging €80 or less for 30 minutes. Of particular concern were the small number of profiles (between 5 and 10 at a time) charging just €50 or €60 for 30 minutes, often these are profiles of quite young women from Eastern Europe or Latin America. It is also worth noting that pricing in the Irish sex trade has clearly not kept inline with inflation. €60-100 was deemed a relatively low price for 30 minutes of ‘full service’ in 2011, today in 2023 this price is €50-80.

Also detected on EI were profiles advertising ‘in-calls’ only – i.e. buyers could only access these women at a specific location rather than seeing them on a ‘out call’ to a location of the buyer’s choosing. This has been known to indicate the presence of women who do not have independence of movement or whose movements are being monitored. Further noted were profiles of different women where the text used to describe them is almost identical, including repetition of errors or spelling mistakes, as just one example shows:

- ▶ ‘First time in Ireland. New in town for you bby kiss Call me’
- ▶ ‘First time in Ireland. New in town for you kiss Call me’

This text was used in the advertising of two different women from two different Eastern European countries who were both advertised as being available in Dublin, and indicates the careless use of similar profiles for different women by prostitution organisers who are potentially controlling multiple persons being advertised on EI. Further, a number of incidents were noted on the site of women being advertised in more than one location at the same time – e.g. being simultaneously listed as available in North Dublin and South County Dublin.

#### — Indicator: Profiteering

Previous research has identified the extent of profiteering by third parties who are central to the very operation of the sex trade, including prostitution advertising websites, Escort Ireland in particular.<sup>501</sup> Women are paying €160 or more per week for basic advertising on EI, with options to generate more clicks such as double ads, ‘top’ ads and flashing ‘available now’ icons costing even more. Some women reported to researchers that advertising on EI is costing them an average of €1000 per month;<sup>502</sup>

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501 Breslin, R., Latham, L., and O’Connor. M., (2021) [Confronting the Harm: Documenting the Prostitution Experiences and Impacts on Health and Wellbeing of Women Accessing the Health Service Executive Women’s Health Service](#). Dublin: SERP

502 Ibid

multiplied by the average 600 profiles entrusted, it shows that the annual profits are in the millions. A number of women discussed how reliant they are on advertising on the Escort Ireland website, which essentially has a monopoly in Ireland in this regard, and the exorbitant fees they pay to do so, particularly if they have to rely on the site's many features to boost clicks on their ads, which cost even more.

It is clear that those who profit from prostitution are making significant sums from the vast majority of persons in prostitution in Ireland – including those who identify as 'independent' in the sex trade – through hugely over-inflated rents charged for premises being used as brothels and the cost of advertising – which would mean that women relying on even the most basic online advertising will have to make at least €860 per week to cover these costs before they can earn anything for themselves or those they may be supporting. It would appear that such costs put women in the trade, and especially those who are 'touring',<sup>503</sup> under significant pressure to see as many buyers as they can in order to cover all of these costs and still have enough money left over to live on and, in many cases, to support loved ones also. It is of course these conditions that often entrap women in prostitution or ensure they leave it no better off financially than when they first began.

#### — Other Indicators of Exploitation

Relevant indicators:

- ▶ Multiple subjects available e.g.: 'duo services'
- ▶ Multiple subjects in one photo
- ▶ Background looks like non-private residence (hotel, etc)
- ▶ Low quality / resolution image

The STIM matrix notes the advertising of 'multiple subjects' as an indicator of potential exploitation. The advertising of 'duos' is common on Escort Ireland – this is two people, usually women, that are advertised and can be 'booked' together. On a daily basis there are usually between five and ten 'duos' advertised on EI and the profile photos include both women posed together.

Many photos in the profiles on EI are taken in hotel rooms – it was previously noted that it is common for the same 'industry photographer' to be used by prostitution organisers, so it is very likely that the same hotel locations are used and reused also. While many of the profile photos on EI are located, posed and lit in a relatively 'glamorous' way, there is also evidence on the site of low-quality profile photos taken

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<sup>503</sup> 'Touring' and being 'on tour' are sex trade terms for women who move, or are moved by prostitution organisers, from location to location, either within a country or across borders, for the purpose of prostitution.

in haste in dingy locations such as backyards, stairwells, cramped kitchens or in small rooms with barely any furnishings and no bedding on the bed. Profiles with photos of this kind are often also advertised at a low price, potentially indicating that organisers are saving time and money on ‘marketing’, whilst trying to maximise the number of buyers that will have access to these women.

In the course of monitoring, a number of other indicators of potential exploitation were noted on EI that do not form part of the STIM matrix, but have been noted by other experts as giving cause for concern, particularly regarding the welfare of the women in question:

- ▶ Overly explicit photos, when compared with many others on the site, in terms of the way the woman is posed and/or the parts of her body that are shown
- ▶ Profile descriptions that do not match the photos – e.g. a woman described in her profile as blond but all the profile pictures feature a woman with black hair
- ▶ Profile photos in a single profile that do not ‘match’ – i.e. it does not appear to be the same woman in all the photos
- ▶ Women who are advertised as ‘available any time’
- ▶ Women whose faces are hidden, covered or blurred out in their profile pictures.

Finally, it is important to note that many profiles on EI detected during the monitoring period contain multiple indicators of exploitation or trafficking – such as profiles advertising very young women (often Latin American or Eastern European), at a low price, using poor quality photos, often shot in a dingy location, and/or in which the young woman’s face is hidden or blurred.

The snapshot study conducted for the purpose of this report, supported by previous research findings in Ireland shows that EI generates considerable profits while operating largely with impunity (as a non-Irish based business operating within Ireland). It further shows that there are clear indicators of control and abuse, and women are advertised to a continuous stream of buyers.

## Strengthened Responses to Reduce the Demand that Fuels Sexual Exploitation

The Palermo Protocol<sup>504</sup> is the foundational document in relation to State obligations to address trafficking in human beings over the past two decades. As the OSCE observes, by referring to the demand that ‘fosters exploitation’ that ‘leads to trafficking’, the Palermo Protocol establishes a concept of demand that moves beyond only the ‘demand for trafficking’ or the ‘demand for sexual exploitation’ meaning States are obliged to discourage demand:

*“that extends beyond the knowing use of trafficking victims to any act that encourages exploitation of the prostitution of others.”<sup>505</sup>*

If demand reduction is to be effective it means ‘reducing the economic attraction of the institutions into which people may be coerced by traffickers’; which in this case ‘the most important institution is prostitution.’<sup>506</sup> The evidence demonstrates that there is clear correlation between the scale of prostitution and the level of trafficking in a destination country, with the number of victims of trafficking estimated to vary from 10% to 24% of the overall numbers in the sex trade.<sup>507</sup> In other words, simply allowing the sex industry to grow increases the likelihood of human trafficking in that jurisdiction. Addressing demand and reducing the size of the commercial sex trade is an effective anti-trafficking measure.<sup>508</sup> There is a growing recognition within the EU that the most comprehensive way to fulfil the obligation to reduce demand as stated in the protocol is the Nordic/Equality model.<sup>509</sup> This blanket gender-specific approach:

*“could have a normative effect against the promulgation of exploitative behaviour, and lowers the barrier to implementation as neither the knowledge of the user or status of the person in prostitution need to be proven by law enforcement.”<sup>510</sup>*

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504 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (one of the protocols to the 2000 United Nations Convention against Transnational Organised Crime)

505 OSCE (2021) [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#). Vienna, p. 11.

506 Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J. and Tunte, M. (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: European Commission, p. 20

507 Danailova-Trainor, G. and Belser, P. (2006) [Globalization and the illicit market for human trafficking: an empirical analysis of supply and demand](#). Working Paper No. 78, Geneva: Policy Integration Department, International Labour Organisation (ILO); Seo-Young, C., Dreher, A. and Neumayer, E. (2012) [Does legalized prostitution increase human trafficking?](#) Economics of Security Working Paper, 71. Berlin. Economics of Security.

508 Aronowitz, A. and Koning, A. (2014) [‘Understanding Human Trafficking as a Market System: Addressing the demand side of trafficking for sexual exploitation.’](#) *International Review of Penal Law* 85

509 Honeyball M. (2014) [Report on Sexual Exploitation and Prostitution and its Impacts on Gender Equality](#). European Parliament

510 OSCE (2021) *Opinion on acts of Germany on prostitution and trafficking in human beings*. Warsaw, 15 December, p. 17. Opinion-Nr.: TRAFF-GERM/417/2021 [JB]

Failure to recognise this interconnectedness between prostitution and trafficking for sexual exploitation and a minimal interpretation of the Palermo Protocol articles above on demand continues to underpin some legal instruments and policy approaches within the European Union. This is perhaps crystallised in Directive 2011/36/EU addressing demand only for victims of sex trafficking stating in Article 18.4:

*‘In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.’*

By only addressing the criminalisation of the ‘knowing’ purchase of sex from a victim of trafficking, this effectively narrowed the obligation of Member States to reduce demand. This move led to the introduction of specific laws and measures attempting to prosecute a buyer only in cases where the person was firstly identified as a victim of trafficking, which proved to be completely ineffective with minimal or no prosecutions. The evidence from a transnational study in the EU found that this approach is:

*“inoperable from an enforcement point of view and ineffective in relation to the wider goal of acting as a deterrent in reducing demand.”<sup>511</sup>*

This fails to understand or implement the intention and spirit of the Palermo Protocol.

The European Commission has proposed, *inter alia*, an amendment of the EU Anti-Trafficking Directive to include a new Article (18a) that would criminalise the knowing use of exploited services. At the same time, the operation of prostitution which is almost exclusively internet and indoor based, is identified in the current EU Strategy 2021-2025 as a high-risk environment for trafficking for the purposes of sexual exploitation.<sup>512</sup> Further, to ensure that the online dimensions of trafficking are also taken into account and as a way of enhancing the criminal justice response to technology-facilitated offences (including in the cross-border context) the European Commission has also proposed a new Article (2a) explicitly stating that intentional acts and means, as well as exploitation shall include acts committed by means of information and communication technologies. The Introduction of specific measures addressing the online dimension of trafficking in human beings is timely given the forthcoming enactment across the EU of the Digital Services Act aiming to create a safer digital space in which the fundamental rights of all users of digital services

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511 Immigrant Council of Ireland (2018) [Comparative Report: Disrupt Demand](#), Dublin, p. 37

512 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 Empty on the EU Strategy on Combating Trafficking in Human Beings 2021-2025](#) COM (2021) 171 final, p. 6

are protected.<sup>513</sup> Given the interrelatedness, these proposed amendments must be considered together. The OSCE criticised these amendments as not being sufficiently detailed and clear to protect victims of trafficking.

In addition to the provision penalising the use of services from trafficked persons, the Criminal Justice (Sexual Offences) 2017 Part 4 makes the buying of sex a criminal offence which is, as indicated above, a critical step forward in fulfilling the State's obligations in relation to demand. There is some encouraging evidence (see Chapter 1, section on Prevention – Article 18) in relation to the removal of criminality from those exploited in the trade and in shifting the burden of criminality to buyers and organisers.<sup>514</sup> However, there is no evidence that the law in isolation has been enough to reduce demand, given the numbers that continue to be advertised on EI. Considering the obligations in the international treaties, many other measures are required to discourage and reduce demand including educational, social and cultural measures, all of which have been lacking in Ireland.

By failing to address the online advertising and promotion of prostitution, the State has continued to allow prostitution advertising websites to blatantly flout the law, not only in its intention to act as a deterrent and a demand reduction measure, but also to stop the trafficking of girls and women into this jurisdiction. Alongside introducing the Equality model, Ireland has now formally recognised prostitution and sex trafficking as a form of gender-based violence, based on an understanding of the inherent and gendered harms of sexual exploitation.<sup>515</sup>

There appears to be some political will to address prostitution advertising websites, with Minister for Justice Helen McEntee specifically mentioning the need to tackle such sites when launching Ireland's new Domestic, Sexual and Gender-Based Violence Strategy.<sup>516</sup> Although, it remains unclear how this will actually be achieved. In order to disrupt their business and ultimately remove them, legal measures need to be explored. Under existing law, it would appear that these sites would already fall within the criminal law.<sup>517</sup> Although, the penalties are minimal and the law does not appear

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513 European Commission (2021) [Combined Evaluation Roadmap/Inception Impact Assessment](#), pp. 4-5

514 O'Connor, M., and Breslin, R., (2020) [Shifting the Burden of Criminality: An Analysis of the Irish Sex Trade in the Context of Prostitution Law Reform](#). Dublin: SERP

515 In 2022 the Government formally recognised prostitution and sex trafficking as a form of gender-based violence for the first time in Ireland in its new *Domestic, Sexual and Gender-based Violence Strategy* and accompanying Implementation Plan Government of Ireland (2022) [Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026](#)

516 Coyne E (2022) '[Justice Minister Helen McEntee says she wants Irish escort websites offering Ukrainian women for sex shut down](#)' *Independent.ie* (28 June)

517 The *Criminal Law Sexual Offences Act 1993* Section 10(1) states that: 'A person who knowingly lives in whole or in part on the earnings of the prostitution of another person and aids and abets that prostitution shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both'. The Criminal Justice (Public Order) Act, 1994 23. —(1) A person who publishes or causes to be published or distributes or causes to be distributed an advertisement which advertises a

to be capable of being enforced in the online space. The UNODC Legislative Guide to the Palermo Protocol also highlights this aspect of the exploitation of the prostitution of others as generally to be understood as ‘profiting from the prostitution of another person’<sup>518</sup> equating the exploitation of prostitution of others to what is commonly known as ‘pimping’.<sup>519</sup>

The Online Safety and Media Regulation Act 2022 is a further possible avenue to explore the disruption of the prostitution advertisement business. This Act amends the Broadcasting Act 2009 to provide for the establishment of a body to be known as Coimisiún na Meán for the purpose of fulfilling the State’s responsibilities under EU Directives,<sup>520</sup> or otherwise in the interests of the common good, to impose obligations on providers of broadcasting services and audio-visual on-demand media services, and to provide for the regulation of content available on relevant online services and harmful online content available on designated online services. The Act allows for the authorised officers of Coimisiún na Meán to carry out investigations for the purposes of ensuring compliance with obligations imposed on persons by or under the Act and to provide for sanctions, administrative and financial, to be imposed on persons for failure to comply with obligations. The provisions in the Act need to be carefully considered in their applicability to sites such as Escort Ireland, with attention also given to the language in relation to bodies located within this jurisdiction and in other member States, which will be particularly relevant given that EI is based in another member State.

Most importantly, given the clear evidence demonstrated in this report and elsewhere of victims of trafficking, potentially including minors, who have been advertised online, this in itself provides a very strong case for the prosecution of Escort Ireland for both facilitating sex trafficking and the sexual exploitation of minors.

### Websites vs Social Media

While ‘escort’ sites may be the most blatant and overt example of technology-facilitated sexual exploitation, the reality is that this is just the tip of the iceberg. There are countless online sites and media platforms used at all stages of the

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brothel or the services of a prostitute in the State or any premises or service in the State in terms, circumstances or manner which gives rise to the reasonable inference that the premises is a brothel or that the service is one of prostitution shall be guilty of an offence.

518 UNODC (2020) [Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#), para. 119; United Nations (2017) [Glossary on Sexual Exploitation and Abuse](#), p. 7

519 UNODC (2020) [Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#), para. 119

520 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018, Audio visual Services Directive

trafficking process. Just as trafficked and exploited people are hidden within the mixed population, online sexual exploitation is often hidden in plain sight within most, if not all, social media and communications platforms.

This chapter was limited in scope to considered prostitution advertisement websites, the wider issues around the use of social media and communication platforms requires considerably more attention. In addressing the corporate responsibility owed by social media companies, there are calls to integrate technological protections to better guard against harms, including exploitation. However, an important distinction exists between prostitution advertising websites and broader social media. While the latter may benefit from such measures, the former – prostitution advertising websites – knowingly facilitate and profit from the prostitution of others.<sup>521</sup> According to UK’s Joint Slavery and Trafficking Analysis Centre – a multi-agency intelligence unit established by policing, Her Majesty’s Government (‘HMG’) and the National Crime Agency:

*“Adult services websites represent the most significant enabler of sexual exploitation, in the UK measures such as safety-by-design and requirements for age verification are not, and will never be sufficient to guard against exploitation and are therefore inappropriate.”<sup>522</sup>*

As such, we echo the Scottish Cross Party findings that:

*“Opportunities and incentives for third parties to traffic and exploit women via Sexual Exploitation Advertising websites cannot be ‘designed out’ of the websites.”*

Given the inextricable link between prostitution advertisement websites and their profiting from the prostitution and exploitation of others, the collaboration and partnership between them and law enforcement would be deeply problematic. It must be recognised that such websites are not partners in the fight against trafficking and exploitation but are themselves the enablers and profiteers of this exploitation.<sup>523</sup>

## **Summary of Key Recommendations**

Prostitution advertising websites have become the main conduit for advertising to meet the diverse demands of buyers of sex with no regard for the levels of vulnerability, coercion, exploitation and trafficking these women have been subjected to. This report demonstrates that Ireland reflects this global reality, as ICT is used

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521 Cross-Party Group on Commercial Sexual Exploitation (2021) [Online Pimping – An Inquiry into Sexual Exploitation Advertising Websites](#), p. 16

522 All-Party Parliamentary Group on Prostitution and the Global Sex Trade (2018) [Behind Closed Doors: Organised sexual exploitation in England and Wales](#), p. 2

523 Cross-Party Group on Commercial Sexual Exploitation (2021) [Online Pimping – An Inquiry into Sexual Exploitation Advertising Websites](#)



to facilitate the market in women including victims of pimping and trafficking. The main prostitution advertising website, Escort Ireland, is clearly embedded in the organised sex trade and accruing large profits from the sexual exploitation of others. The evidence is clear, the commercial sex industry depends on the availability and use of technology to maintain and expand their criminal enterprises. It is beyond crucial that technology also be used to counter and disrupt traffickers and those who use exploited people to meet their own demands.

**The Commission recommends that the proposal of the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons and on reducing the demand that fosters trafficking for sexual exploitation is considered by the State. Specifically, the OSCE has identified the following measures:<sup>524</sup>**

- ▶ **1. Criminalising the creation and dissemination of explicit material from trafficking victims.**
- ▶ **2. Establishing civil and criminal liability for online platforms<sup>525</sup>, including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims - when such platforms knew or had reason to know about the exploitation.**
- ▶ **3. Mandating online platforms to:**
  - e) Implement age and consent verification mechanisms for individuals depicted in sexually explicit content;**
  - f) Create content-removal request mechanisms for non-consensual, sexually-explicit materials;**
  - g) Conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks;**
  - h) Report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.**

One reason for this omission could be the assumption that the issue would be covered by the Digital Service Act ('DSA'). Yet, the DSA contains no express references to trafficking in human beings and as such does not provide a credible explanation for the omission.

<sup>524</sup> OSCE/Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2022) [Policy Responses to Technology-Facilitated Trafficking in Human Beings: Analysis of current Approaches and Considerations for Moving Forward](#). Relevant recommendations apply equally to labour exploitation.

<sup>525</sup> As defined by Art 2(h) of the Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

The introduction of the Criminal Justice (Sexual Offences) Act in 2017 and the inclusion of human trafficking and prostitution as a form of gender-based violence in the Third National Strategy on DSGBV has created the legal and policy framework to address both the demand and the factors that both facilitate and promote trafficking. It is clear that the time is right for Ireland to embrace a fully resourced, multi-pronged and multi-layered approach to addressing technology facilitated pimping and trafficking, which should include, at a minimum the following recommendations.

**The Commission recommends that the State develops extensive public awareness and educational programmes for young people, especially girls, to highlight the risks on social platforms of being groomed and recruited into the sex trade.**

**The Commission recommends the development of national State-led campaigns targeted at demand, in particular, addressing young men as potential buyers.**

**The Commission recommends that An Garda Síochána are resourced to allow for the monitoring of prostitution advertising websites to identify vulnerability, control, organising and trafficking.**

**The Commission recommends that An Garda Síochána develops specific law enforcement measures to disrupt the business model and profits of prostitution advertising websites.**

**The Commission recommends that the Department of Justice develops a long-term legal and enforcement framework for prosecuting sites such as EI for advertising the sale of controlled and trafficked women and minors and for profiting from the prostitution of others.**

**The Commission recommends that in the light of the war on Ukraine, trends in the marketplace are monitored, paying particular attention to increases in advertisements for Ukrainian, east European/Slavic or 'new' persons selling sex; increases of content related to Ukrainian/Eastern European/Slavic women on pornographic websites; and increases in online searches for Ukrainian pornography or 'escorts', and Ukrainian women or girls for sex/marriage/dates.**

**The Commission recommends that sex buyers' review forums are monitored by law enforcement, NGOs, and academics in order to identify trends related to sexual exploitation.**

**The Commission recommends that specialist services are resourced to meet the needs of women and provide pathways and support for exiting the sex trade.**

**The Commission recommends that the Garda National Protective Services Bureau is resourced to ensure that they can continue to tackle organised crime in the sex trade, to prosecute buyers and to protect women and girls who are being sexually exploited.**

**The Commission recommends that the Department of Justice, as National Coordinator, develops, in collaboration with other experts, detailed guidance on how the current legislation is applicable to the online dimension of human trafficking for sexual exploitation.**

**The Commission recommends that the Government procures wide and comprehensive research on the online dimension of human trafficking for sexual exploitation in Ireland, including an extensive analysis of data contained in online environments available for traffickers, from prostitution advertising websites such as Escort Ireland to social media platforms.**

**The Commission recommends that the capacity and knowledge of those responsible for investigating cases of prostitution and trafficking for sexual exploitation is increased, through the inclusion of the latest technologies.**

**The Commission recommends that the National Coordinator develops and chairs a Forum to examine ways to disrupt demand and combat technology facilitated trafficking. This Forum must be multi-disciplinary, bringing together technology experts, law enforcement, legal experts, data analysts, social scientists, health professionals and NGOs.**

**The Commission reiterates its recommendation that Ireland accede and become party to the Budapest Convention on Cybercrime to facilitate collaboration with relevant countries on trafficking technology facilitated for sexual exploitation.**

**The Commission recommends that Ireland examines ways to use its unique position as EU headquarters for the biggest social media companies to enforce minimum standards to protect users against exploitation and human trafficking.**

**The Commission recommends that legislative reforms that have been effective in disrupting the operations of prostitution advertising websites in other jurisdictions – E.g. France, US, Sweden are examined to see how they are disrupting the market.**

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## Chapter 3: Human Trafficking for the Purposes of Labour Exploitation

### Introduction

The purpose of this chapter is to provide a better understanding of the phenomena of trafficking for the purpose of labour in Ireland. In the first section, we examine the current processes of investigation, prosecution, and redress for victims of labour exploitation. We then analyse the interplay between the terms ‘forced labour’, ‘slavery’, ‘servitude’ and ‘trafficking for labour exploitation’ in the Irish judicial and administrative systems. The literature we reviewed includes academic publications, court case reports, official publications and grey literature. We also undertake case study analysis of high-risk sectors and environments for labour exploitation, including the misuse of technology. The purpose of this is to examine the context and nature of labour exploitation within high-risk environments and industry sectors in Ireland:

- ▶ nail/hair and beauty salons;
- ▶ construction industry, agriculture;
- ▶ hospitality industry;
- ▶ fishing industry;
- ▶ domestic work; and
- ▶ others as necessary.

The case study analysis includes labour inspections undertaken by the WRC and AGS, highlighting the potential barriers to detection of potential victims of human trafficking of labour exploitation. We conclude by outlining a number of recommendations for effective legislative, administrative and other reforms to better combat and address trafficking for the purposes of labour exploitation, slavery, servitude and forced labour in Ireland.

### Legal, Administrative and Policy Framework

#### **International Law**

There are several international conventions and treaties that deal with labour exploitation. Some of the most important ones include:

- ▶ International Labour Organization ('ILO') Forced Labour Convention, 1930<sup>526</sup>
- ▶ ILO Protocol of 2014 to the Forced Labour Convention, 1930<sup>527</sup>
- ▶ ILO Convention on the Worst Forms of Child Labour, 1999 (No. 182)<sup>528</sup>
- ▶ United Nations Convention against Transnational Organized Crime<sup>529</sup>
- ▶ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>530</sup>
- ▶ United Nations Guiding Principles on Business and Human Rights<sup>531</sup>
- ▶ Universal Declaration of Human Rights<sup>532</sup>

## European Union Law

According to Article 153 of the Treaty on the Functioning of the European Union, the EU shall support and complement the activities of Member States in, among other fields, the improvement of working conditions, in particular the working environment,

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526 This Convention prohibits all forms of forced or compulsory labour, including debt bondage, serfdom, and trafficking. Ireland ratified the 1930 ILO Convention on 2 March 1931 but most of the substantive provisions of this Convention were contained in Articles 3 to 24, which were deleted pursuant to Article 7 of the Protocol of 2014.

527 This protocol requires countries to take effective measures to prevent and eliminate forced labour, including trafficking for labour exploitation, by requiring each Member to take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.

528 This convention defines and prohibits the worst forms of child labour, including slavery or practices similar to slavery, forced or compulsory labour, and the use of children in illicit activities. Article 1 requires each country which ratifies the Convention to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour (defined in Article 3) as a matter of urgency.

529 The United Nations Convention against Transnational Organized Crime and the Protocols thereto was adopted by the UN General Assembly on 15 November 2000, by resolution 55/25 and entered into force on 29 September 2003. One of the protocols to this Convention was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, discussed below.

530 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (henceforth the Trafficking Protocol) of 2000, provides the first internationally agreed-upon overarching definition of trafficking in human beings.

531 In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, a set of guidelines that define the key duties and responsibilities of States and business enterprises with regard to business-related human rights abuses. The Guiding Principles contain three chapters, or pillars – the State duty to protect, corporate responsibility to respect and access to a remedy. Each defines concrete, actionable steps for governments and companies to meet their respective duties and responsibilities to prevent human rights abuses in company operations and provide remedies if such abuses take place.

532 A number of provisions of the UDHR, which is part of the International Bill of Rights (referred to above), are relevant to the issue of trafficking for forced labour. Article 4 sets out the prohibition on slavery and servitude, while Article 23 deals with the right to work and to just and favourable conditions of employment including just and favourable remuneration.

to protect workers' health and safety, and conditions of employment for third-country nationals legally residing in Union territory. The EU Charter of Fundamental Rights, in Article 5, includes trafficking under the heading of prohibition of slavery and forced labour. This means that EU institutions and Member States are, under Article 5 of the Charter, obliged to protect individuals against trafficking. Secondary EU law must reflect this obligation. In addition to Article 5, the Charter includes in Article 31 a right to fair and just working conditions. The EU has adopted a number of secondary pieces of legislation, mostly Directives, which are of relevance to the issue of trafficking for forced labour. The key instruments in this regard are set out below.

To give effect to these obligations a number of EU Directives and Regulations have been developed. Given their significance to tackling labour exploitation they are considered in detail.

— **Posted Workers Directive (Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services)<sup>533</sup>**

EU law has adopted a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers.<sup>534</sup> Council Directive 96/71/EC on the posting of workers in the framework of the provision of services was transposed into Irish law as a miscellaneous provision of the Protection of Employees (Part-time Work) Act 2001. The Act provides that the full range of Irish employee protection legislation applies to workers posted to work in, or otherwise working in the State. The WRC will issue an acknowledgment to the service provider where it receives a declaration that it is in compliance with the regulations. Breach of these notification requirements is a criminal offence.

As a result of concerns that the Posting of Workers Directive was not being fully complied with, the European Commission subsequently adopted the Enforcement Directive in May 2014, which was transposed into Irish law on 28 July 2016 by the European Union (Posting of Workers) Regulations 2016 (S.I. No.412 of 2016). However, concerns have been expressed about the extent of Ireland's compliance with the requirements of the Posted Workers regime, e.g. in relation to inspection, enforcement and delays in securing redress.<sup>535</sup>

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533 Revised in 2018 (by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).

534 A "posted worker" is an employee who is sent by his or her employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency

535 Doherty, M., (2020) 'Posting of workers before Irish courts', in Rasnača, Z., and Bernaciak, M. (eds), *Posting of workers before national courts* (European Trade Union Institute (ETUI), 2020)

— **Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities**

Directive 2004/81/EC of 29 April 2004 provides for a residence permit to be issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Ireland has opted out of this Directive and is not bound by it or subject to its application. Although victims of trafficking may be eligible to a residence permit under the current Administrative Arrangements in Ireland (see further below), current Irish law and practice do not fully meet the requirements of Directive 2004/81/EC.

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

Directive 2009/52<sup>536</sup> provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Ireland has decided not to take part in the adoption of this Directive and is therefore not bound by it or subject to its application, resulting in lesser protections for undocumented migrant workers in comparison to the agreed EU standards (i.e. recovery of wages, Appendix 2). Although the primary aim of the Directive is to reduce irregular migration, the Directive also contains important measures to protect migrants in an irregular situation, including the opportunity to claim back payment of outstanding pay and measures to facilitate the making of complaints. In addition, the Directive invites Member States to issue temporary residence permits to third-country nationals who were victims of particularly exploitative working conditions and who participate in criminal proceedings against the exploitative employer. Irish law does not currently meet the conditions required by the Employers' Sanctions Directive in a number of respects. There have been calls from a number of sources in recent years for Ireland to opt in to the Employers Sanctions Directive in order to improve the situation of undocumented workers who are vulnerable to exploitation.<sup>537</sup>

In 2021, the Fundamental Rights Agency (FRA') published a report on the role of the Employers Sanctions Directive in protecting migrants in irregular situations from labour exploitation.<sup>538</sup> The report noted that the FRA had previously made a number

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536 European Parliament and of the Council of 18 June 2009

537 See Foundation for European Progressive Studies and the Think-Tank for Action on Social Change (2022) [Migrant Key Workers and Social Cohesion in Europe: A Comparative Field Study](#) (FEPS Policy Study)

538 FRA (2021) [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#)

of suggestions to prevent severe labour exploitation,<sup>539</sup> and to better identify victims, ensuring their referral to support organisations and protecting them, many of which suggestions applied to migrants in an irregular situation.

In particular, four areas of priority action were identified:

- ▶ enhancing the effectiveness of the complaint mechanism by enabling third parties, such as trade unions and relevant associations, to act in support of or on behalf of migrant workers in an irregular situation;
- ▶ making back pay of due wages a reality, by having criminal courts also decide on civil law claims, enabling victims to benefit from state compensation funds, and permitting the freezing and confiscating of employers' assets to compensate exploited workers;
- ▶ informing workers of their rights more systematically and effectively, paying particular attention to language barriers and giving labour inspectorates a key role in informing workers of their rights and the available complaint mechanisms, including during labour inspections; and
- ▶ issuing temporary residence permits to victims of particularly exploitative working conditions.

— **Anti-Trafficking Directive (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)**

One of the key objectives of this Directive is to ensure that victims of trafficking in human beings are protected from prosecution or punishment for criminal activities, such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking.<sup>540</sup> The aim is thus to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators, although this does not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in (see [Non-prosecution of victims \(Article 8\) in Chapter 1](#)).

We have previously expressed concern at the apparent inaccessibility of existing compensation avenues for victims of trafficking, and called for strengthening access to compensation for victims, including the need for urgent reform of legal aid to include advice and representation in relation to seeking compensation.<sup>541</sup> Furthermore, Ireland

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539 Ibid, Appendix I

540 Recital (14)

541 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 114



is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive, since the Criminal Injuries Compensation Scheme only covers verifiable expenses, and not pain and suffering (further considered in Chapter 1 and [Appendix 2](#) relating to compensation for victims).

Unlike other EU measures such as the Employers Sanctions Directive, Ireland has opted in to this Directive. We, in our role as Rapporteur continue to monitor the progress of compliance with each article of the Directive (Chapter 1), and will continue to raise particular concerns in a number of areas e.g. provision of appropriate assistance and support for all victims, ensuring full compliance with the principle of non-prosecution of victims and comprehensive reform of the NRM mechanism (see further below section on Administrative Guidelines).

As detailed elsewhere in this Report, the European Commission published proposed amendments to the Anti-Trafficking Directive.<sup>542</sup> This proposal noted, *inter alia*, that trafficking for the purpose of labour exploitation has been the second most frequent form of trafficking in the EU, with the number of victims rapidly increasing and nearly doubling in the last five years.<sup>543</sup> Proposals to address the gaps in the current EU legislations include:

- ▶ mandatory sanctions against legal persons;<sup>544</sup>
- ▶ increased efforts to tackle the demand that fosters trafficking;<sup>545</sup> and
- ▶ enhanced data collection.<sup>546</sup>

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542 European Commission (2022) [Proposal For a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.](#)

543 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), which recorded that 28% of victims in the EU in 2019-2020 were trafficked for the purpose of labour exploitation representing a significant increase compared to 2017-2018 when the total in this category was 15%.

544 In relation to the optional regime of sanctions on legal persons currently in force, the European Commission proposal seeks to enhance the criminal justice response to trafficking offences committed for the benefit of legal persons by replacing the optional regime of sanctions with two different mandatory regimes that apply in case of standard offences and of aggravated offences. The proposal also notes that the adoption of the Anti-Trafficking Directive in 2011 pre-dates the EU legal framework on freezing and confiscation, and the Commission proposal there seeks to update the reference to tracing, freezing, management and confiscation of proceeds by making explicit reference to the EU rules on these matters

545 This proposal aims to bring further harmonisation across Member States' with a view to reducing demand for *inter alia* cheap labour and products. The proposal also recognises that criminal law is only part of the demand reduction response, and it should continue to be accompanied by education, training and awareness raising activities, in line with the Anti-Trafficking Directive.

546 Under-reporting is recognised as one of the factors hampering the full understanding of the scope of trafficking in human beings within the EU.

On 21 April 2023 Ireland notified the Council that it intended to take part in the adoption and application of this proposed Directive.<sup>547</sup>

— **EU Seasonal Workers Directive (Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers)**

In 2014 the EU adopted the Seasonal Workers Directive (Directive 2014/36/EU) to set out the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. As noted in recital (54), Ireland decided not to opt in to this Directive and is therefore not bound by its terms.

This Directive aims to support the effective management of migration flows for temporary seasonal migration. Furthermore, it aims to ensure decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers, while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent. This is to be achieved through clearer and more harmonised admission rules and working conditions set out in the Directive, to help prevent exploitation and protect the health and safety of seasonal workers. The Directive also encourages the circular movement of seasonal workers between the EU and their countries of origin through the introduction of a facilitated re-entry procedure for subsequent seasons. The Seasonal Workers Directive has been described by Zoetewij-Turhan as:

*“predominantly a migration management tool and ... a product of a migration policy that is directed at attracting highly skilled migrants by granting them ample rights, whereas low-skilled migrants - who are already in a weaker position in many regards - are given fewer rights as they are furthermore perceived as ‘unwanted’. In case of the seasonal workers, the EU still tries to import labour, not people.”<sup>548</sup>*

While Ireland is currently preparing to introduce a seasonal worker employment permit scheme (see further below), at present Irish law and practice would not meet a number of the requirements of the Seasonal Workers Directive.

— **EU prohibition of products made using forced labour Regulation (proposal)**

On 14 September 2022, the European Commission presented a proposal for a regulation to prohibit products made using forced labour, including child labour, on

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547 2022/0426(COD), 3 May 2023. European Commission (2022) [Proposal For a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims](#)

548 Zoetewij-Turhan M. H. (2017) [The Seasonal Workers Directive: ‘...but some are more equals than others’](#), p. 44

the internal market of European Union (EU).<sup>549</sup> The proposed regulation fits into the context of EU efforts to promote decent work worldwide. The proposal covers all products made available within the EU market, meaning both products made in the EU for domestic consumption and for export, and imported goods. The provisions of the proposal would apply to products of any type, including their components, regardless of the sector or industry. Member States would be responsible for the enforcement of the regulation's provisions. Their national authorities would be empowered to withdraw products made using forced labour from the EU market, following an investigation. Customs authorities would identify and stop products made using forced labour at EU borders.

The proposed regulation is intended to complete the EU legislative framework on forced labour in circumstances where there is currently no European Union legislation that empowers Member States' authorities to ban a product made with forced labour from the market. Meanwhile all EU Member States have ratified ILO Convention 29 and are obliged to take measures against forced labour.

In February 2022, the European Commission submitted a proposal for a directive on corporate sustainability due diligence ('CSDDD'). The pending proposal on CSDDD addresses companies' global value chains. While this Directive would require companies to remedy possible violations of due diligence obligations, the proposal does not require Member States or companies to prohibit the placing and making available of any product on the market. The new proposed regulation on forced labour would therefore complement these measures with an obligation that specifically prohibits the placing of products made using forced labour on the EU market. And vice versa, the proposed regulation on forced labour would not introduce any specific requirements for companies to carry out due diligence on forced labour or any other human rights aspects, unlike the proposed CSDDD. Big businesses falling within the scope of the proposed CSDDD would need to address the risks of forced labour in their supply chain, in line with the obligations under the future CSDDD legislation, which may be sufficient to ensure that no forced labour is involved in their respective supply chains. For these companies, no additional compliance needs will arise from the current proposal on prohibiting products made using forced labour.

The two proposals also differ in their respective scope: while the proposed CSDDD covers both human rights and environmental aspects, the proposed forced labour regulation covers only one aspect – the ban on products of forced labour. Moreover, not all obligations for due diligence included in the proposal for the Directive are necessary to address forced labour risks. Following ratification of ILO Forced Labour Convention 29 and the Abolition of Forced Labour Convention 105 by all EU Member

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549 European Parliament (2022) [Proposal for a Ban on Goods Made Using Forced Labour](#)

States, most of them have developed national action plans for the implementation of the UN Guiding Principles on Business and Human Rights (discussed above).

The proposed legislation would complete the existing EU legislative framework on forced labour mentioned above, in so far as it would provide the legal basis to prevent a product made using forced labour from circulating within the internal market as well as being exported.

### — European Convention on Human Rights

Article 4 of the European Convention on Human Rights ('ECHR') provides that no one shall be held in slavery or servitude, or be required to perform forced or compulsory labour.

The European Court of Human Rights ('ECtHR') has issued judgments that assist clarification regarding the meaning of certain terms related to the European Convention on Human Rights, including the prohibition on slavery in Article 4. Thus, for example, in *Rantsev v Cyprus and Russia*<sup>550</sup> the ECtHR held that Article 4 of the ECHR dealing with slavery and servitude also covered trafficking. In *Siliadin v France*,<sup>551</sup> in finding that the applicant had suffered treatment amounting to servitude and forced/ compulsory labour, but which fell short of slavery in circumstances where, although she was clearly deprived of her personal autonomy, there was no right of legal ownership over her, the Court referenced the definition of slavery under the Slavery Convention 1926:

*“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.*

In *SM v Croatia*,<sup>552</sup> the ECtHR clarified that conduct or a situation may give rise to an issue of human trafficking under Article 4, only if all the three constituent elements of the international definition of human trafficking, under the Anti-Trafficking Convention and the Palermo Protocol, are present (ie action, means and purpose). The Court also noted that while human trafficking falls within the scope of Article 4, this did not exclude the possibility that, in the particular circumstances of a case, a particular form of conduct related to human trafficking might raise an issue under another provision of the Convention.

In relation to the concept of 'servitude', this is taken by the ECtHR to mean the provision of services which is imposed by the use of coercion, and understood as a form of forced or compulsory labour, involving a :

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550 [2010] ECHR 22

551 [2005] ECHR 545

552 Grand Chamber, 25 June 2020

*“particularly serious form of denial of freedom”.*<sup>553</sup>

The ECtHR has identified:

*“servitude as a specific form of forced or compulsory labour, or, in other words, ‘aggravated’ forced or compulsory labour...the distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victims’ feeling that their condition is permanent and that the situation is unlikely to change.”*<sup>554</sup>

Thus, in *Siliadin v France*, referred to above, the applicant was judged to be held in servitude because, in addition to the element of forced labour in that case, she was a vulnerable minor with no resources and no means of living apart from the place where she worked. Also, she depended on the people she lived with and had no freedom of movement or free time.

In *CN v United Kingdom*<sup>555</sup> the ECtHR distinguished domestic servitude from trafficking and exploitation, noting that:

*“domestic servitude is a specific offence, distinct from trafficking and exploitation and which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance.”*<sup>556</sup>

Article 4 of the ECHR does not define what is meant by “forced or compulsory labour”. In the case of *Van der Musselle v. Belgium*<sup>557</sup> the ECtHR referred to the definition in the ILO Convention No. 29 where forced or compulsory labour is defined as:

*“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”*

The ECtHR has emphasised that not all work exacted from an individual under threat of a “penalty” is necessarily “forced or compulsory labour” prohibited by this provision. Factors that must be taken into account include the type and amount of work involved.

In these definitions, we can also discern a focus on the nature of the activity, means and purpose with less attention to the issue of movement, either within or across borders. Cockbain and Brayley-Morris (2018), writing in the context of the UK, capture

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553 European Court of Human Rights (2022) [Guide on Article 4 of the European Convention of Human Rights: Prohibition on Slavery and Forced Labour](#), p. 8

554 Ibid

555 [2012] ECHR 1911.

556 European Court of Human Rights (2022) [Guide on Article 4 of the European Convention of Human Rights: Prohibition on Slavery and Forced Labour](#), p. 9

557 [1983] ECHR 13.

this point in their analysis of the section 71 offence of ‘slavery, servitude and forced labour’ set out in the Coroners and Justice Act 2009 (since superseded by the Modern Slavery Act 2015).

They state:

*“Unlike previous legislation around labour trafficking (Section 4 of the Asylum and Immigration Act 2004), the Section 71 offence focused on the exploitation component to trafficking rather than the movement.”*

## Domestic Law

### — Criminal Law (Human Trafficking) Act 2008

This Act, as amended in 2013 is the main anti-trafficking legislation in Ireland. The term “exploitation” in Section 1<sup>558</sup> defines “labour exploitation” as meaning, in relation to a person (including a child) —

- a. subjecting the person to forced labour (including forcing him or her to beg),
- b. forcing the person to render services to another person, or
- c. enslavement of the person or subjecting him or her to servitude or a similar condition or state.

“Trafficking” is defined in section 1 as including, in relation to a person (including a child)—

- d. procuring, recruiting, transporting or harbouring the person,
- e. causing a person to enter or leave the State or to travel within the State,
- f. taking custody, care or charge of a person, or
- g. providing the person with accommodation or employment.

The term “forced labour” (as substituted by section 1(c) of the Criminal Law (Human Trafficking) (Amendment) Act 2013) means work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily.<sup>559</sup>

Section 4 is titled “trafficking of persons other than children” and provides that a trafficker who trafficks another person for the purposes of exploitation is guilty of an offence if the trafficker

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558 As substituted by section 1(b) of the Criminal Law (Human Trafficking) (Amendment) Act 2013.

559 The definition excludes certain categories such as compulsory military service or community service carried out following conviction by a court.

- h. coerced, threatened, abducted or otherwise used force against the trafficked person,
- i. deceived or committed a fraud against the trafficked person,
- j. abused his or her authority or took advantage of the vulnerability of the trafficked person to such extent as to cause the trafficked person to have had no real and acceptable alternative but to submit to being trafficked,
- k. coerced, threatened or otherwise used force against any person in whose care or charge, or under whose control, the trafficked person was for the time being, in order to compel that person to permit the trafficker to traffick the trafficked person.

It is clear from the foregoing that there is currently no law in place criminalising slavery/servitude or forced/compulsory labour in Ireland. Doyle et al note that:

*“unlike the approach taken in the United Kingdom in the Modern Slavery Act 2015, there are no separate specific offences of servitude and forced labour in Irish law, independent of the anti-trafficking regime, meaning that labour exploitation scenarios that do not satisfy the stringent three-part trafficking test of action–means–exploitation will not ground a prosecution.”<sup>560</sup>*

This is problematic insofar as Coghlan and Wylie note that ‘few cases “tick all the boxes” of a rigid definition of trafficking, yet the exploitation of migrant workers is rife.’<sup>561</sup> Some stakeholders working in the field, particularly those supporting victims of trafficking, have commented that there is considerable confusion about the scope of the offence in Ireland and the requirement for coercion as one of the elements required.

### — Employment Permits Acts

Concerns have long been expressed about the State’s employment permit system and economic migration policy particularly in relation to essential skills workers.<sup>562</sup> Particular criticisms have been made of the multi-tiered approach to rights, and the imbalance of power when a worker is tied to an employer as it compounds exploitation, and that for workers the current system limits mobility, progression and access to redress, which in turn is creating inequality and segregation in the labour market. This imbalance combined with the State’s emphasis on immigration control

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560 Doyle, M. D., Murphy C., Murphy M., Rojas Coppari P., and J. Wechsler R. (2019) [‘I felt like she owns me’: Exploitation and uncertainty in the lives of labour trafficking victims in Ireland](#), pp. 231-251

561 Coghlan D. and Wylie G. (2011) [Defining Trafficking/Denying Justice? Forced Labour in Ireland and the Consequences of Trafficking Discourse](#)

562 MRCI (2014) *Work Permits in Ireland*; MRCI (2010) *Ending the Race to the Bottom*

in the workplace can leave migrant workers in very vulnerable and difficult situations, sometimes amounting to exploitation.

There have been calls for the introduction of sectoral employment permits to remove power imbalances between worker and employer so that workers can leave poor working conditions and change employment within a sector to a better job, as well as recommending parity for all workers on employment permits - high and essential skilled - in respect of mobility and family reunification rights.<sup>563</sup> It has also been recommended that the Employment Permits (Amendment) Act 2014 is amended to make clear that complaints for undocumented workers should come within the remit of Workplace Relations Commission and they should be protected from immigration consequences when making a complaint.

While there were some positive changes in the General Scheme of the Employment Permits (Consolidation and Amendment) Bill November 2019, there remain a number of areas of concern.<sup>564</sup> In particular, the lack of clarity and detail in a number of sections with a strong emphasis on increasing Ministerial discretion without corresponding safeguards, and the fact that the mobility of workers has not been addressed and that a move towards temporary permits is favoured over giving rights and entitlements to workers necessary in the labour market.

There are a number of Pre Legislative Scrutiny ('PLS') recommendations which we believe are important from a human trafficking perspective that have not to date been sufficiently reflected in the legislative text. We highlight in particular the PLS Report's Recommendation number 1 concerning the proposed seasonal employment permit; Recommendation number 4 concerning reliance on regulations with limited scrutiny; Recommendation number 6 regarding the difficulty that arises from work permits being linked to a particular employer; and Recommendation number 8 that:

*"The protection and enhancement of the position of employees should be at the centre of proposals to amend the employment permit system."*<sup>565</sup>

As noted above, one area of particular concern is in relation to the introduction of Seasonal Employment Permits, and the proposed increased use of temporary employment permits, without additional safeguarding measures to enable workers to extend their employment and change employers. Permits of this nature are difficult to monitor, and workers are more vulnerable to exploitation, as temporary permits provide minimal protection, access to rights and opportunity for mobility. Workers may

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563 MRCI (2006) [No Way Forward: Identifying the problem of trafficking for forced labour in Ireland](#)

564 MRCI (2019) [MRCI Submission to Joint Committee on Business, Enterprise and Innovation on General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill November 2019](#)

565 Joint Committee on Enterprise, Trade and Employment (2021) [Report on the Pre-Legislative Scrutiny of the General Scheme of the Employment Permits \(Consolidation and Amendments\) Bill 2019](#), p. 6



work very long hours for periods of the year and be forced to leave the State within a limited time period due to the conditions of their permit. It is very challenging for workers to access information and make complaints especially when they are in the State a short time. MRCI has expressed concerns that increased use of temporary employment permits will compound exploitation in isolated, labour intensive and hard to reach sectors such as agriculture and construction, and that this approach makes for a more disposable workforce and creates a power imbalance favouring employer needs over worker rights.<sup>566</sup> The EU Seasonal Workers Directive has been widely criticised by the European Trade Union Confederation ('ETUC'), and across Civil Society for creating

*“inequality between categories of third-country citizens based on their perceived value to the economy as conceptualised by EU legislation most likely infringes the fundamental rights of equality and non-discrimination which are at the heart of the EU integration model and protected by Articles 20 and 21 of the EU’s own Charter of Fundamental Rights”.*<sup>567</sup>

We reiterate our recommendation against the introduction of Seasonal Work permits, or at the very least for the very limited use of such permits, on the basis of and not below the minimum standards agreed in the EU.

Some jurisdictions have introduced “migrant exploitation protection visas” in order to safeguard the rights of workers who are vulnerable to exploitation. For example, in 2021 New Zealand introduced “migrant exploitation protect visas” for workers who have reported exploitation while on an employer supported work visa. The procedure involves the worker making a complaint of exploitation to Employment New Zealand (the national employment rights agency), which leads to the report of exploitation assessment letter. Once that report is issued, the worker has one month to apply for a migrant exploitation protection visa, which has a duration of six months and allows the worker to move employment to any employer in New Zealand, in order to facilitate their removal from the exploitative situation.<sup>568</sup> A similar scheme exists in Canada in the form of the “open work permit for vulnerable workers”, which is a temporary or bridging type work permit designed to allow the worker time to seek an alternative, longer-term work permit with a new employer.<sup>569</sup> In June 2023 the Australian government also committed to introducing visa protections for migrant workers experiencing exploitation including protection against visa cancellation, flexible visa

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566 MRCI (2019) [MRCI Submission to Joint Committee on Business, Enterprise and Innovation on General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill November 2019](#)

567 Zoetewij-Turhan M. H. (2017) [The Seasonal Workers Directive: ‘...but some are more equals than others’](#)

568 See [Migrant Exploitation Protection Work Visa: Visa details | Immigration New Zealand](#)

569 See [Government of Canada – Open work permit for vulnerable foreign workers who are victims of abuse](#)

requirements for future sponsorship visas and a short-term visa to allow workers bring claims for wages owed and to hold exploitation employers to account.<sup>570</sup>

### — National Administrative Policies and Guidelines

The Second National Action Plan to Prevent and Combat Human Trafficking in Ireland (2016) states<sup>571</sup> that:

*“Internationally, labour exploitation covers a diverse range of exploitative behaviours. The extent and nature of the phenomenon in this jurisdiction is still emerging.”*

In a recent publication (resulting from a collaboration of six EU Member States) entitled ‘Guidelines for the First Level Identification of Victims of Trafficking in Europe’, it is stated:

*“Not all labour exploitation is trafficking for forced labour. Workers can be found working in poor conditions, for low salaries or in unhealthy environments, for example, without being victims of trafficking. If the person accepted the job freely, knowing what the conditions would be, and if he/she can leave (provided he/she gives reasonable notice to his/her employer) without fear of reprisals, that person cannot be considered to be a victim of trafficking for labour exploitation. This means that workers that endure poor working conditions because of economic necessity and a lack of alternative options cannot be automatically classified as victims of trafficking, even if they are migrant workers.”<sup>572</sup>*

The Government Report of Review of Atypical Working Scheme for non-EEA Crew in the Irish Fishing Fleet (March 2022, already discontinued) invoked a broad definition of “labour exploitation” but noted that it was for a limited purpose:

*“A number of issues were raised by stakeholders relating to the subject of exploitation of workers, including poor salary, adverse working conditions and contraventions of the scheme. Although the scheme appears to have operated reasonably well for many workers it is evident that the experience for some has not been as positive. For the purposes of the assessment of this issue, a broad definition of the term ‘exploitation’ as a concept has been adopted, in the absence of an*

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570 [New protections herald hope for migrant worker exploitation](#), UNSW Sydney (5 June 2023)

571 *Department of Justice & Equality (2016) Second National Action Plan to Prevent and Combat Human Trafficking*, p. 52

572 [Guidelines for the First Level Identification of Victims of Trafficking in Europe](#) (2013)

*agreed understanding amongst all stakeholders involved in the scheme of the term.”*

IOM Ireland prepared a Counter-Trafficking Training course and trainer manual for the Anti Human Trafficking Unit in the Department of Justice, Equality and Law Reform. That manual defines labour exploitation as:

“Forced labour or services; slavery or practices similar to slavery; servitude”.<sup>573</sup>

It notes that labour exploitation under the Palermo Protocol potentially covers a vast range of exploitative practices. It further defines forced labour as labour not offered voluntarily but under the menace of any penalty. It defines slavery as:

*“status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (UN Slavery Convention 1926).”*

It sets out two examples of practices similar to slavery or servitude as debt bondage and servile forms of marriage.

The IOM Ireland Manual provided a definition of exploitation in its glossary:

*“The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one’s own benefit (e.g. sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs). A core component of trafficking in persons. “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3 of the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons).”<sup>574</sup>*

Doyle conclude that the definition of labour exploitation and its position in the anti-trafficking framework potentially facilitate labour exploitation:<sup>575</sup>

*“it emerges strongly that the lived experiences of the participants cut across the spheres of employment, criminal and immigration law, with each of these regulatory systems impacting on their lives in important ways. Practical difficulties with enforcing employment awards, access to criminal compensation and precarious short-term immigration statuses are just some of the issues highlighted. This suggests that it is*

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573 IOM [Counter-Trafficking Training Modules](#), p. 8

574 IOM [Counter-Trafficking Training Modules](#), p. 97

575 Doyle, M. D., Murphy C., Murphy M., Rojas Coppari P., and J. Wechsler R. (2019) [‘I felt like she owns me’: Exploitation and uncertainty in the lives of labour trafficking victims in Ireland](#), pp. 231-251

*not possible to comprehensively address the needs of victims of labour exploitation through a specific anti-trafficking or ‘modern slavery’ framework alone. Rather, the broader legal and regulatory context must also be interrogated to understand—among other things—how it potentially facilitates exploitation and enables or restricts access to remedies. Equally, a comprehensive conceptual framework must situate trafficking and modern slavery within these broader legal and administrative processes.”*<sup>576</sup>

FRA made similar observations in relation to Ireland:

*“There have been some positive developments in Ireland regarding fighting against labour exploitation, such as the expansion of the Human Trafficking Act in 2013, but more attention needs to be paid to cases of labour exploitation that are unrelated to human trafficking and address issues where an employee is working illegally in the state, but should still be able to avail of their rights not to be exploited.”*<sup>577</sup>

As we noted in our First Evaluation Report:

*“While the approach to criminalisation of human trafficking and the protection of victims in court proceedings is clearly outlined in national law, the areas of immigration and practical assistance to victims has been confined to the realm of administrative policies - the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIAs) and Guide to Procedures for Victims of Human Trafficking. In the absence of any other comprehensive policy outlining the route to identification and assistance for all victims, the AIA is, by default, at the core of the National Referral Mechanism (NRM).”*<sup>578</sup>

A recently published study by the European Migration Network (‘EMN’)<sup>579</sup> highlights challenges and limitations raised by stakeholders in the protections provided; the first is the differences in legal status that arise out of the limited applicability of the Administrative Immigration Arrangements, with International Protection applicants unable to access a Temporary Residence Permit (‘TRP’). This can result in suspected victims of trafficking holding different immigration permissions in the State and as a result, discrepancies in the supports that can be accessed. Such discrepancies were

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576 Ibid

577 FRANET (2015) [Severe Forms of Labour Exploitation Supporting victims of Severe Forms of Labour Exploitation in Having Access to Justice In EU Member States Ireland](#), p. 58

578 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 33

579 Cunniffe E. and Ayodele O. (2022) [Detection, Identification and Protection of Third Country National Victims of Trafficking in Ireland](#)

noted in particular for access to the labour market and to social welfare supports, which for International Protection applicants are subject to different conditions than holders TRPs. Additionally, the temporary nature of the TRP issued to victims of human trafficking and the potential for lapses in permissions was identified as a source of uncertainty and precariousness for victims. It was also identified as impacting on future immigration permissions and access to social welfare.

Some good practices were identified by stakeholders to the EMN study, such as the firewall (block on information sharing) between the Department of Social Protection and the Department of Justice that was introduced during the Covid-19 pandemic for social welfare supports. Undocumented third-country nationals were able to access financial supports without fear of repercussions for their immigration status. This was during a time in which they could have otherwise been exposed to financial uncertainty and consequently vulnerable to exploitation and human trafficking. It was seen as a good preventive measure.

In our submission on the General Scheme of the Criminal Justice (Sexual Offences and Trafficking) Bill we called for, amongst others, the introduction of a separate standalone offences for holding a person in slavery, servitude or forced or compulsory labour in order to fully align Irish law with Article 4 of the European Convention on Human Rights.

### Judicial Consideration of the Definition of Labour Exploitation in Ireland

To date there has not been substantial judicial consideration of the definition of labour exploitation in Ireland. GRETA has noted that a feature of the system is that there is often a preference to avoid prosecuting trafficking offences and to charge traffickers with lesser offences instead.<sup>580</sup>

#### — High Court

The *DPP v. Phuc Nguyen Lee and anor*<sup>581</sup> concerned two appellants found in a cannabis grow house in Meath. The High Court recognised that the appellants were:

*“merely workers, and had been brought into this country for that purpose. They were obviously vulnerable to exploitation and may not have had absolute freedom to walk away from their involvement”.*<sup>582</sup>

In *Win Lin v Governor of Cloverhill Prison and Others*,<sup>583</sup> the applicant asserted he was the victim of human trafficking and that therefore he should not be prosecuted in

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580 GRETA (2017) [Report concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#), para. 233

581 [2015] IECA 157

582 At para. 6

583 [2014] 1 IR 134, [2014] 2 ILRM 254

respect of certain drugs offences, pursuant to Article 8 of the 2011 Directive which permits the relevant prosecuting authorities not to prosecute the victims of trafficking where the crimes which they have committed are the direct consequence of their exploitation by traffickers. At the time of this judgment, the applicant was remanded in custody on drug offences and asserted his detention was unlawful. The applicant originated from China and asserted he was forced to travel abroad to help pay his father's debts. The applicant was unable to provide specific details of how he came to arrive in Ireland, nor approximate dates. The applicant gained employment watering plants in a greenhouse, which the applicant alleged to have believed were tea plants. Mr. Justice Hogan pointed out the applicant had no passport, no documentation to confirm his identity, nor satisfactory explanation of how he had arrived in Ireland and that the applicant was a vulnerable person who had been forced into criminality due to debt problems.

Mr. Justice Hogan considered the definition of labour exploitation in Criminal Justice (Human Trafficking) Act 2008.

He stated (at para. 27) that the reference to "enslavement" and "servitude" is a clear echo of the Thirteenth Amendment of the US Constitution of 1865:

*"Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall take place within the United States, or any place subject to their jurisdiction."*

On the issue of servitude, Mr Justice Hogan concluded that within the meaning of s. 1 of the 2008 Act:

*"the circumstances in which Mr. Lin was detained in the greenhouse amounted to servitude or a similar condition or state."*

For this purpose, it is irrelevant as a matter of law that he originally agreed to take up this offer of employment. What is instead critical is that Mr. Lin was deprived of his liberty under the nascent - but real - threat of violence for a significant period in circumstances where, by reason of his very vulnerability in terms of language and immigration status, he could not effectively independently secure his release from that detention in the greenhouse."

However, the application was denied on the basis that while he was subjected to servitude, the evidence did not support the assertion that he was trafficked, due to issues in relation to his account of how he came to be in the State and key details in terms of identity, method of travel and dates of arrival which had not been independently confirmed, as well as the fact that he was at liberty and could travel extensively throughout the State which the court regarded as:

*“a critical objective factor which negatives the suggestion that he was trafficked, even if this factor alone is not always dispositive of a trafficking claim.”*

In *Hussein v Labour Court*<sup>584</sup> the notice party was a Pakistani national, who worked for his cousin, the applicant, from September 2002 to December 2009. During the course of his employment, the notice party alleged he was subjected to consistent exploitation in that he was paid less than the national minimum wage, the hours he was compelled to work were excessive and the applicant failed to confirm his employment with the relevant public authorities. The notice party did not speak English and was unaware of the illegality of these circumstances until he visited a Migrants’ Rights Centre in August 2009. He subsequently resigned his position in December 2009 and commenced his complaints. However, Hogan J found that the notice party could not rely on the employment legislation because of his illegal immigration status.

#### — Labour Court and WRC

In *Ruby O’Connor v Yellow River Taverns* (ADJ-00035736), the WRC found that exploitation occurred where an employer did not pay an employee for their labour:

In *Brakeway Plastics (IRL) Ltd v a Worker* (LCR12809) the Labour Court considered that “the requirement to work unpaid overtime insisted upon by the Company bordered on exploitation” and accordingly ordered compensation.

In *Irish Country Bacon P.L.C v Irish Transport And General Workers’ Union* (LCR 12544), the Labour Court found that a new lower pay grade introduced by the company “as complete exploitation as the workers concerned are doing semi-skilled work and even skilled in some cases. The introduction of this new grade is also out of line with the bacon industry generally, where a three grade structure is the norm.”

*Gerry Kelly Enterprises Limited v Andris Reinfelds* (DWT0214) was paid below the minimum required by the construction industry and the Labour Court found that he was exploited on that basis.

### Prevalence of Human Trafficking for the Purpose of Labour Exploitation

Feingold reports labour trafficking to be a widespread phenomenon, due in part to the ubiquitous demand for services and other work-based activities.<sup>585</sup> Writing in the UK context, Cockbain and Brayley-Morris state that:

*“Labour trafficking is now recognized as a priority both in the UK and internationally (Home Office, 2011b, 2014; European Commission, 2012;*

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584 [2012] IEHC 364

585 Feingold, A. D. (2005) Human Trafficking. *Foreign Policy*, 150: 26-30, 32. Slate Group LLC

*US Department of State, 2014). In the UK, the year 2014 saw not only a general increase in trafficking referrals but a particularly steep growth in suspected labour trafficking cases (National Crime Agency, 2015).”<sup>586</sup>*

The International Labour Organisation’s recent report, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*,<sup>587</sup> calculates that across the world, there exists in the region of 27.6 million cases of forced labour, a figure which includes an estimate of up to 3.3 million children. The definitional ambiguity of forced labour, depending on whether or not it subsumes human trafficking and/or other forms of exploitation involving sexual exploitation, make the prevalence estimates exceptionally difficult at international level.

The unified understanding at EU level allows for a more streamline assessment, which is captured in the periodically issued data studies. The most recent data collection results, published in December 2022, showed that trafficking for labour exploitation is the second main form of exploitation in the EU (28%), whereas trafficking for sexual exploitation represents 51%.<sup>588</sup>

The EU has identified the high-risk sectors of labour trafficking that include agricultural sector, construction, hospitality, cleaning sector, domestic work, forestry, textile and garments, food manufacturing.<sup>589</sup>

In the Irish context, the relatively low annual number of officially recorded human trafficking cases in general, and those related to labour exploitation in particular, can be contrasted against the comparatively high numbers of cases identified in the UK. It has to be noted, however, that the definitions of human trafficking and ‘modern slavery’ vastly differ, and the data from the UK was already incompatible with the EU wide statistics, since the introduction of the Modern Slavery Act in the UK in 2015.

Based on the official data available, we identified trafficking for labour exploitation as the second most prevalent type (38%). According to Cunniffe and Ayodole<sup>590</sup>, official statistics for Ireland for 2017-2018 indicate that victims of trafficking for the purposes of labour exploitation accounted for approximately 47% of all trafficking victims in

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586 Cockbain, E., & Brayley-Morris, H. (2018) [Human Trafficking and Labour Exploitation in the Casual Construction Industry: An Analysis of Three Major Investigations in the UK Involving Irish Traveller Offending Groups](#). *Policing: a journal of policy and practice*, 12(2), 129-149, 130

587 ILO (2022) [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#)

588 European Commission (2022) [Commission Staff Working Document Statistics and Trends in Trafficking in Human Beings in the European Union in 2019-2020 Accompanying the Document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the Progress made in the Fight Against Trafficking in Human Beings \(Fourth Report\) SWD/2022/429 final](#)

589 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 Empty on the EU Strategy on Combating Trafficking in Human Beings 2021-2025’](#), COM (2021) 171 final, p. 6

590 Cunniffe E. and Ayodele O. (2022) [Detection, Identification and Protection of Third Country National Victims of Trafficking in Ireland](#)



Ireland. However, the trend did not continue into 2019, when, according to Cunniffe and Ayodole, only three of the total number of victims officially identified in that year were recorded as victims of trafficking for the purposes of labour exploitation.

This type of crime sees notable sporadic surges linked to the operations of various production and service sectors. For example, a 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 from 2015-2018. More information is available in Appendix 4 Data.

A data collection study for the period 2014-2019, uncovered 132 ‘unofficial’ cases of which one third pertained to trafficking for labour exploitation, which tallies with the official data.<sup>591</sup>

The ILO’s report, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*,<sup>592</sup> indicates that the majority of forced labour cases are found within the private economy, where adult-related forced labour is concentrated in five main areas of economic activity, namely:

1. the services sector (excluding domestic work),
2. manufacturing,
3. construction,
4. agriculture (excluding fishing), and
5. domestic work.

However, this report also indicates that adult forced labour occurs in many sectors across the world in addition to these five main areas, including quarry work, mining, the fishing industry as well as forced begging and illegal activities.

GRETA’s third evaluation report on Ireland records that the high risk sectors in Ireland for labour exploitation of migrant workers are varied, including the agriculture and forestry sectors, fisheries, meat processing, hospitality, construction, horse-racing, car washing, nail bars and domestic work.<sup>593</sup>

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591 Breen, M., Healy, A.E., and Healy, M.G. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland](#). Mary Immaculate College, Limerick, Ireland, p. 71

592 ILO (2022) [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#)

593 GRETA (2022) [Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)

The UNODC analysis of profiles of victims of human trafficking for labour exploitation reveals a contrasting picture in the gender profile of victims of sexual exploitation (where women/girls represent almost 96% of victims) compared to the profile of victims of trafficking for labour exploitation where 63% were found to be men/boys.<sup>594</sup>

The ILO<sup>595</sup> emphasises the high numbers of children (3.3 million) in the global estimates who are believed to be victims of forced labour, describing this situation as ‘the tragedy of children subjected to forced labour’, and warning that the known numbers may be considerably under-representative of the true scale of the problem. This issue, the ILO report suggests, demands special and urgent attention. It is noted that ILO found that more than half of all children in forced labour are in commercial sexual exploitation and not forced labour. However, it also presented some evidence of children in forced labour in other sectors including domestic servitude, agriculture, and manufacturing. Furthermore, the ILO reports that there is evidence to suggest:

*“that children can be subjected to severe forms of coercion and abuse, including abduction, drugging, being held in captivity, deception, and manipulation of debt.”<sup>596</sup>*

Overall, there is a dearth of research of the experiences of designated victims of human trafficking in Ireland. This group can be defined as a ‘hard-to-reach’ section of the general population,<sup>597</sup> and as such research with this group requires responsive attention to the ethical dimensions of research practice as well as the need for a skilled research team equipped with adequate resources.

In the absence of direct interviews with victims of human trafficking for the purpose of labour exploitation, this report has drawn on individual and group-related case reports across the available literature in order to illustrate the range of factors relevant to this issue in the Irish context. The lack of prosecutions for human trafficking related to labour exploitation, and the lack of publicly available data on cases regarding trafficking cases which are officially recorded on the NRM, means that analysis of the nature of human trafficking for labour exploitation in Ireland can be described as both speculative and incomplete. There is a need for research which can critically investigate the known cases of human trafficking, in particular, those already entered into official records.

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594 UNODC (2014) [Global report on trafficking in persons 2014](#)

595 ILO (2022) [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#)

596 Ibid, p. 4

597 Barrick, K., Pitts, W. J., McMichael, J. P., Wheaton, W. D., & Evans, B. M. (2015) [Developing a Sampling Frame of Potential Trafficking Victims Using Geo-Mapping Techniques](#). *Forum on Crime and Society*, Special Issue: Researching Hidden Populations: Approaches to and Methodologies for Generating Data on Trafficking in Persons. See also the collection of articles on the challenges of identifying suitable research methodologies for use in studies of hidden populations in Kirwan G. (2017) [‘In the Half Shadows’: Research with Hard to Reach Populations](#). *Social Work & Social Sciences Review*, 19(3): 3-6

## Indicators of Human Trafficking for the Purpose of Labour Exploitation

The Blue Blindfold website,<sup>598</sup> does not provide for a definition of labour exploitation but sets out a list of indicators of persons trafficked for labour exploitation.<sup>599</sup>

The ILO booklet<sup>600</sup> outlines a list of 11 Indicators of Forced Labour based on work carried out as part of the ILO's Special Action Programme to Combat Forced Labour<sup>601</sup> related to the Declaration on Fundamental Principles and Rights at Work.<sup>602</sup> The Handbook is designed to assist frontline workers in different settings to identify situations where forced labour is occurring or when a worker *may* be a victim of trafficking for the purposes of forced labour.

The indicators are listed below with a short summary derived from the description provided in the Handbook:

- ▶ Abuse of vulnerability – this arises when the employer takes advantage of a worker's vulnerable position; more likely in situations of multiple dependency by the worker on the employer.
- ▶ Deception - victims of forced labour may be led to believe they are being recruited to decent work but instead find themselves in abusive situations from which they are unable to escape.
- ▶ Restriction of movement – it is necessary to distinguish between legitimate restrictions (eg for safety reasons) and unreasonable restrictions on movement.
- ▶ Isolation – locations of work may be remote, with no access to transport or where freedom to contact others is curtailed.
- ▶ Physical and sexual violence – this can include various forms of violence
- ▶ Intimidation and threats – can be varied in nature, including coercion and threats to report workers to the authorities.

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598 A website of the Department of Justice dedicated to providing information and resources on human trafficking, see <https://www.blueblindfold.ie/>

599 Including: live in groups in the same place where they work and leave those premises infrequently, if at all; live in degraded, unsuitable places, such as in agricultural or industrial buildings; not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing; be given only leftovers to eat; have no access to their earnings; have no labour contract; work excessively long hours; depend on their employer for a number of services, including work, transportation and accommodation; have no choice of accommodation; never leave the work premises without their employer; be unable to move freely; be subject to security measures designed to keep them on the work premises; be disciplined through fines; be subjected to insults, abuse, threats or violence; lack basic training and professional licences.

600 ILO (2012) [ILO Indicators of Forced Labour](#). ILO Special Action Programme to Combat Forced Labour (SAP-FL)

601 ILO (2013) [Special Action Programme to Combat Forced Labour](#)

602 [ILO Declaration on Fundamental Principles and Rights at Work](#) (1998, amended in 2022)

- ▶ Retention of identity documents – this can be an element of forced labour when the worker cannot retrieve these documents.
- ▶ Withholding of wages – refers to situations in which monies owed for work are deliberately withheld as a means of control.
- ▶ Debt bondage – a debt which binds the worker to the employer and the conditions attaching to it are excessive compared to typical loans.
- ▶ Abusive working and living conditions – refers to working or living conditions that are unacceptable such as degrading, dangerous or substandard conditions which fall short of what would be considered acceptable conditions.
- ▶ Excessive overtime – includes excessive hours or denied breaks, days off or also being on call to an excessive extent.

The International Trade Union<sup>603</sup> has published guidance for its members on human trafficking in which it sets out a list of factors used by traffickers to ensure compliance from victims, including the following:

*“Actual presence or credible threat of:*

- ▶ Physical violence against worker or family or close associates
- ▶ Sexual violence
- ▶ (Threat of) retaliation
- ▶ Imprisonment or other physical confinement
- ▶ Financial penalties
- ▶ Denunciation to authorities (police, immigration, etc.) and deportation
- ▶ Dismissal from current employment
- ▶ Exclusion from future employment
- ▶ Exclusion from community and social life
- ▶ Removal of rights or privileges
- ▶ Deprivation of food, shelter or other necessities
- ▶ Shift to even worse working conditions
- ▶ Loss of social status”

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603 ITUC (2008) [Forced Labour: Mini Guide to Action. International Trade Union Confederation](#)

The issue of deception is listed among these indicators and this factor was also highlighted by Wijkman & Kleemans in their study of court cases related to female traffickers convicted in the Netherlands.<sup>604</sup> They identify different forms of deception utilised by traffickers in their study. In some instances, it involved a promise of legitimate employment, but soon after arrival in the Netherlands, the victims discovered that they would be working in a different context, such as the sex trade. For others, they knew they were coming to work in various sectors, but although they worked as per their agreement with their employer, they subsequently received low or no income in return. This study also highlighted the phenomenon whereby a victim of trafficking later becomes a trafficker themselves, and they illustrate case examples from their data where this occurred.

Similarly, Breen et al report from their research that service providers working to assist victims of trafficking in Ireland identify deception as an important element in the means of recruitment of many victims who are trafficked in Ireland:

*“trafficking is often linked to recruitment and deception which then lead to exploitation.”<sup>605</sup>*

## Case Examples

The aim of this section is to illustrate the potential for human trafficking for the purposes of labour exploitation in the Irish context and it summarises examples of cases of human trafficking for the purposes of labour exploitation which have been reported in the wider Irish literature. These include cases which align with the indicators of labour trafficking as set out in the ILO’s list of indicators.<sup>606</sup> This section also summarises case examples based on a documentary search of available academic and grey material.

An important caveat regarding this section is that some of the cases reported here may not or have not been officially designated cases of human trafficking. They are presented here because elements of these cases fit with the list of indicators outlined earlier, or because they are described in the reports about them as potential cases of human trafficking.

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604 Wijkman, M. and Kleemans, E. (2019) [Female Offenders of Human of Human Trafficking and Sexual Exploitation](#). *Crime, Law and Social Change*, 72(1): 53-72, p. 64

605 Breen, M., Healy, A.E., and Healy, M.G. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland](#). Mary Immaculate College, Limerick, Ireland

606 ILO (2012) [ILO Indicators of Forced Labour](#). ILO Special Action Programme to Combat Forced Labour (SAP-FL)

## Muhammad Younis

In 2011, the Rights Commissioner in the Labour Court found that Mr Younis' employer in Dublin had breached the Terms of the Employment (Information) Act 1994 (as amended), the Organisation of Working Time Act 1997 and the National Minimum Wage Act, 2000. Mr Younis, from Pakistan, had been working as a chef at a restaurant in Dublin. His experiences are reported to have included a number of negative factors which can be regarded as similar to the indicators listed by the ILO, including receiving threats, payment "well below" the minimum wage, and excessively long working hours.

The Rights Commissioner awarded Muhammad Younis substantial compensation for breaches of his employment rights. Following a series of applications, the High Court overturned this award, ruling that Mr Younis had no locus standi because his contract of employment was illegal. However, the Supreme Court on appeal reversed the High Court decision.

A feature of this case was that the employer had not renewed Mr Younis' work permit and this rendered him undocumented and effectively working illegally in the state. The threat, therefore, by any employer to not renew a worker's employment permit can have serious implications for the individual in terms of their confidence and their ability to seek protection under the law when exploitation or victimisation arise.

## Fiona

Catherine Reilly,<sup>607</sup> writing in the Irish Times, reported the case of Fiona (not her real name), from Africa, who alleged that she was the victim of forced labour in Dublin where she worked in a domestic-type role in a house. The report (2011) stated "she says she experienced seriously abusive behaviour, including the confiscation of her passport by her employer, a classic indicator of trafficking. She had:

*"nowhere to run to, and only after being hospitalised following major stress did she manage to get help."*

No further details are available regarding the developments that followed in this case and if her situation was the subject of a criminal investigation or if she was recorded officially as a victim of human trafficking in Ireland. Fiona described the anxiety she experienced and this case provides a good example of the vulnerability that victims might experience in a country new for them where they are unsure how to find assistance when problems arise.

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607 Reilly C. (2011) '[Legislation fails victims of forced labour in Ireland.](#)' *The Irish Times* 17 September)

## Vincent

The case of Vincent (not his real name) is included in a set of ten case studies reported by Doras.<sup>608</sup> In brief, Vincent was recruited through word of mouth in his home country and he understood he was coming to Ireland for legitimate employment and decent working conditions. When he arrived to Ireland he discovered he had been deceived about the nature of the work and the conditions in which he had to live and work, including long hours, no day off and low pay. He was accommodated in poor living conditions with other employees.

## Charleville Group

O'Donoghue reported on a police operation in Charleville, Co. Cork in which a group of three men were removed from a premises on foot of a report from a concerned party.<sup>609</sup> Few specific details were reported but it was described in the reports as a case of suspected human trafficking ostensibly for the purposes of labour exploitation.

## Cases Reported in Group Research Studies

### Migrant Workers Study

Murphy et al report on their analysis of data from 23 Non-EU migrant worker interviews in a sample group composed of people identified or suspected as victims of labour trafficking or who had experienced employment breaches but which fell short of the threshold required to meet a test of human trafficking.<sup>610</sup> Their composite analysis illustrates the less than favourable working conditions experienced by members of this sample which included violations of employment legislation related to working hours, minimum wage, paid annual leave, equality and terms of dismissal.

This study found that the fisheries workers in their sample reported receiving insufficient rest periods in the context of long working hours a cohort of interviewees within this sample reported working seven-days per week without rest days or holidays. The issue of deception during the recruitment stage was raised by some of the interviewees, who recounted being misled about the conditions of work they would experience when they arrived into Ireland.

Murphy et al also highlight the means of control exercised over some of their interviewees, including threats of losing their job, of being deported, confiscation of

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608 Doras Luimni (2014) [No Chances, No Choices. Human Trafficking and Prostitution in Limerick: Key Issues and Challenges](#). Limerick, Ireland: Doras Luimni

609 O'Donoghue, D. (2020) ['Three men thought to be trafficked to Ireland found by Gardaí in north Cork.'](#) *Irish Examiner* (28 July)

610 Murphy, C., Doyle, D.M. and Murphy, M. (2020) ['Still Waiting' for Justice: Migrant Workers' Perspectives on Labour Exploitation in Ireland](#). *Industrial Law Journal*, 40 (3): 318-351

passports and in some cases control over movement and liberty, including in some instances measures of surveillance. These factors also inhibited the interviewees from seeking help:

*“The level of control which employers exercised over their passage to Ireland, their initial entry, and their immigration status also appeared to act as a barrier to reporting exploitation”.*<sup>611</sup>

### Migrant Fishers in Ireland

Murphy, Doyle and Thompson’s study involved interviews with 24 migrant male fisheries workers.<sup>612</sup> Similar to previous studies on conditions in the fishing industry, the participants in this study reported working long hours, low wages, few rest hours, and also receiving racially verbal abuse. The issue of the power imbalance between the worker and the employer is noted as a concern among this group, particularly where the interviewee was working without a valid permit. Doyle et al<sup>613</sup> had previously noted the strong impact that fear of losing one’s work permit can exert on the relationship between the employer and employee (see also Skrivankova).<sup>614</sup>

### MRCI report on the Fishing industry in Ireland

MRCI focused particularly on exploitation in the fishing industry in its publication *Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry*.<sup>615</sup> While the publication is entitled ‘exploitation’ as opposed to ‘trafficking’, it describes instances where migrant workers have been recruited, deceived, and exploited.

### Emma

The details of this case are extracted from the ICI publication *Child Migration Matters*.<sup>616</sup> Emma (not her real name) is from the African continent. At age 15 years, she was trafficked from her home country to Ireland for the purpose of domestic exploitation. She believed she would be allowed go to school but this did not happen. She escaped her situation and went to live with another African woman, where things were better for a while and she attended school. However, this relationship became problematic and through a series of events, including her lack of independent

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611 Ibid, p. 342

612 Murphy, C., Doyle, D.M. and Thompson, S. (2022) [‘Workers’ Perspectives on State-Constructed Vulnerability to Labour Exploitation: Experiences of Migrant Fisher in Ireland](#). *Social & Legal Studies*, 1-22.

613 Doyle, M. D., Murphy, C., Murphy, M. Coppari, P. R. and Wechsler, R. J. (2019) [‘I Felt Like She Owns Me’: Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland](#). *The British Journal of Criminology*, 59(1): 231-251

614 Skrivankova, K. (2010) [Between Decent Work and Forced Labour: Examining the Continuum of Exploitation](#). Joseph Rowntree Foundation

615 MRCI (2017) [Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry](#)

616 Immigrant Council of Ireland (2016) [Child Migration Matters: Children and Young People’s Experience of Migration](#)



representation at her ORAC interview, Emma went on to experience years of precarious living circumstances in both the UK and Ireland. Eventually, after many years and with the benefit of legal advice and representation, Emma was granted permission to reside in Ireland and was formally identified as a victim of human trafficking.

These cases provide an overview of the range and nature of documented or suspected cases of human trafficking for the purposes of labour exploitation in Ireland. From these accounts it is clear that victims in the Irish context can be from different places of origin, can experience many different forms of exploitation, coercion and control and may endure such experiences over short or lengthy periods of time. A common feature of the cases that appear in the public domain is the difficulty that victims experience in seeking help and support to extricate themselves from these types of situation.

### **Constraints on Victims of Labour Trafficking to Seek Help and Support**

As the cases outlined in the previous section portray, there are a range of factors that obstruct or dis-incentivize victims of human trafficking for the purpose of labour exploitation to come forward and seek assistance when they become aware of the exploitation they are experiencing. These obstacles can include fear of being deported, fear of physical abuse, fear of losing the opportunity to work in Ireland, fear of being charged with an offence. Recent research has shed further light on the dynamics that operate to discourage victims from seeking help. For example, Breen et al's<sup>617</sup> study canvassed its participants on why they believed victims of human trafficking (all forms of human trafficking) often do not make contact with the relevant Irish authorities, such as the NRM. They identified three categories of factors, namely:

*“(i) victim-related reasons;*

*(ii) system-related reasons; and*

*(iii) types of victims of trafficking not recognised by the NRM.”*

The victim-related factors include the influence of ‘push’ factors where the victim weighs up the choices they face about their present circumstances based on the conditions they have left behind. They also highlight that when a victim seeks assistance to escape, the trafficker is likely to continue to want their ‘debt’ paid and the victim may assess that they are still at risk even when they reach out for help. As Breen et al point out, entering the NRM:

*“does not erase such debt.”<sup>618</sup>*

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617 Breen, M., Healy, A.E., and Healy, M.G. (2021) [Report on Human Trafficking and Exploitation on the Island of Ireland](#). Mary Immaculate College, Limerick, Ireland

618 Ibid, p. 64

Other issues highlighted in their study include distrust, fear, a compromised capacity to engage or understand their predicament on the part of the victim, and concern that they are also at risk of prosecution or forced repatriation to their country of origin if they come forward and seek official assistance.

In terms of system-related reasons for lack of engagement with the NRM, Breen et al found that the agencies working in this field believe the complexities and difficulties in proving oneself to be a victim of human trafficking act as a deterrent to seeking help, and the challenges in producing evidence to support one's story can be a factor in a victim's decision whether or not to seek out help.

Breen et al also report the questions raised by some participants in their study about why certain forms of human trafficking are not appearing in the official records and the concern that these activities are happening in Ireland but not being recognised or understood as human trafficking. Whilst it is clear that trafficking for the purposes of labour exploitation is being recognised and recorded in Irish official data, it is not certain what proportion of cases are recorded officially or how many evade detection in the first instance.

Furthermore, Breen et al make an important point in relation to official records of trafficking related to children, which includes children trafficked for the purposes of labour exploitation, where they suggest that some children known to be subjected to human trafficking are not being recorded as trafficking victims:

*“While fulfilling trafficking criteria, the justice system rarely deals with child labour exploitation as a form of trafficking offense (see AHTU annual reports). As per interviews with participating organisations, typical scenarios of child labour exploitation involve children sent by their families to the Republic of Ireland and Northern Ireland to work and send money back to their families...”<sup>619</sup>*

Cockbain and Brayley-Morris outline key challenges to investigations and prosecutions, echoing some of the factors found in the Irish cases outlined earlier. These can include the vulnerability of the victims, their credibility in a legal sense, and the complexities of the situations which typically surround these cases.

They indicate that,

*“Key examples include difficulties managing vulnerable victims and witness credibility issues. These parallels suggest there may be some fundamental issues associated with tackling trafficking that apply regardless of the specific subset. Barriers to detection and intervention*

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619 Ibid, p. 78

*may be particularly acute when traffickers operate within marginalized and isolated groups....*<sup>620</sup>

What victims themselves understand to be their situation and the choices they can make are important factors, captured succinctly by Doyle et al<sup>621</sup> who provide the example of a victim-research participant who believed it was not possible to contact the police as they would be found to be acting illegally.

The interviewee states:

*“I can’t talk to the police as I have no visa.”*

Mantouvalou<sup>622</sup> similarly highlights the “precarity” associated with short-term or tenuous legal permissions or employee status. Apart from the concerns which can arise in situations where the victim lacks the required legal papers (permissions), it has also been noted that some victims may distrust people in roles of authority or statutory services due to prior experience of contact involving discriminatory, inhumane or abusive interactions.<sup>623</sup>

Stapleton<sup>624</sup> identified gaps in the identification process and also the timeframe for case decision-making. It was found that the victim identification process often took months to complete, leaving identified victims in a situation of uncertainty but with few supports. Stapleton also argued that victims should be protected and treated as such “regardless of their willingness to cooperate with a criminal investigation.” Cunniffe & Ayodele<sup>625</sup> also highlight the negative implications for victims of long identification processes.

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620 Cockbain, E., & Brayley-Morris, H. (2018) [Human Trafficking and Labour Exploitation in the Casual Construction Industry: An Analysis of Three Major Investigations in the UK Involving Irish Traveller Offending Groups](#). *Policing: a journal of policy and practice*, 12(2), 129-149, 130

621 Doyle, M. D., Murphy, C., Murphy, M. Coppari, P. R. and Wechsler, R. J. (2019) [‘I Felt Like She Owns Me’: Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland](#). *The British Journal of Criminology*, 59(1): 231-251

622 Mantouvalou, V. (2015) [“Am I Free Now?” Overseas Domestic Workers in Slavery](#). *Journal of Law and Society*, 42: 329-57

623 Hoyle C., Bosworth M., and Dempsey M (2011) [Labelling the victims of sex trafficking: Exploring the borderland between rhetoric and reality](#). *Social & Legal Studies* 20.3 (2011): 313-329

624 Stapleton, P. (2011) [Human Trafficking in Ireland: Identifying Victims of Trafficking](#). Cork, Proceedings of the 2nd Annual Critical Social Thinking Conference

625 Cunniffe E. and Ayodele O. (2022) [Detection, Identification and Protection of Third Country National Victims of Trafficking in Ireland](#)

## Technology and Human Trafficking for the Purposes of Labour Exploitation



*“Information and communication technology have rapidly changed the criminal landscape with traffickers adopting new modi operandi to recruit, control and exploit victims. To address these challenges, we need to increase capabilities of law enforcement ranging from data processing to decryption capabilities and develop a broad cooperation framework amongst authorities, internet companies and civil society fit for the digital era.”*

*Olivier Onidi – European Commission – EU Anti-Trafficking Coordinator, quoted in EUROPOL (2020).<sup>626</sup>*

There is an increasing awareness that combatting human trafficking requires innovative methods of detection including the use of new technologies and digital research methods.

While in Chapter 2 of this report, we detail technology facilitated trafficking for sexual exploitation, in this section we examine current knowledge on the use of technology in the trafficking of humans for the purposes of labour exploitation. Firstly, it is important to clarify that technology can play a role in all forms of human trafficking, although that role may vary in terms of the ways in which it is used during different stages of the trafficking process such as the recruitment stage or the control and nature of the exploitation. In this section, we aim to illustrate the strategies adopted by traffickers to identify, recruit or deceive victims, and also to identify recommendation which may be used to counter these types of online behaviours.

EUROPOL underlines how digital activities can provide traffickers with opportunities to scale-up the level and reach of their activities:

*“Technology also acts as a force multiplier for trafficking activities as it enables the commercialisation and exploitation of victims on a massive scale. Victims are repeatedly exploited as criminals replicate the same*

626 EUROPOL (2020) [The Challenges of Countering Human Trafficking in the Digital Era](#). Europol Operations Directorate

advertisement and livestreaming in multiple platforms in order to maximise outreach and profits.”<sup>627</sup>

The OSCE<sup>628</sup> highlights how digital communication media can be used for the sale and purchase of victims:

*“The volume of victims bought and sold through online platforms are in the thousands, which underlines how technology can facilitate the crime of human trafficking for labour exploitation”*

### Technological Strategies Adopted by Traffickers

Technology can be used by traffickers as an effective set of tools. The OSCE<sup>629</sup> indicates the various ways in which technology can widen and deepen the reach of trafficking activity:

*“the misuse of technology enables perpetrators to increase the size and profitability of the human trafficking market; turn vulnerable individuals into victims; exert control and influence over victims and facilitate illicit financial flows”*

It is important to note, however, that some writers such as Milivojevic et al (2020) caution against uncritical assumptions regarding what they refer to as the ‘trafficking-technology nexus’, and they suggest that more research is needed to identify how traffickers are (or are not) using technology.

There are a number of ways in which it is suggested in the literature that traffickers can use technology as part of their trafficking activity.

### Sourcing and Connecting with Victims

The internet offers many opportunities for people to connect with people they do not know via social media platforms, gaming, chatrooms, websites, etc. It is possible to conceal one’s true identity in many online contexts and the unsuspecting or vulnerable internet user is at risk of believing they are in contact with someone with a very different profile to the reality.

For example, Campana<sup>630</sup> reports how jobseekers can be duped into believing they are in contact with legitimate employers when that communication is taking place

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627 EUROPOL (2020) [The Challenges of Countering Human Trafficking in the Digital Era](#). Europol Operations Directorate

628 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking, (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#), p. 9

629 Ibid, p. 141

630 Campana P. (2022) [Online and Technology-Facilitated Trafficking in Human Beings](#). GRETA, Council of Europe

via established employment websites. The OSCE<sup>631</sup> summarises the types of online contexts that traffickers use:

*“Messaging apps, such as KIK, KakaoTalk, WeChat and WhatsApp, are widely used by traffickers to recruit victims, especially children, and to communicate with victims and buyers.”*

EUROPOL<sup>632</sup> distinguishes between active and passive online strategies used by traffickers. One active strategy is referred to as ‘hook fishing’ by which is meant deliberate methods of drawing in the victim. One example of hook fishing is the posting of fake advertisements for jobs, or setting up fake job interviews or fake job recruitment agencies.

*“Active recruitment resembles the ‘hook fishing’ technique and involves criminals posting false job advertisements on trusted job portals and social media marketplaces. Criminal networks also set up full-fledged websites of fake employment agencies, often promoted on social media to make them easily accessible to a larger number of potential viewers. Sometimes these websites include live chats, ostensibly allowing immediate contact with the alleged hiring managers.”*

Anthony<sup>633</sup> similarly describes how social media channels can prove useful tools for traffickers in these types of hook fishing activities:

*“The ability to tightly target a desirable audience also makes social media an ideal venue for serving deceptive or fraudulent job advertisements to a vulnerable population”.*

### Lover-Boy Technique

Campana<sup>634</sup> illustrates how the ‘lover-boy’ technique is used to convince potential victims that the person they are communicating with in an online environment is trustworthy and is interested in them. The trafficker will get to know the victim, display interest in their lives and connect with them at an emotional level, possibly with an indication that they are interested in a deeper relationship. The victim is thus lured into a fall sense of safety and will be thus more amenable to suggestions by the trafficker such as travelling to where the trafficker suggests or signing up for work with them.

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631 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and Tech Against Trafficking, (2020) [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#), p. 19

632 EUROPOL (2020) [The Challenges of Countering Human Trafficking in the Digital Era](#). Europol Operations Directorate

633 Anthony B. et al (2018) [On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking](#). Polaris Project, 20

634 Campana P. (2022) [Online and Technology-Facilitated Trafficking in Human Beings](#). GRETA, Council of Europe

## Blackmail and Coercive Control

Campana<sup>635</sup> indicates that blackmail can result in a deliberate strategy of collecting compromising information about the victim which is then used to put pressure on them to perform certain actions or obeying certain instructions.

## Surveillance

Technology can be used as a means of monitoring the movements of a victim who is under the control of a trafficker. Smart technology provides functionalities that assist traffickers to track the physical location of a victim, and to monitor their interactions with others.

## Addressing the Use of Technology in Human Trafficking for Labour Exploitation

The rapid and extensive digitalisation of society means that technology is playing an increasing role across all aspects of human existence at present. While this presents many positive opportunities, it also creates openings for technology to be used by those seeking to exploit others, including traffickers, who wish to make contact with potential victims or to use technology to exert power over victims already under their control.

While the internet has been subject to certain restrictions – varying from country to country – generally regulation of cyber activity has been light in many jurisdictions leaving open possibilities for traffickers to use the internet space to their advantage. Where restrictions or regulations exist, it is difficult for authorities to keep pace with advances in technology which provide ways around such restrictions. For example, the ability to switch IP addresses frequently provides a means by which those using the internet for a range of illegal activities, including trafficking, can avoid detection and thwart investigations into their activities.

The same source<sup>636</sup> lists some of the main challenges to effective identification, investigation and prosecution of online behaviour designed to assist trafficking activities.

These include:

- ▶ Data encryption. This is generally regarded as a useful safeguard against unintended or unwanted sharing of electronic information, but it can

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635 Campana P. (2022) [Online and Technology-Facilitated Trafficking in Human Beings](#). GRETA, Council of Europe

636 Ibid, pp. 11-12

also make detection of online human trafficking activity difficult to identify or investigate.

- ▶ Large volume of data on the internet. There is now so much global internet activity that this poses problems in knowing where or what to target by investigators and law enforcement agencies. Furthermore, there is the question of storage and how long Internet Service Providers can reasonably be expected to retain and store data. This issue cuts across other considerations such as the individual right to privacy.
- ▶ Lack of technical expertise and/or equipment. Technology is changing rapidly and efforts to keep pace with these changes requires funding and investment in skills development on the part of relevant authorities. These challenges include expertise in handling electronic evidence.
- ▶ The evidence to indicate trafficking activities in online contexts can often be technical and complex. This requires prosecutors with a knowledge of technology and an ability to demonstrate in courtroom contexts where and how illegal activity has occurred.

Campana<sup>637</sup> lists a set of possible methods of detection of trafficking activity in online settings. He refers to actions such as the use of ‘web-scraping tools’ which can help in efforts to detect trafficking type interactions on websites. A broader range of social network analysis or ethnographic methods may be useful in mapping interaction flows. Other emerging methods include the following:

### Accountancy Practices

In terms of accountancy practices, Ishaya et al<sup>638</sup> present a literature review in relation to global supply chains and how human trafficking may be detected related to trade and employment activities.

### Crime Pattern Theory

Paraskevas & Brookes<sup>639</sup> discuss the use of technology to identify patterns of behaviour that could indicate where human trafficking for the purposes of labour exploitation is occurring and the means being used, including digital technologies.

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637 Ibid

638 [Ishaya B. J., Paraskevakis, D., Bury A., and Bryde D. \(2023\) A systematic literature review of modern slavery through benchmarking global supply chain. \*Benchmarking: An International Journal\*. See also Christ K. L., Burritt R., and Schaltegger S \(2020\) \*Accounting for work conditions from modern slavery to decent work. Accounting, Auditing & Accountability Journal\*, 33\(7\): 1481-1504](#)

639 Paraskevas A., and Brookes M. (2008) [Nodes, Guardians and Signs: Raising Barriers to Human Trafficking in the Tourism Industry. \*Tourism Management\*, 67, 147-156](#)



## Measuring Trafficking Flows

Sarrica<sup>640</sup> proposes measuring traffic flows to help identify static and dynamic determinant of human trafficking flows. Similarly, Harris and Franchino-Olsen propose the application of predictive analytics to the question of trafficking.<sup>641</sup> Tezcan and Maas<sup>642</sup> propose a network interdiction approach and Volodko, Cockbain and Kleinberg<sup>643</sup> advocate for data analytics to be applied in order to identify online trafficking patterns and activities. De Vries and Radford<sup>644</sup> have published a paper on the use of online analytic methods to identify risk markers for hard to observe crimes, such as human trafficking and Tobey et al<sup>645</sup> propose a method for detecting human trafficking through analysis of automated/online customer reviews of massage parlours (this may also be useful in other employment sectors where trafficking for the purposes of labour exploitation is known to occur). Similarly, Goyal et al<sup>646</sup> propose using new methodologies to enable identification of online recruitment scams.

The potential to provide reporting mechanisms for the public (possibly using technology to facilitate this type of reporting) deserves consideration, whereby members of the public or other parties can report online activity or other activity, which they are concerned involves human trafficking for the purposes of labour exploitation. Finally, the experiences of victims needs to be collated to inform strategies to tackle the use of technology by traffickers at different points in the trafficking process.<sup>647</sup>

## Staffing and Resources

The challenges of identifying, investigating and prosecuting trafficking activities which occur in online settings has been outlined above. A key issue that will determine success in limiting the use of technology for trafficking purposes is the deployment

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640 Sarrica, F. (2020) [The Use of Human Trafficking Detection Data for Modelling Static and Dynamic Determinants of Human Trafficking Flows](#). *European Journal on Criminal Policy and Research*, 28(4), 483-501

641 Harris, K. J., and Franchino-Olsen, H. (2022) [Predictive Analytics: A Novel Approach to Early Prevention of Human Trafficking](#). In *Paths to the Prevention and Detection of Human Trafficking*. IGI Global

642 Tezcan B., and Maass, K. L. (2023) [Human trafficking interdiction with decision dependent success](#). *Socio Economic Planning Sciences*

643 Volodko A., Cockbain E., and Kleinberg, B. (2020) ["Spotting the signs" of Trafficking Recruitment Online: Exploring the Characteristics of Advertisements Targeted at Migrant Job-Seekers](#). *Trends in Organized Crime*, 23: 7-35

644 de Vries, I., and Radford, J. (2022) [Identifying Online Risk Markers of Hard-to-observe Crimes through Semi-inductive Triangulation: The Case of Human Trafficking in the United States](#). *The British Journal of Criminology*, 62(3), 639-658

645 Tobey M., Li, R., Özaltn O. Y., Mayorga M. E., and Caltagirone S. (2022) [Interpretable Models for the Automated Detection of Human Trafficking in Illicit Massage Businesses](#). *IISE Transactions*, 1-14

646 Goyal N., Mamidi, R., Sachdeva N., and Kumaraguru P. (2023) [Warning: It's a scam!! Towards Understanding the Employment Scams using Knowledge Graphs](#). In *Proceedings of the 6th Joint International Conference on Data Science & Management of Data*

647 Campana P. (2022) [Online and Technology-Facilitated Trafficking in Human Beings](#). GRETA, Council of Europe

of staff with sufficient expertise and resources at their disposal who will be able to intervene as and when required.

Such a strategy can be informed by the provisions enshrined in the Council of Europe's (Budapest) Convention which addresses issues related to technology-related crimes.

In tackling online trafficking activity, a balance needs to be struck between overly regulated regimes versus meaningful investigatory powers by relevant authorities. There also needs to be a clear plan for who will address what issues and in this light the establishment of a national plan or strategy could operate to provide direction on what, how and by whom issues related to technology and human trafficking can and will be tackled.

## **Conclusions**

### **Scale**

We provide an overview of the scale and nature of human trafficking for the purposes of labour exploitation in the international and Irish contexts. The high numbers of people subjected to human trafficking at a global level is not reflected in the low numbers of victims officially recognised in the Irish context. However, there are possible factors which give rise to under-reporting in the Irish context, including reluctance by some victims to engage with the NRM or law enforcement authorities for fear of being criminalised themselves or of being deported back to the place from which they originally came.

Furthermore, certain policy aspects of the current NRM exclude certain categories from being included in the official statistics. This includes situations where victims opt to leave the jurisdiction and not take part in criminal investigations/prosecutions. It also includes children whose situation of vulnerability is typically dealt with under other safeguarding processes and consequently, this cohort of victims are not always recorded as trafficking victims.

The low rate of prosecutions under the relevant trafficking legislation also suggests that trafficking crimes, when detected, are not prosecuted under trafficking legislation but are categorised as something other than trafficking in the pursuit of a successful prosecution.

### **Terminology**

The problem of terminology, and in particular, the lack of an agreed vocabulary or lexicon of human trafficking hampers efforts to identify, research and address this global issue. Alongside efforts to establish an agreed terminology, there is also considerable commentary in the wider literature aimed at identifying the specific factors which constitute this form of human trafficking so that human trafficking

situations can be readily distinguished from situations where there is exploitation in a work situation but not trafficking.

In the case examples provided in this section, the difficulties in distinguishing cases which fall on the fine line between trafficking and non-trafficking cases of labour exploitation can be discerned. It is essential that service providers and decision-makers involved in deciding or determining when and if a situation involves trafficking for the purpose of labour exploitation understood the definitions and parameters of this form of human trafficking.

### **Staff Training**

Training of relevant staff and supervision of those staff is essential to aid accurate detection, investigation, prosecution and management of these cases.

The establishment or existence of a National Referral Mechanism is not enough on its own. It must be functional, fit for purpose and capable of doing the job it was set up to do. Tackling human trafficking for the purposes of labour exploitation requires sufficient numbers of relevant staff, with adequate training and resources to deliver an effective NRM which can respond promptly to requests for assistance from victims and service agencies.

### **National Protocols**

The system for addressing human trafficking in general, including for the purposes of labour exploitation, must have clear protocols for the management of issues such as interviewing potential victims (including children), it must have interagency protocols with relevant service agencies to ensure that victims receive the supports they need.

The legislative protections must be in place to ensure that a victim of human trafficking in Ireland is not deterred from seeking help because they are concerned that they will be in a worse situation if they do come forward. This requires addressing a range of issues including access to suitable accommodation, access to welfare, health, emotional and language supports, as well as adequate legal protections such as access to legal representation and not only legal advice.

### **Research**

The challenges of conducting research with a hidden population on a sensitive topic were discussed, but it is clear that additional research is necessary. There is insufficient research evidence available in the Irish context on the topic of trafficking for the purposes of labour exploitation. The data that is on file regarding cases that are designated officially as human trafficking cases should be assessed and the findings published, so that a baseline data analysis is available to policy makers, service providers, decision makers, educators and researchers in this field. A research plan

needs to be rolled out for the short, medium and long term, ideally as part of a wider strategy to establish an integrated and coherent response to this issue.

## **Summary of Key Recommendations**

**The Commission reiterates the recommendations proposed by the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons through reducing the demand fostering trafficking for labour exploitation be considered by the State. Measures such as, establishing civil and criminal liability for online platforms<sup>648</sup> and mandating online platforms to conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks; report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts.**

**The Commission recommends that the State opts into the EU Employers Sanctions Directive.**

**The Commission recommends that Seasonal Work permits are not introduced, or at the very least that such permits are used on a limited basis, while the standards are on par with those agreed by the EU Member States.**

**The Commission reiterates its recommendations that a standalone offence is introduced in Irish law for holding a person in slavery, servitude or forced or compulsory labour.**

**The Commission recommends that the Employment Permit system is reformed to enable worker mobility, progression and access to redress by issuing occupation-specific work permits.**

**The Commission recommends that the State considers the introduction of a specific “migrant exploitation protection permit” to enable migrant victims of exploitative employment situations to leave those situations quickly.**

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648 As defined by Art 2(h) of the Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. Including websites, as well as their administrators, for complicity in human trafficking, e.g. facilitating or allowing exploitative acts – such as recruitment or advertising of trafficking victims - when such platforms knew or had reason to know about of the exploitation. OSCE (2022) Proposal for strengthened provisions on combating tech-facilitated THB and on reducing demand fostering trafficking for sexual exploitation.

**The Commission recommends that the State develops a research strategy to help fill knowledge gaps related to human trafficking, specifically the experiences of victims of human trafficking for the purpose of labour exploitation, in the Irish context.**

**The Commission recommends that a National Strategy/Forum on Technology and Human Trafficking is developed.**

**The Commission recommends that this Strategy/Forum should contain a roadmap to tackle the abuse of technology by traffickers for the purposes of labour exploitation, including the staffing, training and resources that will be required, the areas of online activity that will be initially targeted for attention, the research agenda that will be conducted and the legislative gaps that will be addressed.**

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## Chapter 4: The War in Ukraine – Implications for Shared Resources, Human Trafficking and Exploitation

### Introduction

The invasion of Ukraine by the Russian Federation on February 24th 2022 triggered the largest and fastest displacement of refugees that Europe has experienced since the Second World War. As of May 23rd 2023, the Office of the United Nations High Commissioner for Refugees (UNHCR) recorded that 8,249,055 persons originating from Ukraine have been displaced into Europe, with 5,246,661 of that number being granted Temporary Protection Status<sup>649</sup> in the EU. We note that an estimated 5,352,000 Internally Displaced Persons (IDP's) were recorded within Ukraine as of January 23rd 2023.<sup>650</sup> Between 25% and 30% of the entire Ukrainian population as a result of the war.<sup>651</sup> There have been credible assertions by agencies such as Human Rights Watch of forced movement of Ukrainian nationals, including tens of thousands of children, into the Russian Federation by Russian authorities. Various sources cited by the European Parliament briefings cite figures upwards of 180,000 children having been moved from Ukraine to Russia.<sup>652</sup>

The large-scale movements of people, triggered by devastating and continuing loss of civilian life and attacks on civilian locations and infrastructure, will have long standing repercussions both within the country of Ukraine and within countries who are currently hosting those refugees. As a generator of human vulnerability, poverty and displacement, the war has direct implication for human trafficking, increased risks of exploitation, and in the Irish context – a pressure on extremely limited resources and accommodation shared by (distributed among) a range of vulnerable populations.

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649 UNHCR operational data portal: <https://data2.unhcr.org/en/situations/ukraine> Date of access May 25th 2023. Note: UNHCR data portal defines 'Europe' as follows: "Europe" corresponds to all Europe sub-regions as identified by Eurovoc ([European Union, Thesaurus Eurovoc. Volume 2, Subject-oriented version, Publications Office, 2005](#)), therefore including EU and non-EU countries belonging to Central and Eastern Europe, Northern Europe, Southern Europe, and Western Europe, plus Türkiye'.

650 UNHCR Operational Data Portal: <https://data.unhcr.org/en/country/ukr> Date of access May 25th 2023

651 Beyond Europe, at the end of 2022 approximately 270,000 Ukrainians had sought refuge in Canada and the United States. 136,000 persons had entered Canada through the Canada-Ukraine Authorization for Emergency Travel Scheme (CUAET) visa scheme and other legal migration channels. A further 735,900 Ukrainians had applied for the CUAET scheme as of the December 2022. 82,000 Ukrainians entered the United States through its Uniting for Ukraine (U4U) program. A further 34,000 entered the US through various other pre-existing visa programs, with an additional 20,000 entering the US through its land border with Mexico and sought asylum, having travelled to Mexico visa-free (European Commission Joint Research Centre report Ukraine's Population Future After the Russian Invasion: the Role of Migration for Demographic Change Published February 7th 2023 Date of Access May 25th 2023)

652 European Parliament (2023) [Russia's War on Ukraine: Forcibly Displaced Ukrainian Children.](#)

## Vulnerable Profile of War Refugees

At European level, an estimated 90% of Ukrainians displaced are women and children.<sup>653</sup> Ukrainian men aged between 18 and 60 and adult women from certain professions are prohibited by the Ukrainian Government from leaving the country and taking up residence in another country. As a result, a high proportion of those who fled Ukraine were the female and child members of family units, where the male family members within the age range specified above remained in Ukraine. Thus, the demographics of those who have sought refuge abroad, coupled with the sudden and traumatic nature of the invasion, create a situation of high needs, high vulnerability and potential risks of exploitation and abuse for those who have fled.

## Risks of Exploitation

The chaotic and immediate nature of events and movement of persons as a result of the war is unprecedented in European history. It represents a significant and ongoing humanitarian crisis in responding to the needs of those who have arrived. In an analysis by the UNODC,<sup>654</sup> they state that the vulnerabilities of those displaced to human trafficking emanate from:

- ▶ Lack of income generation opportunities;
- ▶ Interruption in provision of essential services;
- ▶ Issues with rule of law;
- ▶ Internal displacement; and
- ▶ Risk of exploitation in armed conflict.

Prior to 2022, Ukraine represented a significant country of origin for detected trafficking cases in Europe. Between 2017 and 2022 victims trafficked outside Ukraine were detected in 40 countries in Central Europe, Southern Europe and Eastern Europe.<sup>655</sup> Clear correlation can be determined between the conflict in Ukraine in 2014 and the resultant impact of detected cases of trafficking in the years afterwards.

In January 2023 the OSCE Office for Democratic Institutions and Human Rights ('ODHIR') published the findings of a survey on the safety and security of women refugees from Ukraine. In that survey close to 1000 refugee women described the issues of safety they perceive and have experienced.

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653 United Nations Office on Drugs and Crime (UNODC) (2022) [Conflict in Ukraine: Key Findings on Risks of Trafficking in Persons and Smuggling of Migrants](#)

654 Ibid

655 United Nations Office on Drugs and Crime (UNODC) (2022) [Global Report on Trafficking in Persons 2022](#)

Respondents reported that they had experienced:

- ▶ sexual harassment;
- ▶ domestic violence;
- ▶ received requests for sexual favours;
- ▶ received proposals to become involved in the sex industry;p
- ▶ received proposals to become involved in pornography;
- ▶ received offers regarding surrogacy; and
- ▶ issues such as fraud, threats, coercion and blackmail.

Some respondents reported that their children had experienced:

- ▶ bullying, discrimination and harassment in educational environments;
- ▶ discrimination and harassment in the community;
- ▶ experienced sexual harassment;
- ▶ received requests for sexual favours; and
- ▶ and requests to produce pornographic materials.

Other notable issues were reported such as:

- ▶ lack of knowledge of local language;
- ▶ lack of financial resources;
- ▶ inability to rent accommodation;
- ▶ lack of healthcare;
- ▶ lack of social network and community;
- ▶ domestic violence; and
- ▶ discrimination.

In March 2023, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings and UN Special Representative of the Secretary-General on Sexual



Violence in Conflict made a joint statement<sup>656</sup> under the Swedish EU Presidency conference in Stockholm. The statement flags in particular the surge in online searches for sexual services from Ukrainian women in Europe in the preceding 12 months.<sup>657</sup> In Sweden, 30 of the 38 men arrested for seeking sexual services in March 2023 were seeking Ukrainian women.

## Human Trafficking in the Context of the War

The examples outlined in the previous section demonstrate both the potential vulnerability to exploitation experienced by Ukrainian women and the willingness to exploit by those who see opportunity in the precarious nature of their current state. Nonetheless, overall at European level, instances of human trafficking resulting from the 2022 invasion and resultant displacement remain underreported and constitute a developing area for data collection and support services. Measures such as the Temporary Protection Directive, with its implicit clear legal migration route and access to supports and services in host countries, may prove to have been a significant mitigating factor to the types of systemic vulnerabilities which exacerbate the risk of trafficking by significantly reducing the need to use irregular routes and means for those fleeing conflict.

Some initial indications exist at European level of instances which bear the hallmarks of suspected trafficking. In a survey of instances of trafficking as reported and/or investigated by European authorities, conducted by the EU Fundamental Rights Agency in the latter half of 2022, some preliminary information can be ascertained as regards the developing nature of this issue at present. Of the differing number of cases being investigated as suspected trafficking cases in several countries, many were found by the authorities to not constitute trafficking. However, issues of exploitation within the sex trade, illegal adoption and forced surrogacy, labor exploitation and online exploitation of vulnerable Ukrainians through social media channels were evident.

This lack of upsurge in confirmed trafficking cases in this context, to many experts in the field, is conspicuous by its absence and in assuming that minimal levels of exploitation have occurred. As evidenced earlier, following the 2014 conflict in Ukraine, trafficking impacts were seen in the period 2016 to 2021. What may be perceived as an absence of cases now, therefore, could well be in reality a lag in detection and visibility of the issue. International bodies such as ODHIR have thus made strong

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656 UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (2023) [‘Joint Statement by OSCE Special Representative Richey and UN Special Representative Patten on preventing and responding to trafficking for the purpose of sexual exploitation and sexual violence in the context of the Russian invasion of Ukraine’](#) [accessed 25 May 2023]

657 Editorial Board (2023) [‘Ukrainians suffered at home. They are preyed on as refugees, too’](#). *The Washington Post* (5 February)

recommendations<sup>658</sup> to state authorities to significantly improve the environment for prevention and early detection of trafficking cases, such as:

- ▶ Establishing vetting procedures for accommodation providers, including criminal record checks, and develop long term safe housing solutions;
- ▶ Regulating employment agencies and increasing labour inspections
- ▶ Providing Ukrainians with information on rights in easy to understand formats
- ▶ Monitor and remove online disinformation concerning the rights of Ukrainians
- ▶ Providing awareness raising materials and access to support services such as hotlines in Ukrainian language
- ▶ Training all stakeholders working with Ukrainian refugees as regards the indicators of trafficking and national referral mechanisms
- ▶ Providing appropriate training to law enforcement
- ▶ Setting up robust registration systems for separated and unaccompanied children

These measures are seen as the best means through which exploitation of vulnerability can be avoided and/or detected where occurring.

### Implications for Children

In the first two months of the war, UNICEF estimates that almost two thirds of Ukrainian children were displaced internally within Ukraine and externally to neighboring countries. This constitutes a generationally impacting child trauma event of devastating proportions.

Prior to invasion, Ukraine had a significant number of children in institutionalized care settings – some 90,000 living in institutions, orphanages, boarding schools and other care facilities, with over 50% of those children suffering from disabilities.<sup>659</sup> Tens of thousands of those children were hastily returned to families at the outbreak of the conflict, with a small number being transferred initially to neighbouring countries such as Poland. Additionally, an estimated 4.1 million children are in need of care within Ukraine,<sup>660</sup> where UNICEF analysis suggests that the number of children living

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658 See [ODIHR Survey on the safety and security of women and refugees from Ukraine](#)

659 UNICEF (2022) '[Two months of war in Ukraine creating 'a child protection crisis of extraordinary proportions' - UNICEF Geneva Palais briefing note on the situation of children in Ukraine'](#) (6 May) [Accessed 25 May 2023]

660 UNICEF (2023) [Ukraine Humanitarian Situation Report No. 27](#)

in poverty has almost doubled from 43% to 82%.<sup>661</sup> As mentioned earlier, an estimated 180,000 children have been illegally moved (mass abducted) from Ukraine to Russia.<sup>662</sup>

Responding to the needs of children within Ukraine and those displaced outside Ukraine represents a logistical and resource dilemma, the scale of which is still yet to be determined. Children displaced by conflict will often suffer from extreme PTSD and depression as a result of traumatic experiences witnessed or within the family, coupled with potential family separation and undermining of core developmental settings such as education, community and familial networks and peers. Vulnerabilities of this nature both within and outside Ukraine, coupled with precarious and varied reception conditions across Europe, create an environment where exploitation and abuse can occur, with individuals and criminal networks poised to exploit the deteriorating standards.

Further vulnerability exists in the lack of centralised EU level monitoring and tracking of entry of unaccompanied minor children, with a dearth of data currently persisting as regards the number of such children who have entered the EU. Of the tens of thousands of Ukrainian children who have entered Europe since February 24th 2023, no definitive number exists as to how many were unaccompanied or accompanied by individuals who did not constitute direct family members or guardians. Indicative examples exist from some countries bordering Ukraine, such as in Romania where in the months immediately following the invasion of Ukraine some 4,620 unaccompanied children arrived in Romania.<sup>663</sup> In the same timeframe, it is estimated that some 140,000 children passed into Moldova, with 36,000 initially remaining. Child protection experts there estimate that approximately 2% of those children would be separated from family or unaccompanied<sup>664</sup>. Indeed further data gathering challenges exist in the fact that, in many neighbouring countries, the capacity did not exist to register Ukrainian nationals entering or passing through the country for a number of weeks. In that time, tens of thousands of women and children passed through European countries, with the number of children unaccompanied in that initial wave unknown.

### Response to the War Refugees by the EU

Condemning the Russian invasion in the strongest way possible, the EU took quick and decisive action to enact measures which responded to the needs of the hundreds of thousands who would be displaced and seeking refuge. The single most important and impactful measure can be seen in the almost immediate activation, for the first time since its inception, of the Temporary Protection Directive(2001/55/EC of 20 July

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661 Filippov A. (2023) [‘War in Ukraine pushes generation of children to the brink, warns UNICEF’](#) reliefweb (21 February)

662 European Parliament (2023) [Russia’s War on Ukraine: Forcibly Displaced Ukrainian Children.](#)

663 World Vision [Impact of War on Ukraine’s Children: A Child Protection Report](#), p. 3

664 Ibid

2001)<sup>665</sup>. Also of relevance to us as a National Rapporteur is the swift design of ‘A Common Anti-Trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine’, under the remit and lead of the EU Anti-Trafficking Coordinator.

### EU Temporary Protection Directive

The protection afforded under this Directive differs from the well-known ‘International Protection’ in that it is not an individually assessed form of protection, but a temporary means of offering protection to a defined group. It is seen as an exceptional measure and time bound; and it can be extended unto a maximum of three years,<sup>666</sup> thus offering protection to refugees of the war against Ukraine up until March 2025. The protection is not intended as a long term status and considerable implications exist as regards how the status of those benefitting may continue to reside in their host country following the expiry or discontinuation of that status and whether that status is deemed reckonable by the host country for a variety of residence purposes.

The Temporary Protection provisions, which grant immediate rights in areas such as immigration status, access to employment, social protection, healthcare and education differ from the entitlements of those International Protection seekers who may spend many months and years in the International Protection determination process before attaining similar levels of rights. This distinction causes considerable difficulty linked to delivery of, in effect, a differing level of service within the State. However, while Beneficiaries of Temporary Protection (‘BOTP’s’) are granted considerable rights ‘upfront’, in the long term those rights may be withdrawn or reduced once that status is discontinued, whereas a person who achieves refugee status under the 1951 Convention is granted that status on a permanent basis. Considerable actions are required at national level within EU Member States to reduce inequality of service and rights for those who seek protection in the EU.

As of the end of March 2023, 3,888,345 beneficiaries of temporary protection had been recorded in the EU. The main EU states receiving persons of that status were Germany (27% of overall TP beneficiaries), Poland (25%) and the Czech Republic (8%).<sup>667</sup>

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665 Activation of the Temporary Protection Directive required a majority vote at the European Council, following a proposal from the European Commission. On March 2nd 2022 the European Commission published its proposal, which was then considered by the meeting of Justice and Home Affairs Ministers Council on March 3rd and 4th 2022. The Council agreed on its adoption, thus activating the Council Directive 2001/55/EC of 20 July 2001 immediately. Prof. Mario Savino and Francesco Luigi Gatta, [‘On the Brink of a New Refugee Crisis - Temporary protection as a paradigm shift?’](#), 10 March 2022.

666 Halpin R. (2022) [Temporary Protection: the Action of the Temporary Protection Directive in Response to the Crisis in Ukraine](#). Houses of the Oireachtas Library and Research Service.

667 Eurostat [Temporary Protection for Persons Fleeing Ukraine – monthly statistics](#). Note: data set due for update on June 9th 2023



‘Communication on welcoming those fleeing the war in Ukraine: Readyng Europe to meet the needs’,<sup>669</sup> which addresses the specific vulnerability of women, children, elderly people and persons with disabilities to the risks of trafficking in human beings when arriving in the EU. In its conclusions of 24-25 March, the European Council underlined that particular attention should be paid to the needs of the most vulnerable and measures to prevent and detect human trafficking.<sup>670</sup> On March 28th 2022, the Justice and Home Affairs Council published a ‘10 Point Plan for stronger European Coordination on welcoming people fleeing the war from Ukraine’<sup>671</sup>. Among its recommendations, Point 5 recommended a Common Anti-Trafficking Plan to preventing human trafficking and protecting victims. Point 6 of the plan recommended the use of the aforementioned Solidarity Platform, under the lead of the EU Anti-Trafficking Coordinator, as the mechanism for greater coordination and support of EU Member States in this area.

On May 11th 2022, the EU Anti-Trafficking Coordinator published a new EU Common Anti-Trafficking Plan<sup>672</sup> in response to the need for enhanced protection of those fleeing Ukraine. This plan was developed by the EU Anti-Trafficking Coordinator with EU and national agencies, which included us as a National Rapporteur on Human Trafficking and the Department of Justice as a National Coordinator. The Plan builds on the existing [EU Strategy on Combating Trafficking in Human Beings](#), presented by the European Commission on 14 April 2021, and follows the [EU Anti-Trafficking Directive](#) (Directive 2011/36/EU).

## The EU Common Anti-Trafficking Plan

- ▶ Strengthening awareness raising on the risks of trafficking in human beings and setting up helplines: this will include provision of relevant information through emergency helplines and material, e.g. leaflets and posters, and the

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669 European Commission (2022) [Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Welcoming those Fleeing War in Ukraine: Readyng Europe to Meet the Needs](#) (COM 2022) 131 final)

670 European Council (2023) [‘Note from General Secretariat of the Council Delegations on European Council Meeting \(24 and 25 March 2022\) – Conclusions’](#) (EUCO 1/22)

671 European Commission (2022) [The 10 Point Plan for Stronger European Coordination on Welcoming People Fleeing the War from Ukraine](#)

672 See [Common Anti-Trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine](#)

setting up of dedicated websites, apps and awareness raising campaigns;

- ▶ Reinforcing prevention against trafficking in human beings: examples here are security checks of the entities and individuals offering accommodation and checks of the suitability of the offered accommodation, if allowed under national law;
- ▶ Enhancing the law enforcement and judicial response to trafficking in human beings: Member States should, *inter alia*, make full use of existing instruments for operational cooperation, report all suspicious cases and launched investigations to Europol via SIENA, and systematically exchange data on investigations on human trafficking related to the war in Ukraine;
- ▶ Improving the early identification, support and protection of victims of trafficking in human beings: actions in this regard will include unconditional assistance, support and protection measures set forth in the EU Anti-Trafficking Directive as soon as the authorities have reasonable-grounds for believing that the person may have been exploited as well as programmes addressing the long-term

needs of victims in view of their recovery and reintegration;

- ▶ Addressing the risks of trafficking in human beings in non-EU countries, especially Ukraine and Moldova.

In summary, while issues of human trafficking and exploitation are yet to materialise in a statistically impactful sense at European level, the initial signs of potential exploitation and poor treatment of Ukrainians in certain settings can be ascertained from the testimony of Ukrainians polled and interviewed in such research pieces as was carried out by the Fundamental Right Agency.

Clear patterns are beginning to emerge of instances where inappropriate and exploitative approaches have been described by Ukrainians in the journey into Europe and across the continent. Vigilance, policy and resource preparedness and collaborative, cross sectoral activity is needed in all member states as envisioned by the guidelines and action plan articulated above at European level.

Additionally, a large scale engagement piece is required to ‘reach out’ into the locations that Ukrainians are being accommodated to inform and communicate on rights and entitlements of those suffering exploitation, and ultimately build trust between that community and civil society, mainstream service providers and state agencies. It is crucial that an environment is created whereby disclosure of issues can occur in a manner which can be formally tracked, engaged with and supported to recovery.

### **National Responses in Ireland**

Ireland was part of the design and implementation of the EU response and developed its own national approaches to the war refugee crisis. Both the State and the Civil society were major factors in deploying a much needed and timely response to the humanitarian issues at hand. The State acted swiftly to eliminate any administrative blocks to securing the protection of war refugees and remained an active participant and implementer of the EU-coordinated measures to alleviate the hardship of the full scale invasion on the people affected.

Simultaneously, an unprecedented level of public engagement has evolved in communities across Ireland since February 2022 in response to the emerging needs of Ukrainians and other International Protection seekers who have arrived in Ireland. Volunteering, community development initiatives and civil society support have played a crucial role in building an infrastructure of welcome in local communities and are



playing a significant role in aiding the integration process for those who have come to Ireland.

### State Response, Visa Waiver and Temporary Protection

While Ireland did not immediately adopt the Temporary Protection Directive in 2001, it eventually opted into the Directive in 2003.<sup>673</sup> Prior to February 25th 2022, Ukrainian nationals were required to apply for a visa to enter Ireland for any purpose. Just a day after the invasion, Minister for Justice Helen McEntee announced that Ireland would immediately lift all visa requirements between Ukraine and Ireland.<sup>674</sup> On March 1st 2022, Minister McEntee stated in Dáil Éireann that the government of Ireland was supportive of the activation of the Temporary Protection Directive, and that officials within her Department had commenced preparations on the assumption that an EU level decision was imminent.<sup>675</sup>

It must be understood that the activation of the Temporary Protection Directive provided short term certainty as regards immigration status and access to rights in the initial stages of response. The secondary practical needs for accommodating and providing information to Ukrainians who have arrived, as part of a coordinated state response then became important.

The Government launched a dedicated webpage aimed at centralising information for concerning Ireland's response to the invasion of Ukraine.<sup>676</sup> This portal operating in Ukrainian and other relevant languages, directed offers of support from the general public, and offers of assistance from businesses in Ireland. The information for Ukrainians contains details of what to expect upon arrival in Ireland, and what processes concerning registration for temporary protection, receiving a PPS number and how accommodation may be provided.

Initially a reception hub was established in Dublin Airport where Ukrainians were met by immigration officials, staff from the International Organisation for Migration (IOM), officials from the Department of Social Protection and other support services. This innovative approach has been hailed by many as good practice and marked a significant example of government departments and civil society coming together to deliver immediate structured access to administrative processing and information. From May 2022, reception was moved to the CityWest Convention Centre which combined

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673 [2003/690/EC: Commission Decision of 2 October 2003 on the request by Ireland to accept Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof \(notified under document number C\(2003\) 3428\)](#)

674 Department of Justice (2022) '[Minister McEntee announces immediate lifting of visa requirements between Ukraine and Ireland](#)' (15 March)

675 Department of Justice (2022) '[Dáil statement by Minister for Justice Helen McEntee on Russian invasion of Ukraine](#)' (15 March)

676 See [Ireland's response to the Russian invasion of Ukraine](#) [website]

administrative aspects with initial accommodation before BOTP's are moved to regional locations for further accommodation.

To further assist in cross departmental coordination, a Senior Officials Group, comprised of senior officials from all government departments, was established under the Department of the Taoiseach and has met weekly since the beginning of the crisis.<sup>677</sup> In addition, a 'Stakeholder Group' has been established and is now chaired by Minister of State Joe O'Brien, which brings together officials of government departments and civil society groups to share information and elevate issues. An 'Accommodation Working Group' has also been established, chaired by a former manager of a local authority area, which oversees aspects of the development of accommodation options.

At community level, Community Response Forums were established in each local authority area, chaired by the Chief Executive of that area, which aim to bring together local statutory agencies and other stakeholders to share information and develop responses at local level.

While this level of governmental engagement is innovative and appropriate, the pace at which medium to long term development of responses, particularly in the area of accommodation, remains a considerable challenge. In effect, Ireland's response to the needs of Ukrainians, while immensely commendable and innovative in many ways, remains an emergency crisis response over one year post invasion, and remains in need for considerable further development into the medium to long term as the crisis continues.

### **Civil Society Response and the Ukraine Civil Society Forum**

While the Government has primary responsibility for providing humanitarian relief, civil society in Ireland plays a huge role in delivery on the ground. To assist with overall coordination of civil society responses, the Ukraine Civil Society Forum was established in the weeks following the invasion of Ukraine. Founded in March 2022, the Forum is funded by the Community Foundation of Ireland, and hosted by the Immigrant Council of Ireland and. As of May 2023, the forum membership comprised of 84 organisations, while their affiliations magnify the reach to a further 500+ organisations regionally.<sup>678</sup>

The Ukraine Civil Society Forum is a short-term, responsive initiative convened by Civil Society organisations acting collectively to support the emergency reception and integration of Ukrainian refugees in Ireland. The initiatives' purpose is to connect community responses nationally and sectorally. This coordination centres around

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677 Houses of the Oireachtas Senead Éireann Debate (2022) [Ukraine War](#) (2 June)

678 The forum meets on a monthly basis (previously twice monthly prior to April 2023), with Cluster meetings taking place on a regular basis between overall forum meetings. The Forum utilizes Slack and Zoom to facilitate continual discussion and information sharing online.

information sharing amongst stakeholders, avoiding duplication of efforts, identifying gaps in provision, sharing solutions, identifying trends and patterns and escalating where necessary to the Government to address. The Initiative aims to engage constructively with the State's own emergency response structures.<sup>679</sup>

The Forum is organised around a number of 'clusters' to aid information exchange, issue escalation and knowledge transfer (see Diagram 2). Strategic oversight is provided by a 'Core Group' comprising the Chairs of each cluster and two representatives from the Ukrainian community in Ireland.



© Ukrainian Civil Society Forum

More broadly speaking, civil society organisations in Ireland rapidly responded to the immediate circumstances of Ukrainian war refugees through direct engagement, outreach and the provision of services at community, regional and national level. Organisations such as Crosscare, Doras, the Immigrant Council of Ireland, the Irish Refugee Council, the Migrant Rights Centre Ireland, Nasc, and others adapted their services and resources to meet the immediate increase in demand and complexity of issues which presented.<sup>680</sup>

679 The objective of the Ukraine Civil Society Forum (UCSF) could be accessed here <https://www.immigrant-council.ie/campaign/ukraine-civil-society-forum>

680 See [CrossCare](#) [website]; [Doras](#) [website]; [Immigrant Council of Ireland](#) [website]; [Irish Refugee Council](#) [website]; [MRCI](#) [website]; [NASC Ireland](#) [website]

Notable examples of good practice were developed, such as the national dedicated helpline in Ukrainian, developed by the Irish Refugee Council, engagement and outreach with Ukrainians in the accommodation centres in which they were located regionally by organisations such as Doras and Nasc, and the use of webinars, information helpline and printed resources by the Immigrant Council, UNHCR Ireland<sup>681</sup> and others. Ukrainians themselves have also organised within their community, with groups such as the Association of Ukrainians in Ireland and Ukrainian Action playing prominent roles in the national response to the issue. Migrant-led initiatives such as Together Razem adapted services to engage with the Ukrainian community.<sup>682</sup>

Organisations not directly related to the issue of migration also adapted services, translated materials and sought to support the Ukrainian community and meet the extraordinary need, such as the Children’s Rights Alliance, LGBT Ireland, Ruhama, Dublin Rape Crisis Centre, and Cairde.<sup>683</sup> Community Work Ireland also engaged immediately with the emerging issue and have played an important role across Ireland in supporting Ukrainians and their host communities from a community development perspective. The Family Resource Centres National Forum and Family Resource Centres across Ireland continue to play a crucial role at local level in responding to the needs of Ukrainians and the host community, providing local settings, meeting spaces and supports in numerous different areas. In a survey carried out of Family Resource Centres nationally, 98.8% of the responders stated that they had been involved to some extent in the immediate support to Ukrainian nationals at community level. In terms of accommodation, the initiative ‘Helping Irish Hosts<sup>684</sup>’ has developed in the past 12 months to work with families who have voluntarily offered to share their home with Ukrainians fleeing the conflict.

It must be understood and acknowledged, all of the above mentioned organisations engage with the issue of International Protection and migrant rights more broadly and, while some resources have been developed in response to the particular needs of Ukrainians, these groups continue to provide support to and engage with International Protection applicants, refugees and other migrant communities. As a result, increasing capacity within civil society and community based groups has been, and continues to be, a challenge. A further challenge exists in the provision of services particularly to one nationality, though the needs of that group are large and the sudden influx of tens of thousands of persons warranting dedicated responses. Increasingly, civil society groups and community initiatives are in practice seeking to make no distinction

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681 UNHCR Ireland – [Help Ireland: People feeling Ukraine](#) [website]

682 [Ukrainians in Ireland](#) [website]; [Together-Razem](#) [website]

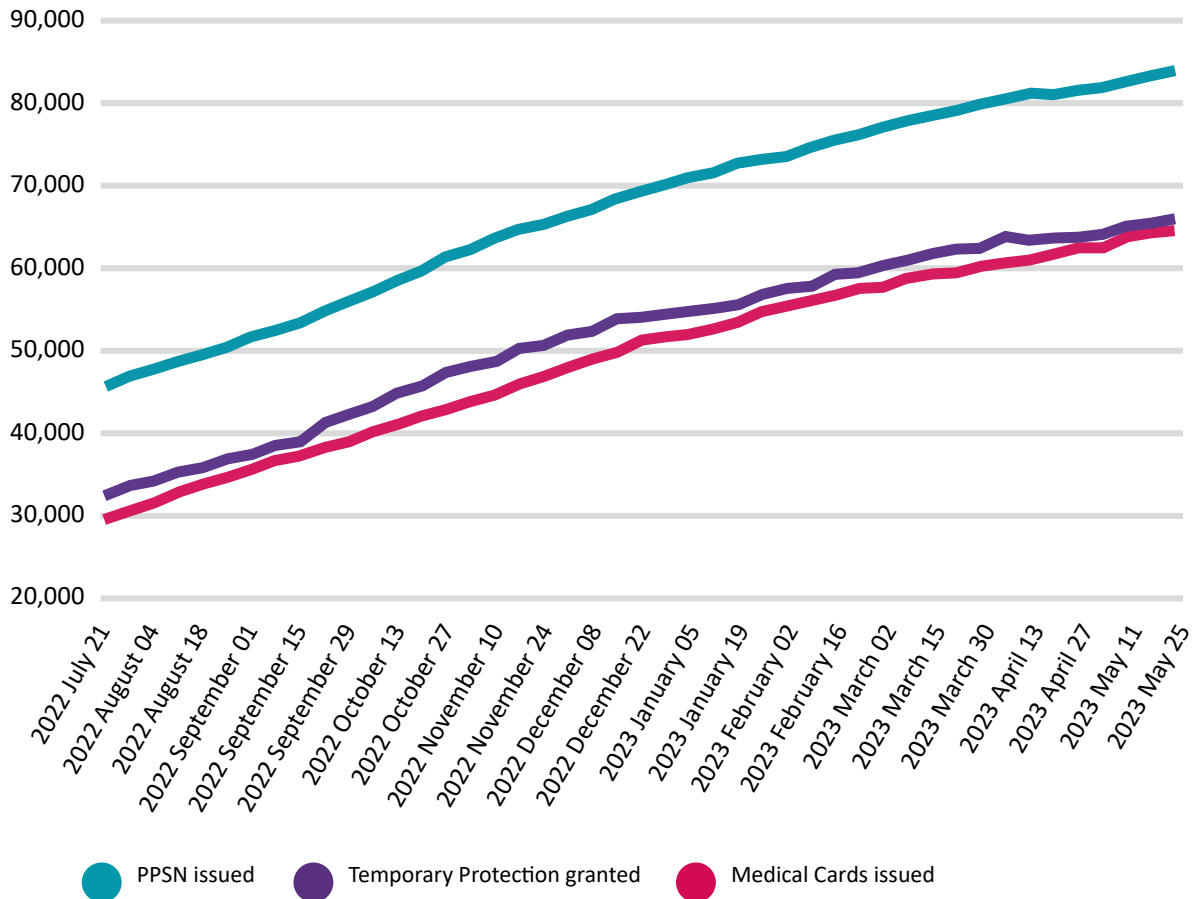
683 Children’s Rights Alliance (2022) [The Children’s Rights Alliance You’re your Rights Guidance](#); LGBT Ireland – [Support for LGBTI+ People Fleeing Ukraine](#); [Ruhama](#) [website]; DRCC – [Information in Ukrainian and Russian on supports for victims/survivors of sexual violence](#); [Cairde](#) [website]

684 [Helping Irish Hosts](#) [website]

between International Protection applicants, regardless of their country of origin, while the need for dedicated activities in support of Ukrainians (particularly where English language limitations persist) will continue to be necessary and appropriate.

### Shared Resources and Challenges

#### — Overall trend for key metrics of Beneficiaries of Temporary Protection



As of the 25th of May 2023 there have been 83,348 persons granted Temporary Protection in Ireland. Estimates from the Central Statistics Office suggest that approximately 17% of those granted status since March 2022 have since left the State. While the rate of arrival is variable to some degree, on average 1,600 new arrivals travel to Ireland on a monthly basis at present. Of those in Ireland, three quarters are women and children: 29% are children, 48% are adult women, and 23% are adult men. To date, 83,630 PPSN have been issued to Ukrainians, along with 64,328 medical cards.<sup>685</sup>

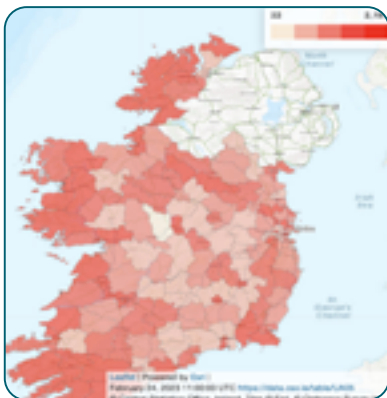
685 Central Statistics Office – [Ireland’s Relationship with Ukrainian People and their Economy](#)

## Accommodation

KERRY COUNTY COUNCIL	6,557	MEATH COUNTY COUNCIL	1,733
DONEGAL COUNTY COUNCIL	5,159	SLIGO COUNTY COUNCIL	1,508
CLARE COUNTY COUNCIL	3,789	WESTMEATH COUNTY COUNCIL	1,412
CORK COUNTY COUNCIL	3,684	WEXFORD COUNTY COUNCIL	1,383
DUBLIN CITY COUNCIL	3,143	WICKLOW COUNTY COUNCIL	1,342
MAYO COUNTY COUNCIL	3,033	WATERFORD CITY AND COUNTY COUNCIL	1,292
SOUTH DUBLIN COUNTY COUNCIL	2,453	GALWAY CITY COUNCIL	1,153
GALWAY COUNTY COUNCIL	2,315	CAVAN COUNTY COUNCIL	1,108
LIMERICK CITY AND COUNTY COUNCIL	1,963	CORK CITY COUNCIL	1,102
	1,813		1,039

82% of arrivals coming to Ireland from Ukraine required accommodation and are provided with state provided accommodation in various settings, ranging from hotel rooms, bed and breakfast accommodation, other types/locations of rented accommodation and congregated settings. As of May 25st 2023, 64,881 BOTPs were currently in State provided accommodation and private pledged accommodation. Of this, BOTPs in 'short term' accommodation (Hotels, Guesthouses, Emergency Shelters) numbered 54,352, while BOTPs in 'longer term' accommodation (pledged homes, offer a home scheme) numbered 10,305. According to CSO analysis, Ukrainians are spread throughout the 26 counties, with higher concentrations in certain local authority locations. The majority of accommodation centres have been subcontracted by central government and local authorities, with over 770 contracts currently in place to provide accommodation to Ukrainians.<sup>686</sup>

## Integration



23,600 children and young people from Ukraine are currently in residence in Ireland under temporary protection. School enrolment rates are high, with 93% enrolment at primary level and 82% in secondary. However, an issue exists in determining the extent to which Ukrainian children are accessing education in Ireland (in person) and in Ukraine (online). In the 2023 survey by Ukrainian Action, described in detail below) it was reported that 43% of children surveyed were

686 Leahy P. (2023) [‘Almost 90 Ukrainians refugees arriving in Ireland every day, Oireachtas committee to hear’](#) The Irish Times (30 May)

in education in both settings. Keeping a connection with home education has been described as an important factor in this anomaly, with the possibility of returning to education in Ukraine being a strong determining motivation. In the long term, however, this dual approach to education may take a considerable toll on children in terms of workload, strain and mental health.

Among adults, 15,720 of those who have come to Ireland are in employment (40% of overall figure), 12,622 are in education (29%). In majority, adults in education and undertaking English language classes. 77% of BOTP's are in receipt of a medical card.

The above represents a significant initial integration achievement, with education and employment playing key roles in providing settings for community integration and building a path to self-sufficiency for Ukrainians. The large percentage of Ukrainians who have secured employment in Ireland (or remain in their original employment from Ukraine but do so remotely) provides strong testament to the resilience of that community and their desire to contribute to their new home and attain independence following the trauma of their displacement.

## Challenges

Despite the notable integration advances, the accommodation situation of Ukrainians remains a significant destabilising element of their integration journey. In that regard, the Commission is of the opinion that the short term and reactive nature of Ireland's response to date needs to evolve into mid to long term durable solutions which support better integration. By now, undisputed evidence exists of the long term detrimental impacts of institutional living (direct provision arrangements) for those that endure it, particularly children and those with additional needs and vulnerabilities.

In 2023, the organisation Ukrainian Action, supported by the Department of Children, Equality, Disability, Integration and Youth carried out an extensive survey of Ukrainians in Ireland. In total, between January 27rd and February 3rd 2023, 7938 Ukrainians responded to the online survey, representing 4273 adults and 3665 children and approximately 10% of the Ukrainian community in Ireland. Its findings give crucial insight into the reasons many Ukrainians chose Ireland, what the current barriers they experience are, and what in turn their future needs may be. 99% of respondents were in Ireland as a BOTP.

When asked what their primary motivation in coming to Ireland was, 73% prioritised that English language was the primary pull factor, followed by distance from Russia (53%), state support for accommodation (50%), simple and clear entry rules (40%), and family connections (35%).

99% of those who responded stated that they had a PPS number. 87% stated that they had a medical card, and 67% had successfully opened a bank account. However, just

8% of those surveyed had a driving licence. 48% of those surveyed stated that they use public transport as their primary means of travel, followed by 33% on foot and 15% who stated they had their own car.

84% of respondents stated that they were learning English, through various means ranging from access to structured classes to using online tools and applications. According to their parents, 57% of children describe language capacity as their most pressing challenge.

22% stated that they were in employment, with a further 7.5% stating that they were in employment and seeking to improve their job. 35% did not have a job but were seeking one. 35% did not have a job and were not seeking one, attributing this to various reasons, such as their having a low level of English language proficiency, the pressures of caring for children, the location of their accommodation, the type of accommodation, their age and their overall health condition. When surveyed as regards the barriers they experience in accessing employment, 20% stated that their accommodation situation undermines their job search, 18% stated that they were finding it hard to get a job, particularly in their career pre conflict, and 17% stated that their low level of English proficiency was proving a barrier to progression.

In terms of access to medical care, 71% described issues in accessing health care, primarily related to lack of knowledge of the Irish system and lack of knowledge on what their rights to access healthcare are.

In the developing area of mental health support, just 5% of respondents were in contact with a formal psychological one to one support via a psychologist, 2% were attending a support group, 17% were seeking psychological support and 52% felt that they did not need support of this nature.

Finally, when asked about their future intentions, 41% of respondents to this survey reported that they had decided to remain in Ireland, 32% were undecided and 24% remained clear in their commitment to return to Ukraine as soon as conditions allow. These statistics, which can be seen as representative of the intentions of Ukrainians in Ireland overall, thus place in stark reality the need to develop a well-structured and resources integration plan for Ukrainians in Ireland, in tandem with other International Protection seekers and migrant groups. There is, in the numbers employed and in education, a clear demonstrated desire amongst Ukrainians in Ireland to work, to be self-sufficient and to contribute to their new home in Ireland – it is imperative for their wellbeing and that of communities all over Ireland that they be given the opportunity to do so.



## Suspected Cases of Human Trafficking

As one of the thematic areas of the Ukraine Civil Society Forum mentioned above, the Immigrant Council of Ireland have convened cluster meetings to monitor developments in relation to human trafficking within the context of those who have arrived in Ireland since February 2023. Mirroring the experience at European level, definitive cases where human trafficking occurred and was formally identified by authorities have not presented to support services or been formally identified by relevant authorities to date. However, instances where suspicions of human trafficking have been detailed through media reports. In June 2022, the Department of Justice confirmed that there were two cases of which authorities were aware in which human trafficking was suspected, though not confirmed or formally identified.<sup>687</sup> Similarly in July 2022, a case of suspected child trafficking of a Ukrainian minor was brought before the courts, but it is not clear to date if formal recognition of that child as having been identified as a victim of trafficking has occurred.<sup>688</sup>

Widespread provision of accommodation and financial supports by the Irish government, coupled with the clear legal pathway to migrant and reside provided by the waiving of entry visas and the provision of temporary protection may in time be found to have created a context where the likelihood of exploitation and human trafficking occurring was significantly diminished. However, as stated above in regards to the international context on this issue, the lack of formal identification of cases where trafficking has occurred in the movement of Ukrainian nationals to Ireland should be treated cautiously, as lack of detection may be evidence of a lag in the issue presenting rather than an absence of it having occurred. Significant investment is needed to build trust and lines of communication with Ukrainian nationals residing in Ireland to engender the environment where disclosure of issues of this nature may occur. Bridging the language barrier, provision of information on what the indicators of human trafficking are, providing environments for support and trust building, and access to mental health and gender based violence supports are all seen as crucial elements of creating the environment for disclosure and recovery. The detailed plan and recommended actions set out in the EU Anti-Trafficking Plan as articulated by the EU Anti-Trafficking Coordinator set out clear provisions for actions member States should take to respond in this area, and provides a crucial framework which Ireland can incorporate into the national response.

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687 Power J. (2022) [‘Officials aware of two suspected cases of Ukrainians trafficked to Ireland’](#) *The Irish Times* (21 June)

688 Ibid

## **Summary of Key Recommendations**

Given the ongoing and ever evolving nature of the situation, the Commission outlines a set of practical measures that should be implemented as a matter of priority. To avoid an added crisis of human trafficking and human rights abuses against those fleeing the war in Ukraine:

**The Commission reiterates its recommendation that the Department of Justice launches and coordinates a nationwide, targeted Anti-Trafficking campaign raising awareness of the specific risks for those fleeing Ukraine.**

**The Commission recommends that as part of that campaign, every Ukrainian arriving in Ireland, as well as those already accommodated throughout the state, should be given an information leaflet on Human Trafficking in Ukrainian (and other relevant languages) in simple, easy to understand format with relevant contact points through various modes of communication (telephone, email, online texting etc.).**

**The Commission recommends that civil society organisations are resourced to provide outreach into accommodation settings where Ukrainians are located to provide information and build trust with Ukrainians on the issue.**

**The Commission recommends that resources are provided to community based settings such as Family Resource Centres and local women's groups to provide welcoming, family orientated spaces which can be utilised to link with Ukrainians regionally. These settings can then in turn be utilised as information provision settings where talks, leaflets and referrals to support from expert services may be provided.**

**The Commission recommends that further investment is made available to IPAS and the Department of Housing to increase the provision of long-term, stable and safe accommodation options beyond the use of hotels, hostels, and congregated settings, with extra attention paid to the gender-specific, age-specific and trauma oriented needs of refugees.**

**The Commission reiterates its recommendation that material and psychological assistance is offered to eliminate the potential involvement of bogus and exploitative assistance to refugees in Ireland.**

**The Commission reiterates its recommendation to centralise and coordinate the response by means of national registers, coordination of existing hotlines and central points of contact in appropriate languages through the involvement of resident**

**Ukrainian community and representative groups with deep communication networks such as Ukrainian Action as much as possible.**

**The Commission reiterates its recommendation that to avoid compounding hardship and trauma, the State ensure Ukrainian families are not separated due to different nationalities.**

**The Commission reiterates its recommendation that awareness is raised on the employment rights of refugees on temporary permits and to alert the labour inspectors to be vigilant to high-risk sectors, loopholes and all forms of exploitation.**

**The Commission reiterates its recommendation that pornography, sex and escort websites, where Ukrainian women have traditionally been objectified should be monitored.**

**The Commission recommends that situations of exploitation (taking advantage) that can leave people, especially women and children, vulnerable to trafficking due to the enhanced vulnerabilities are proactively investigated.**

**The Commission recommends that a long term and sufficiently resourced integration strategy for Ukrainians in Ireland is developed, paying attention to issues such as English language, education, employment, children's needs, health and mental health and specific issues such as gender based violence and human trafficking.**

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## Glossary

AAAWD – Automated Aggregation and Analysis of Websites and Data

AGS- An Garda Síochána (Irish police force)

AHTT (HSE) – Anti Human Trafficking Team (Health Service Executive)

AI – Artificial Intelligence

AIA – Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking

Anti-Trafficking Directive - 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

AWS – Atypical Working Scheme

BOTP – Beneficiaries of Temporary Protection

Budapest Convention – Council of Europe Convention on Cybercrime

CEDAW - UN Convention on the Elimination of all Forms of Discrimination Against Women 1985

CEPOL – European Union Agency for the Law Enforcement Training

Child Sexual Abuse and Exploitation Directive - Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

CoE - Council of Europe

CRC – Convention on the Rights of the Child 1990

CSAM - Child sexual abuse material

CSO – Civil Society Organisation

DCEDIY - Department of Children, Equality, Disability, Integration and Youth Affairs

DoJ/DJ – Department of Justice

DP – Direct Provision

DPP – Director of Public Prosecutions

DPSUs - Divisional Protective Services Units (An Garda Síochána)

DSA – Digital Service Act

DSGBV – Domestic, Sexual and Gender-Based Violence

DV – Domestic Violence

EC – European Commission

ECHR - European Convention on Human Rights, formally the Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR - European Court of Human Rights

EEA – European Economic Area

EI – Escort Ireland

EIGE – European Institute for Gender Equality

EMN – European Migration Network

EU - European Union

EUROPOL - European Union Agency for Law Enforcement Co-operation

FBI – Federal Bureau of Investigation (US)

FRANET – European Union Agency for Fundamental Rights

GBV – Gender-based Violence

GDPR – General Data Protection Regulation

GNIB – Garda National Immigration Bureau

GNPSB - Garda National Protective Services Bureau

GRETA - Group of Experts on Action against Trafficking in Human Beings of the Council of Europe

HAP – Housing Assistance Payment

HSE – Health Service Executive

HTICU - Human Trafficking Investigation and Coordination Unit of An Garda Síochána

ICI – Immigrant Council of Ireland

IHREC – Irish Human Rights and Equality Commission

IHREC – Irish Human Rights and Equality Commission

ILO - International Labour Organization

INTERPOL - International Criminal Police Organization

IOM - International Organization for Migration

IP – International Protection

IPAS – International Protection Accommodation Service

IPO – International Protection Office

ISTAC - International Survivors of Trafficking Advisory Council

ITF – International Transport Workers Federation

JIT - Joint Investigation Team

LAB – Legal Aid Board

Lanzarote Convention - Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007

LRC – Law Reform Commission

MAX – Migrants Against Exploitation

ML – Machine Learning

MLA - Mutual Legal Assistance

MOOC – Massive Open Online Course

MRCI – Migrants Rights Centre of Ireland

NAP – National Action Plan

NCMEC – (US) National Centre for Missing and Exploited Children

NGO - Non-governmental Organization

NRM - National Referral Mechanism

OAP – Operational Action Plan

OCG – Organised Crime Group

ODIHR - OSCE Office for Democratic Institutions and Human Rights

OSCE - Organization for Security and Co-operation in Europe

OSR/CTHB –OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Palermo Protocol - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000

PSNI – Police Service of Northern Ireland

RCMP – Royal Canadian Mounted Police

RSE – Relationships and Sexuality Education

SCSIP - Separated Children Seeking International Protection

SDGs – Sustainable Development Goals

SEA – Sexual Exploitation Advertisement

SPHE – Social, Personal and Health Education

STIM – Sexual Trafficking Identification Matrix

TCA – Trafficking for Criminal Activity

TCE – Trafficking for Criminal Exploitation

TCN – Third Country National

TFB – Trafficking for Forced Begging

THB - Trafficking in Human Beings

The Commission – Irish Human Rights and Equality Commission

TIP - Trafficking in Persons

TLE – Trafficking for Labour Exploitation

TLE – Trafficking for Labour Exploitation

TRALIM - Training of Lawyers on European Law Relating to Asylum and Immigration

TRP – Temporary Residence Permission

TSE – Trafficking for Sexual Exploitation

TSE – Trafficking for Sexual Exploitation

Tusla – Child and Family Agency

UN – United Nations

UNCRC - United Nations Convention on the Rights of the Child

UNODC – United Nations Office on Drugs and Crime

Victim Rights Directive/Victims Directive - Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Victims' Compensation Directive - Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

VOT – Victim of Trafficking

WHS – Women's Health Service (Health Service Executive)

WIST – Web Identity Search Tool

WRC – Workplace Relations Commission



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## APPENDIX 1: IHREC Submission on the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022

The Commission welcomes the publication of the General Scheme of the Criminal Justice (Sexual Offences And Human Trafficking) Bill 2022 following the announcement by the Minister of Justice to that effect in May 2021, and urges the swift completion and implementation of this crucial piece of legislation by the Government.

Unlike the criminalisation of human trafficking offences, victim identification and assistance has not been placed on a statutory footing to date (except some legal protections within criminal proceedings that were brought about through the Victims of Crime Act 2017). It is the view of the Commission that this has created an unhelpful imbalance in the overall human trafficking response, which the proposed legislation has the potential to address.

With reference to the key issues raised in the Commission's first National Evaluation Report as Rapporteur on Human Trafficking (published June 2022), this legislation represents a further step to ensure full compliance with the EU Anti Trafficking Directive. In particular, with Article 11.4, wherein States must:

*“take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.”*

The Commission's submission is based on the findings and evaluation of the first National Evaluation Report of the Rapporteur (IHREC, 2022).

The proposed observations outlined in the Submission are intended to bring attention to the most pressing issues arising in the General Scheme and offer possible solutions through suggested amendments of the relevant Heads. With the exception of one particular observation pertaining to separate legal representation to victims of human trafficking (under head 5 of Part 2 Sexual Offences), this Submission focuses exclusively on Part 3 'NRM' (Heads 12-21).

In this submission, the Commission welcomes the positive approaches outlined in the General Scheme with regards to conferring a role (a degree of agency) to victims in the process of identification, the inclusion of 'historic' and 'potential' victims of this crime, the multi-agency cooperation and inclusion of independent stakeholders, protection against deportation and some steps with regards to non-prosecution.

Before moving to consider the General Scheme, in depth, the Commission would like to raise what it considers two of the most significant omissions from the General Scheme.

First, the almost complete absence of a child-specific identification process. The Commission has emphatically called for the inclusion of child-specific identification and assistance measures. Such calls are reiterated throughout the National Evaluation Report and owing to the significant reforms that are urgently required, these have been included in a dedicated chapter within the report (IHREC, 2022). Children are among the most vulnerable victims of trafficking. According to a recent EU Study, the social, economic and personal cost from the crime committed against children is exceptionally high (European Commission, 2020). Given their unique vulnerability, child victims of trafficking need child-specific processes and procedures within the NRM Bill.

Second, the complete absence of the sixty-days Recovery and Reflection period - a requirement of the Europe Convention on Action against Trafficking in Human Beings. Failing to provide for, in statute, immigration permissions seriously undermines the protections available to victims who are third country nationals, and in doing that, the principle of assistance to victims that is independent of cooperation with criminal investigation. The Bill must be sufficiently clear on the rights and entitlements suspected victims of trafficking can rely on before, during and after criminal investigation and proceedings, while also taking into account the implications of the habitual residence conditions especially in the cases of European Economic Area ('EEA') victims and third country nationals. The Commission has continuously highlighted the need to have an equal and fair process for all victims of trafficking, irrespective of their immigration status and nationality.

The following observations to relevant Heads of the Scheme have been compiled by the Commission to assist the Joint Oireachtas Committee on Justice in its deliberations, to assist the drafting of the Bill in general and to facilitate informed discussions on various aspects of victim identification and assistance along the way.

## **Part 2 Sexual Offences**

### **— Head 5 Amendment of section 4A of the Act of 1981**

The Commission, as Rapporteur, has expressly called for victims of trafficking for the purposes of sexual exploitation to be afforded the same protections as victims of rape and other sexual assault offences in criminal trials.<sup>689</sup> Despite Head 5 extending the provisions for separate legal representation to complainants of other sexual assault offences, this does not extend to victims of trafficking for the purposes of sexual exploitation. The argument is two-fold. First, traffickers commonly use sexual violence

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<sup>689</sup> The Third National Strategy on Domestic Sexual and Gender identifies Trafficking in Human Beings as a form of gender-based violence, in line with Directive 2012/29/EU.

as a tool to assert power and control over women, children, and men, regardless of the type of trafficking they are engaging in.

Second, a trafficking offence is not, by definition, a sexual offence, although the sexual exploitation (without the element of trafficking) of a person, may constitute rape and/or sexual assault of the victim. The difficulty arises where the accused trafficker is not (exclusively, or possibly at all) the person who is actually perpetrating the sexual exploitation, but rather the person ‘recruiting, harbouring, etc.’ the victim for the purposes of sexual exploitation. Given the heinous nature of what a victim is subjected to when they have been sexually exploited, it is essential they are afforded the same protections as other victims of rape and sexual assault with regard to separate legal representation.

**The Commission recommends that the right to separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences) should be extended to victims of offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008.**

### **PART 3: National Referral Mechanism for Victims of Human Trafficking**

#### **— Head 12 Interpretation**

While the Commission acknowledges that the definitions may have been included under Head 12 in order to assist the drafters, it is unnecessary to repeat the definitions from *Criminal Law (Human Trafficking) Act 2008* (‘2008 Act’). It is further observed that the definition of ‘forced labour’ outlined in the General Scheme does not take into account that the *Criminal Law (Human Trafficking)(Amendment) Act 2013* also includes ‘begging’.

The Commission is concerned that the definition of ‘victim of human trafficking’ may potentially risk prejudicing prosecutions for offences under the 2008 Act. Further, given that Article 11 of the Anti-Trafficking Directive and Article 10 of the Warsaw Convention require, at most a ‘reasonable grounds’ identification for access to assistance and support, the term ‘suspected victim of trafficking’ could be retained.

**The Commission recommends that the term ‘suspected victims of trafficking’ is retained and defined where there are reasonable grounds to believe a person has been a victim of an offence under section 2 or 4 of the Criminal Law (Human Trafficking) Act 2008 or section 3 of the Child Trafficking and Pornography Act 1998.**

### — Victim’s consent

Referring to victims of trafficking as ‘applicants’ within the proposed NRM process represents a positive move away from the passivity attributed to victims of trafficking under the existing administrative policy (Government of Ireland, 2011) and recognises their agency within the process of identification that is all too often taken from them when they have been subjected to the heinous crime of trafficking.

However, the Bill must recognise and provide for the individuals who do not have the capacity to be their own agent, for example, children or adults with diminished capacity to consent/apply (s.4(3) of the 2008 Act<sup>690</sup>).

**The Commission recommends that the Bill include express provisions for the identification victims who lack capacity such as children or adults with diminished capacity.**

### — Absence of a child –specific identification process

The Commission has emphatically called for the inclusion of child-specific identification and assistance measures. Such calls are reiterated throughout the National Evaluation Report, and owing to the significant reforms that are urgently required, these are included in a dedicated chapter within the report (IHREC, 2022). In the report, the Commission explicitly recommends that children should be appointed a Children’s Legal Advisor, (IHREC, 2022) and that all child trafficking offences should be included in the 2008 Act.

In principle, Section 26(3B) of the *Civil Legal Aid Act 1995* applies equally to children. However, it is clear that provision is not sufficiently child-specific, to meet the needs of suspected child trafficking victims. Where a child is in the care of their (safe) parent/guardian and the child is sufficiently mature, they may instruct their solicitor but where a child does not have the requisite maturity, the child’s parent or guardian will need to give instructions. At present, this is not possible under the *Civil Legal Aid Act 1995*. Separately, where a child is in the care of the State, there is no requirement that Tusla seek legal aid on behalf of the child. A model for such a mechanism might be section 23D(5)(b) of the *Child Care Act 1991*. To recognise the significant benefit to child victims and to ensure that all children receive the legal support they require and are entitled to, the Commission would urge the Committee to consider providing each child with a ‘Children’s Legal Advisor’.

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690 Mental impairment has the same meaning as in s. 5(5) of the Criminal Law (Sexual Offences) Act 1993: (5) In this section “mentally impaired” means suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation.

**The Commission recommends that the term ‘Children’s Legal Advisor’ be included and defined in the interpretations section in the Bill.**

As already stated in the first National Evaluation Report, the Commission is of the view that legal assistance has to be extended to parent/guardians of suspected child victims of trafficking. Similarly, a mechanism would be needed in cases where Tusla is acting *in loco parentis* with respect to a suspected child victim of trafficking. (IHREC, 2022, p.138)

Children are among the most vulnerable victims of trafficking. According to a recent EU Study, the social, economic and personal cost from the crime committed against children is exceptionally high (European Commission, 2020). Given their unique vulnerability, child victims of trafficking need child-specific processes and procedures within the NRM Bill. 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 (Department of Justice and Equality, 2016). The Commission has criticised the use of such prospective and exploratory language, regarding it as a weak commitment on the part of the State to implement the Council of Europe Group of Experts on Action against Trafficking (‘GRETA’) recommendation (IHREC, 2016).

There were no child trafficking victims identified in Ireland in the last two years. Over the period 2013 to 2020, there were 34 child victims of trafficking identified in the State, which represents 9% of all victims. This proportion is significantly lower than the EU average of 22%. The markedly lower than EU levels of child trafficking in Ireland and the complete lack of identified cases in the last two years, exposes the challenges facing the State in the identification and categorisation of such victims in Ireland, and logically the appropriate assistance they require that flows from this.

While the General Scheme outlines some minimal child-specific measures,<sup>691</sup> the Commission is of the view that these do not amount to a child-specific identification procedure. Therefore, it is especially important that the Bill develops concrete measures for child applicants, in line with the international recommendations and the Commission’s first National Evaluation Report that extensively explored child trafficking in Ireland (IHREC, 2022). Furthermore, greater clarity is needed in relation to the provision that Tusla will act ‘in the best interests of the child’ where a child’s parent/guardian is potentially involved in the trafficking or where the child is unaccompanied. It may also be the case that a child trafficking victim may have a safe parent/guardian.

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691 Heads 16 (6) and 19(2)(f)

The Bill must ensure that it is capable of capturing both scenarios and is sufficiently clear and detailed to ensure that child victims receive the necessary support and assistance.

**The Commission recommends that the Bill contain a child-specific identification process.**

**The Commission recommends that the findings of the Firsts National Evaluation Report of the National Rapporteur on Human trafficking, GRETA 3rd evaluation report, the OSCE country report of 2020 are all taken into account for the development of a child-specific identification process in the Bill.**

**The Commission further recommends that all ‘Competent Authorities’ and ‘Trusted Partners’ undertaking mandatory child trafficking training (IHREC, 2022) to be included in the Procedural Guidelines.**

**The Commission recommends, in relation to the definition of ‘child’, that the term ‘age assessment’ be included and defined in the Bill in regard to potential child victims of trafficking.**

**The Commission recommends that age assessments should be carried out by Tusla, or another competent body, supported by strict policy-guidelines that are child-centred and adapted to the person’s specific needs (cultural, gender, etc.) and should not be based on a medical test.**

**The Commission further recommends that the guidelines should explicitly adopt the principle of the ‘benefit of the doubt’ regarding age determination of young applicants.**

**It should be taken into account that the dangers inherent in treating a child as an adult are far greater than the danger of providing child-appropriate level of immediate care to an adult (OSCE/ODIHR, 2022).**

**The presumption of minority should be applied unless and until an age assessment test proves otherwise.**



### — Inclusive categorisation of potential victim/ applicants

In line with the Commissions previous statements about the importance of recognising and supporting ‘historic’ victims of trafficking the Commission welcomes the inclusive categorisation of potential victims within the General Scheme.

The inclusive categorisation of potential victims (applicants) ends the lack of clarity about the particular point at which a person can be considered a suspected victim of trafficking by the State. The proposed approach reflects better the various ‘stages’ of human trafficking as it covers those who have previously been trafficked, those who are currently being trafficked, and potentially those who ‘may’ be being trafficked. Including persons who are at risk of trafficking (IHREC, 2022; GRETA, 2022) through the inclusion of those who ‘may be trafficked’ is a particularly useful preventative measure, which aligns to the definition of human trafficking as a crime of intent (Article 2(1) of the EU Anti-Trafficking Directive).<sup>692</sup>

The Commission, in its first National Evaluation Report, has previously called for a strengthened response to human trafficking and is of the view that the Bill provides an ample opportunity to address a range of legislative recommendations to achieve this..

**The Commission recommends the introduction of a separate standalone offences for holding a person in slavery, servitude or forced or compulsory labour fully aligns Irish law with Article 4 of the European Convention on Human Rights, which requires criminalisation of slavery, servitude and forced labour.**<sup>693</sup>

**The Commission recommends the 2008 Act be amended to include the offence of trafficking of children for sexual exploitation, with all necessary consequential amendments to the 1998 Act.**

**The Commission recommends the drafting of the Bill include amendment of the term ‘exploitation’ with a view to incorporating trafficking for the purposes of novel and rare forms of exploitation such as forced/exploitative marriages, sale of children and illegal adoptions, which have been reported elsewhere.**

<sup>692</sup> Article 2(1) of the EU Anti-Trafficking Directive establishes that ‘Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’.

<sup>693</sup> See *CN v. United Kingdom*, no. 4239/08, ECHR 2012

It is worth noting at this point that the Commission has taken the view that panels be drawn from the Operational Committee to ensure relevant expertise and to guard against the process become unwieldy and convoluted. As such, a distinction is made between the Operational Committee and the Operational Committee Panel, which is outlined in detail in Head 15.

### **Head 13 Competent Authorities of the National Referral Mechanism**

The Commission is concerned that Head 13 does not specify the minimum level of seniority and expertise of Operational Committee [Panel] members. Expert knowledge and expertise in trafficking is essential to a functioning identification process.

Given that the Minister for Enterprise, Trade and Employment is responsible for employment permits, and that these are susceptible to abuse by traffickers, this Department could also be included. The Commission is also of the view that consideration could be given to designating the Minister for Transport as a competent authority too, taking into account the Marine Survey Office's responsibility regarding working time rules, under SI672 of 2019.

**The Commission recommend the Bill clearly state that no Gardaí below the rank of superintendent will be part of an Operational Committee and that all members of the Operational Committee must be of sufficient seniority and appropriately trained on trafficking in human beings.**

### **Head 14 Application for recognition as a victim of human trafficking**

#### **— Multi-agency two-stage assessment**

The Commission has continuously raised the problems associated with the current identification process, wherein An Garda Síochána are the sole authority of identification. In particular, the negative impact this has on victims, as they are compelled to cooperate with law enforcement in exchange, or fear, that they will not be granted residence permission. This often forces them back to the situation that lead to their trafficking in the first place, and/or places them in fear of retribution by their traffickers.

The two-stage procedure outlined in Heads 14 and 17 respectively mark an important move away from the current one-stage, single-agency identification process. The new approach should facilitate timely referral into the NRM in line with Article 11.2 of the EU Anti-Trafficking Directive. This will, in-turn, trigger access to initial basic assistance:

*“as soon as there are reasonable-grounds indications for believing that a person might have been subjected to trafficking.”<sup>694</sup>*

While the Commission has outlined particular issues regarding the details of each ‘identification’ stage currently contained in the General Scheme, the principle of adopting a multi-disciplinary and multi-agency two-stage assessment process is to be welcomed. Nonetheless, the Commission is of the view that the Bill should, from the outset, guard against the possibility of unnecessary Judicial Review of Head 14 decisions. This is especially relevant for non-statutory bodies but is equally relevant for Competent Authorities participating in this mechanism, taking into account the cost to the public, the burden on the courts and the toll this has on the vulnerable people at the centre of this process. This concern could be mitigated against by making it clear within the Bill that there is only one identification decision (Head 17), which is undertaken by the State.

**The Commission recommends that Head 14 place a duty upon Competent Authorities and/or Trusted Partners to refer anyone who they believe, or who believes themselves to be a victim of trafficking, to the Operational Committee [Panel].**

In the case of a person with diminished capacity, including children, any person who believes that the person may be a suspected victim of trafficking shall request a Competent Authority and/or Trusted Partner to make an application to the Operational Committee on behalf of that person for them to be recognised as a victim of human trafficking. Of relevance here is the recommendation made under Head 12 that the Bill include express provision for victims who lack capacity such as children or adults with diminished capacity.

#### — Unnecessary duality in establishing both ‘credibility’ and ‘reasonable grounds’

The threshold of “a) the application is credible, and (b) is based on reasonable grounds” that the Competent Authority or Trusted Partner must satisfy before they refer to the Operational Committee should be removed and a lower threshold of “a positive finding from trafficking indicators” inserted. Every suspected victim must also be given the benefit of the doubt. This intentionally low threshold is in line with best practice (UNODC, 2009; GRETA, 2020; OSCE, 2011).

The added test of ‘credibility’ alongside the standard assessment of ‘reasonable grounds’ is to insert an unnecessary condition for identification of victims of trafficking,

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<sup>694</sup> The recognised ‘test’ as per *P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* [2015] IEHC 222 at para 189 states clearly states ‘The directive requires the State to provide assistance and support “as soon as there are reasonable-grounds indications for believing that a person might have been subjected to trafficking”.

which is neither supported nor required by international law. In practice, this amounts to raising the identification threshold beyond that which is required.<sup>695</sup> Explicitly establishing such dual criteria for identification of victims in Head 14 and Head 17 creates a hardened threshold for identification on the one hand, and creates an extra conditionality that could be problematic for implementation by both Competent Authorities and Trusted Partners alike, on the other. The meaning of ‘credibility’ for the individual partners and their capacity to establish ‘credibility’ may vastly differ, resulting in inconsistent application in decisions that may, inevitably, expose the process to litigation. Additionally, this would raise issues of a requirement for ‘evidence’ to establish credibility. Most importantly, the raised threshold will negatively impact potential victims of trafficking who are at the centre of the NRM by delaying the process and the entailing assistance.

The Commission’s proposes a change to the ‘test’ that should be applied when determining whether a person is a suspected victim of trafficking to refer to ‘reasonable grounds’ alone, an approach that fully aligns with the jurisprudence of the Irish courts, the EU Anti-Trafficking Directive, the Council of Europe Directive and the OSCE. All recommended amendments are in line with the internationally agreed ‘test’ to be applied in an NRM.<sup>696</sup>

The referral process under Head 14 should have a reporting and referral process similar to the obligation under the Children First Act 2015, to report where a child has been harmed or is at risk of being harmed.

**The Commission recommends that the ‘credibility’ requirement be removed from both Heads 14 and 17 and not be included in the Bill.**

**The Commission recommends that Head 14 be drafted in such a way as to require the Competent Authority and/or Trusted Partner to refer the applicant to the Operational Committee, provided that consent of that applicant has been obtained.**

<sup>695</sup> The recognised ‘test’ as per *P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General* [2015] IEHC 222 at para 189 states clearly states ‘The Directive requires the State to provide assistance and support “as soon as there are reasonable-grounds indications for believing that a person might have been subjected” to trafficking’.

<sup>696</sup> EU Anti-Trafficking Directive: ‘A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness.’ 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, Recital 18. Council of Europe Convention: Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Council of Europe Convention on Action against Trafficking in Human Beings 2005, Article 13.1. OSCE NRM Handbook: A presumed victim of trafficking shall mean a person for whom there are reasonable grounds to believe that he or she is likely to have been trafficked, but who has not (yet) been formally identified as such by the authorities, or who has declined to be formally identified as such. OSCE/ODIHR (2022) [National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons](#). Warsaw: OSCE Office for the Democratic Institutions and Human Rights, p. 378

The Commission is unconvinced of the merits of a seemingly random list of criteria the Competent Authority or Trusted Partner must consider when deciding whether to refer a person to the Operational Committee under (the original) Head 14. There is also a danger that the four ‘reasonable grounds’ specified in 14(4) will be considered to be the only reasonable grounds that the Competent Authority or Trusted Partner may consider.

**To ensure accuracy, accountability and consistency the Commission recommends that internationally recognised indicators, such as the Delphi and Dignity indicators (or nationally agreed list of indicators), be specifically included or referenced in the Bill as the criteria which the Competent Authority or Trusted Partner may consider in making their referral. At the very least, the reasonable grounds criteria included in the Bill must fully align with the statutory definition of trafficking with the three elements.**

As currently drafted, the Heads are unclear on what supports and services a person is entitled to receive between the time the Competent Authority and/or Trusted Partner refers applicant to the Operational Committee, and the time when the Panel issues its decision. On this particular matter, see proposed amendments relating to Head 19 below.

#### — Re-applications to Component Authorities and Trusted Partners

Currently, the Scheme does not consider what would happen if a person makes multiple applications to multiple Competent Authorities and Trusted Partners.

It is the view of the Commission that the applicant should be in a position to apply more than once to a Competent Authority or a Trusted Partner for the purposes of referral to the Operational Committee. If an application does not result in a referral, the respective Competent Authority or the Trusted Partner must provide an explanation to the applicant within 5 working days. Where new evidence or information comes to light, the applicant should have the right to make a fresh application to a Competent Authority or a Trusted Partner of applicant’s choice for the purposes of referral to the Operational Committee.

**The Commission recommends that the process under Head 14 allows for the possibility of re-application to a Competent Authority or a Trusted Partner.**

## Head 15 National Referral Mechanism Operational Committee [Panel] for the identification of victims of human trafficking

### — Operational matters

The Commission is of the view that the processes of the Operational Committee are too important to be delegated to auxiliary guidelines and should be specified in statute. This has particular implications for the early identification, assistance and recovery of suspected victims, who are at the centre of the NRM in Part 3 (see head 19 for details).

The Bill must specify how often the Operational Committee should meet. The Commission is of the view that this should happen, at a minimum, every two months to align with the length of the current 60-day Recovery and Reflection period, to ensure that no victim (applicant) will wait an unreasonably long period of time for a decision to be made on their application to be identified as a victims of trafficking. Furthermore, while the Heads specify that the “Operational Committee shall make decisions collectively,” the Commission would recommend that where consensus cannot be achieved then a simple majority decision should suffice and the decisions are ‘owned’ by one single State body.

In that regard, the Commission is concerned that the legal status of the Committee is uncertain, and as a result, its actions are those of its members. As set out in Head 15, all of the members could be sued, including the trusted partners, who would be jointly and severally liable. It would be far better if a single entity were responsible in law for the final decision, and this is why the Commission proposes that the Department of Justice assumes this function (See Head 17).

Unless there is a proper appeal mechanism, there is a risk that every negative identification decision will be subjected to judicial review. The costs implications of this for the State and for the vulnerable persons involved could be enormous.

**The Commission recommends that the operational framework of the Committee is provided for in primary legislation and open to parliamentary scrutiny, due to its essential role in the functioning of an early mechanism for identification of victims of trafficking.**

### — Independent bodies

The inclusion of independent non-statutory organisations being recognised as ‘Trusted Partners’ in the NRM is an essential, positive and long-awaited reform. This will ensure greater utilisation of unique specialist knowledge, a victim-centred, and practice-informed approach (IHREC, 2022). Moreover, it will introduce important checks and balances of victim identification decisions.

Despite this positive reform, the Commission is concerned that the current first-step of the identification process (outlined in Head 14) would divest powers to Trusted Partners, that should be exercised by the State, which could have serious implications for matters such as charitable status and insurance. Furthermore, this would potentially leave identifying Trusted Partners open to legal challenge through Judicial Review. The Commission makes further comments in this regard under Head 18 ‘Designation by Order of Trusted Partner’. Notwithstanding this, the Commission particularly welcomes the formalisation of the role of Trusted Partners in the Operational Committee undertaking formal identification decisions (Head 17, discussed below) but would, at the same time, recommend that Head 14 be amended to include only a duty upon Trusted Partners and Competent Authorities to refer an applicant to the Operational Committee on the basis of a reasonable ground indications for believing that a person might have been subjected to trafficking, and not, as currently envisioned in the General Scheme *a duty to complete a de facto* identification process.

#### — Membership and expertise

As currently drafted, all Competent Authorities (and Trusted Partners) will form the Operational Committee and will act as the collective decision making body of the NRM. It is the view of the Commission that this structure lacks the specificity of expertise necessary to examine applications involving different forms of exploitation. Head 15 (2) states that:

*“Each Competent Authority shall be represented at meetings of the Operational Committee.”*

The Commission is concerned that some Competent Authorities and Trusted Partners have only specific expertise of some forms of trafficking exploitation, yet they are tasked with deciding every application under Head 17. Given Heads 15(3) and (4), presumably this would mean that each would have equal decision-making power in deciding upon applications for recognition as a suspected victim of trafficking. For example, the WRC would be called upon to decide (per Head 17) whether an applicant is a suspected victim of trafficking for the purposes of sexual exploitation. Yet, it is highly unlikely that the WRC has the requisite knowledge of this form of trafficking. Equally, it is unlikely that Tusla would have sufficient knowledge of the particulars of labour-related exploitation.

To ensure the requisite knowledge and expertise of the decision-makers, ‘Operational Committee Panels’ from the Competent Authorities and Trusted Partners (and independent experts where needed) could be convened for the purpose of deciding Head 17 identifications arising from Head 14 referrals. The Department of Justice, in its role as National Coordinator could be responsible for convening such panels and would act as Chair of the Operational Committee [Panels].

**The Commission recommend that the Bill require the Department of Justice to draw up procedures that allow for the selection of ‘relevant’ members of the Competent Authorities, Trusted Partners and persons with expert knowledge of trafficking to form Operational Committee [Panels] that will then preside over exploitation-specific identification decisions under Head 17. This expert knowledge must cover at a minimum: the form of exploitation the applicant has claimed to be a victim of; gender-based violence; forced labour and employment-related matters, legal expertise and; child trafficking when considering an application under Head 17.**

This approach will further ensure that the Operational Committee does not become unwieldy and that each member of the Operational Committee [Panel] has the requisite knowledge and expertise of the complexity of vastly different and specific forms of trafficking to be able to deliver competent and high-quality decisions. In addition, it is hoped that owing to the smaller and more specialised composition the Operational Committee [Panels] will be easier and more expedient to convene, leading, in turn, to fewer delays, quicker decisions and access to assistance and supports for victims (Articles 11.2<sup>697</sup> and 11.4<sup>698</sup> of the EU Anti-Trafficking Directive).

Finally, in regards to Head 15 (ii) “Interim arrangements for applicants awaiting a determination on their application, including provision of support services”, the Commission is of the view that as currently drafted this is not sufficient. Instead, where a Competent Authority and/or Trusted Partner has referred a person under Head 14 to the Operational Committee [Panel] for identification, such applicants must be granted the 60-day Recovery and Reflection period in line with the recommendations relating to Head 19.

### **Head 16 Sharing of information by Competent Authorities and Trusted Partners**

The Commission is encouraged to see that an applicant’s information can only be used for the purposes of identification. This is an important first step in ensuring that the identification process is separate and distinct from the criminal justice and immigration processes. This also aligns the proposed NRM with Article 11(3) of the EU Anti-Trafficking Directive, which requires that assistance, and support for a victim is not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial (IHREC, 2022).

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697 Article 11.2 of the EU Anti-Trafficking Directive establishes that ‘Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3’.

698 Article 11.4 of the EU Anti-Trafficking Directive establishes that ‘Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations’.



The Commission is concerned with the inclusion in subhead 2 of:

*“information relating to the person’s arrival in the State.”*

This suggests that the mechanism is only for third country nationals, which it is not. Head 16(2)(d) provides that all of Competent Authorities and Trusted Partners would receive details of a criminal investigation. Consideration should be given to the necessity for the dissemination of such information to everyone or to the deciding panel alone.

Whether a child has been taken into the care of the State, in which case Tusla are acting *in loco parentis* (and/ or as the child’s legal guardian), or where the child is in the care of their parent/guardian they must have access to a Children’s Legal Advisor. The Children’s Legal Advisor would act as an advocate for the child to ensure the highest protection and support for the child, regardless of the form of trafficking the child has been subjected to, the family background, and/or the child’s immigration status (OSCE/ODIHR, 2022).

**The Commission recommends that child applicants should be appointed a ‘Children’s Legal Advisor’ at the earliest stage of the referral and identification process<sup>699</sup>.**

**To ensure consistency, the Commission is of the view that Head 16 should read ‘applicant’ instead of ‘person’.**

### **Head 17 Identification of a victim of human trafficking by the National Referral Mechanism Operational Committee [Panel]**

The multi-agency identification process outlined in the Bill is a significant and positive reform of the current practice and is an approach that is internationally considered ‘best practice’ (OSCE/ODIHR, 2022). This approach combines multi-disciplinary professionals, agencies and services and ensures a wider range of skills and knowledge. Importantly, the approach outlined in the General Scheme includes agencies, such as the HSE and Tusla that focus on the health and wellbeing of people; and potential victims of trafficking by extension. This is conducive to the intended shift away from viewing trafficking through the criminal justice/immigration lens. This paradigm shift is *essential* for ensuring that the response to trafficking is grounded in human rights.<sup>700</sup>

699 IHREC (2022) [Trafficking in Human Beings in Ireland](#), p. 25

700 According to the OSCE ‘Adopting a human-rights-based approach to victims of trafficking is a critical step in ending such abuses. A human-rights-based approach recognizes that human trafficking is not just a criminal activity but one that has profound human-rights implications both for victims and for the governments and non-governmental organizations that must deal with them. The creation of an effective National Referral Mechanism (NRM) can be a vital step in ensuring that the human rights of trafficked persons are protected.’ See OSCE/ODIHR (2022) [National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons](#). Warsaw: OSCE Office for

### — Threshold

As outlined above, relating to Head 14, the Commission strongly believes that it is not necessary to include both Head 17(1)(a) ('the balance of probability') *and* (b) ('reasonable grounds') as the inclusion of both raises the threshold beyond that which is required by the jurisprudence of the Irish courts (*P Case*) or internationally recognised best practice (OSCE/ODIHR, 2022) where:

*“it is recognised that ‘international consensus as reflected in the Directive is that a person should be identified as a “suspected victim” if there are reasonable-grounds indicators to that effect.’”<sup>701</sup>*

The inclusion of a legal burden of proof in a non-judicial setting is not only problematic but also wholly inappropriate.

### — Indicators

Head 14 considerations regarding the removal of a seemingly random sample of indicators applies to Head 17 as well, and an amendment in this regard is proposed.

**The Commission recommends that the grounds upon which the Operational Committee [Panel] should base their decision, align with the definition of trafficking and should be based on indicators to that effect and a reasonable ground threshold.**

### — Clear timelines

Appropriate and sufficiently short timelines for formal identification of a person as a 'suspected victim of trafficking' are at the core of:

*“mechanisms aimed at the early identification of, assistance to and support for victims.”(EU Anti-Trafficking Directive Article 11.4)*

It is the view of the Commission that Head 17(3) does not provide for a sufficiently clear timeframe within which the Operational Committee [Panel] must make their decision. The Commission is of the view that the absence of a specific timeframe is likely to have a seriously detrimental impact on victims. The Commission would recommend that the Head 17 identification decision should be issued within a timeframe of 60-days from the Head 14 referral and correspond to the end of recovery and reflection period (OSCE/ODIHR, 2022), and that such a decision is communicated (in writing) to the applicant and/or the applicants lawyer no later than 3-days after the

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the Democratic Institutions and Human Rights, p. 11

701 P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General [2015] IEHC 222, at para 183

decision is made. Applicants should be given reasons, in writing, if their application was unsuccessful.

### — Appeal and Reconsideration process

The Commission, in the first National Evaluation Report specially called for a NRM with, *inter alia*, an appeals process. The Commission is disappointed by the complete absence of a process for either appeal or reconsideration of the decisions under Head 17. Where new evidence or new information comes to light, the State must not refuse to re-consider the application, as there remains a positive duty to investigate further.<sup>702</sup> This is especially important for victims who might suffer from Post-traumatic stress disorder, which can make recall a difficult and slow process. It must be remembered that there is a duty upon the State to identify victims in order to assist and protect them. As such, the State is obliged to act on information that may lead to identification. This duty does not stop with a decision under Head 17, if this decision turns out to be wrong. If it did, the State would be failing to perform the duty properly and the rights of victims to assistance and protection afforded to them under the Convention on Action against Trafficking in Human Beings, the Anti-Trafficking Directive and Article 4 ECHR would be denied to them.<sup>703</sup> Accordingly, where relevant evidence casts doubt on the correctness of a negative identification decision, this must not be disregarded as to do so would:

*“dilute the content of the duty and water down the protections afforded to victims.”<sup>704</sup>*

Victims must enjoy the ‘benefit of doubt’, and this should be enshrined in the Bill.

A judicial remedy to challenge the decisions of the Operational Committee is available by way of Judicial Review, but it is the view of the Commission that this does not sufficiently meet the duties of the State to identify and protect victims. Furthermore, it is costly and arduous to both the State and the victim involved, in terms of public funds, court overuse and personal loss.

**The Commission recommends the Bill include an appeal and a reconsideration process.<sup>705</sup>**

702 Brecknell v. United Kingdom (2008) 46 EHRR 42 at 70-71 and 75

703 See R (DS) v Secretary of State for the Home Department [2019] EWHC (Admin)

704 R (DS) v Secretary of State for the Home Department [2019] EWHC (Admin) at 68

705 IHREC (2022) [Trafficking in Human Beings in Ireland](#), p. 82

## Head 18 Designation by Order of Trusted Partner

The Heads as drafted do not confer any immunity from suit on competent authorities or trusted partners or provide any indemnity if they are challenged (see Head 15). The Commission is of the view that a provision like section 154 of the *Data Protection Act 1998*, which confers conditional immunity on the Data Protection Commission and Commissioner, could be considered as an additional precaution.

As currently drafted, a number of trafficking-specific bodies and organisations would not fall under Head 18 (1). These include, although are not limited to, Trade Unions and awareness and training organisations such as MECPATHS. This provision should be expanded to include Trade Unions and organisations/bodies with demonstrable expertise in human trafficking.

There is a risk that the ‘trusted partner’ mechanism will intentionally or unintentionally compromise the independence of NGOs or influence them to withhold legitimate criticism of anti-trafficking law and policy. There is also a risk that ‘trusted partner’ status will be withheld from NGOs which are considered to be critical or troublesome.

**The Commission recommends that a mechanism of independent review of decisions relating to trusted partner status should be included.**

## Head 19 Access to services by victims of human trafficking

The Commission recalls the obligation of the State to provide assistance and support ‘prior, during and after’ any criminal proceedings (EU Directive, Article 11.1), and this assistance and support:

*“shall include at least standards of living capable of ensuring victims’ subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.” (EU Directive, Article 11.5)*

The Commission questions the feasibility of the idea to have all agencies and bodies on the Operational Committee working together to create a care package, and is of the view that a statutory entitlement should be considered comparable to the entitlement to an aftercare plan provided to children in the care of the Child and Family under section 45 of the Child Care Act 1991.

### — A procedure applicable to all victims and equal treatment

The Commission has continuously highlighted the need to have an equitable and fair process for all victims of trafficking, irrespective of their race, nationality or citizenship.

One of the most significant advancements envisaged in the General Scheme is that, *prime facia*, the NRM applies to all victims of trafficking, regardless of their nationality, immigration status or pending asylum claims (IHREC, 2022; GRETA, 2022). However, the decision not to place immigration-related measures - an integral part of assistance - in statute, undermines the equitable treatment of victims of trafficking of different backgrounds, origins and circumstances. Most particularly, this oversight will disproportionately affect third country nationals and EEA nationals, who represent the majority of victims of human trafficking (IHREC, 2022). Moreover, there is potentially an equality/discrimination issue arising, with some victims of trafficking being treated less favourably than others based on their nationality. Failing to recognise the need to place such protections on a statutory footing represents a serious missed opportunity to honour the object and purpose of EU<sup>706</sup> and international law.<sup>707</sup>

The Bill must include and clearly outline the rights and supports available to identified victims of human trafficking. Failing to provide, in Statute, for specific measures regarding social welfare assistance, housing assistance, immigration permissions for victims of trafficking, will perpetuate the present inconsistent approach and chronic deficiencies in assistance and support. In its first National Evaluation Report as a National Rapporteur, the Commission exposed the lack of synchronicity between State Agencies and Departments that led to divergent decisions with respect to identical cases, and made detailed recommendations regarding these matters. The Commission is of the view that the Scheme offers a unique (if not only) opportunity to coordinate once and for the assistance and support to victims of this crime.

Including all immigration provisions for victims of trafficking in the Operational Procedures or policy effectively waters down the protections available, leaving them liable to amendment and change at any time and without parliamentary scrutiny.

#### — Victims seeking International Protection

Importantly, the Bill must ensure that victims of trafficking who are simultaneously seeking International Protection are not treated in a manner different from other victims (IHREC, 2022). In particular, that the third country national immigration provisions for victims must apply to them as well. Currently, such victims are treated the same as the rest of the asylum seeking populations, in that they hold asylum permits precluding them from leaving Direct Provision and they have curtailed

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706 Most especially, Council Decision 2007/125/ JHA “Prevention of and Fight against Crime” which in Article 3(2)(c) and (d) seeks to ‘*promote and develop best practices for the protection and support of witnesses and for the protection of crime victims*’; EU Directive 2004/81/EC regarding the issuing of residence permits to third-country nationals who are victims of trafficking, or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; EU Directive 2004/80/EC relating to compensation to crime victims; EU Directive 2012/29/ EU establishing minimum standards on the rights, support and protection of victims of crime. It is recognised that Ireland has opted-out of some of these Directives

707 [Council of Europe Convention on Action against Trafficking in Human Beings 2005](#)

opportunities for reintegration (training/employment) compared to other victims of trafficking.

### — Recovery and Reflection Period for all victims

In line with Article 13 Council of Europe Convention on Action against Trafficking in Human Beings, the Commission would recommend the Recovery and Reflection period be granted to all applicants who receive a positive Head 14 referral and that this be expressly outlined in the Bill.

It must be remembered that the purpose of the 60-days Recovery and Reflection period is to allow the suspected victim of trafficking time and support to begin to recover and, where they so choose, to make an informed decision as to whether they wish to report the crime(s) to the authorities. It also enables suspected victims time to decide whether they wish to be formally identified by the Operational Committee [Panel]. As such, the Bill must be sufficiently clear on the rights and entitlements suspected victims of trafficking can rely upon during and after the Recovery and Reflection period.

The Council of Europe Convention includes measures necessary to assist victims in their physical, psychological and social recovery.<sup>708</sup> To ensure that all victims of trafficking benefit from these measures the national law has to contain explicit provisions.

### — Clearly outlined assistance from the moment of referral

The Commission would strongly recommend that entitlements to services (such as trafficking-specific healthcare, child-trafficking specific care, gender-specific accommodation, free legal aid, and access to education and psychological support) be enshrined in the Bill and aligned to the procedures outlined in Head 14 and Head 17, respectively.

Owing to the undeniable vulnerability of victims of trafficking, it is essential that recognised victims of trafficking be afforded the necessary supports they require in order to recover. Adequate provision of such would better safeguard the rights of victims and would, in all likelihood, increase the possibility of victims being able to assist An Garda Síochána with the investigation of trafficking offences where the victim is safe and supported. Accordingly, O'Malley J in the *P Case* emphasises this exact point:

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708 Article 12 Assistance to Victims should include, at least: a. standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance b. access to emergency medical treatment; c. translation and interpretation services, when appropriate; d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand; e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; f. access to education for children. 2. Each Party shall take due account of the victim's safety and protection needs.

*‘Concentration on the veracity of an applicant may also lead the decision-makers to overlook the fact that what is at stake is not simply a matter of entitlement to a beneficial status, as in an application for refugee status, but a measure intended to facilitate the investigation of a serious crime. It does not necessarily lead to any permanent material gain for the applicant but is intended to assist the State in preventing the modern blight of human trafficking’<sup>709</sup>*

#### — Gender-specific and child victims-specific clarity in assistance

As outlined above, the Commission is disappointed there are no express provisions in the General Scheme to provide for gender-specific and child trafficking specific services to victims; a clear recommendation of the first National Evaluation Report.

Given the continued criticism of the Direct Provision System, it is troubling that Head 19 (1)(b) commits identified victims of trafficking to assistance within Directive Provision. Instead, the Commission would recommend that the Bill contain access to gender-specific accommodation for victims of trafficking, in addition to assistance from Local Authorities pursuant to their obligations under the Housing Acts 1966 to 2021.

Depending on the circumstances children may, or may not, require entry into the child protection system. In a situation where a child has a parent, relative or legal guardian who is not implicated in the trafficking of that child it will likely be in the child’s best interest for the child to remain with their parent, relative or guardian. Equally, where a child is unaccompanied or has no safe legal parent, relative or guardian they must receive care tailored to meet their needs. The Bill must reflect these two possibilities and ensure that appropriate supports are provided for each situation. The Commission also recommends that the Bill include the immediate access to services for children suspected to be victims of trafficking once the Competent Authority or Trusted Partner has decided to refer the application to the Operational Committee. Presumed children victims of trafficking, including those undertaking an age assessment, should have access to the appropriate statutory support and assistance.

It is also recommended that the Bill include the requirement that a designated Competent Authority, with specific expertise in victim care and support (the HSE Anti Human-Trafficking Team (for adult victims) or Tusla for child victims) be required to undertake an individual risk and needs assessment and development of a care package for each person who has been identified as a victim of trafficking. This is a process that requires regular (at minimum quarterly) review and updating.<sup>710</sup>

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709 P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General [2015] IEHC 222, at para 183

710 ‘Effective assessment should not be a single, one-off event but rather an ongoing process of *‘assessment, review, and action’* that is tailored to the individual needs and risks of each individual person and conducted

### — Immigration permission as part of assistance

It is important that a longer-term residence permission be guaranteed to a third country national, determined by the Operational Committee [Panel] to be a suspected victim of trafficking. While this may of course be revoked if the person is later found not to be a *bona fide* victim, the Bill must clearly outline the residence permission available to identified victims of trafficking. It must be considered, that if upon the completion of the identification process, or at any time after the identification process, the applicant is found not to be a victim, those rights evaporate.<sup>711</sup> Thus, it is balanced, necessary and proportionate to ensure that victims' rights to assistance and support are enshrined in the Bill.

Where it is not possible for the Operational Committee [Panel] to meet to decide on an application within the specified timeframe (Head 17), or where the applicant, Competent Authority or Trusted Partner who is supporting the applicant so requests (based on reasonable grounds), the Bill should clearly state that the 60-Days Recovery and Reflection period is automatically renewed for a further 60-days and/or until the Operational Committee [Panel] meets to determine the Head 17 application. Where a positive Head 17 identification decision has been made, Head 19 should also include a prospective avenue to family reunification, especially with minor children.

### — Assistance not conditional on cooperation with investigations

Of particular relevance is Article 11.3 of the Directive that in criminal investigation and proceedings, requires:

"assistance and support for victims are not made conditional on the victims' willingness to cooperate."

In the absence of a clear and specified statutory provision on the immigration status of victims of trafficking triggered by a positive identification decision, third country national victims would have no other option but to cooperate in criminal investigations in exchange for possible legal residence; as is the present *status quo*.

The Commission has been informed that all immigration and related issues will form part of the 'Operational Guidelines' that will accompany the Bill. These are not equivalent to a statutory protection. It must be remembered that the core of the universal criticism levelled at the current NRM centres on the State's pre-occupation with immigration issues (Administrative Immigration Arrangements); arguably to the detriment of fulfilling the broader obligation owed to victims (Government of Ireland, 2011; IHREC, 2022; GRETA, 2022). It is the view of the Commission that by

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with their informed consent', see NRM Handbook, OSCE (2022), pg. 310

711 P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General [2015] IEHC 222, at para 166



excluding the immigration measures from the legislation and by placing them within the Operational Guidelines, the new NRM will perpetuate the differential treatment of victims depending on their nationality and immigration status and it will interfere with the principle of voluntary cooperation with the criminal justice system and unconditional assistance:

*“before, during and after the conclusion of criminal proceedings.” (Article 11.1 of the EU Anti-trafficking Directive)*

**The Commission recommends that the Bill clearly set out assistance and support of suspected victims of trafficking. Most especially, the rights owed to third country national and EEA national victims, through express provisions for:**

- ▶ **social welfare (free of any habitual residence condition tests, which must be irrelevant);**
- ▶ **housing assistance (that includes a specialised shelter and/or private arrangements);**
- ▶ **medical and psychological care; and**
- ▶ **immigration status, where necessary to facilitate the entitlement to the above listed assistance, before, during and after the formal identification process subject of this scheme.**

**The Commission recommends that the Bill clearly state that access to assistance and support and the necessary immigration status for third country national victims that underpins it are not conditional on cooperation with criminal investigation and proceedings.**

**In line with the most recent recommendations by GRETA, Head 19 should also include and expressly provide for the appointment of cultural mediators and/or trafficking experts to assist in the identification process, where necessary.**

## **Head 20 Prohibition on Deportation or Transfer of Victim of Trafficking**

In addition to the expanding of the protections from deportation to include transfer under the Dublin III Regulations, the Commission, would also urge for the inclusion of a third subsection (c), a prohibition on deportation of victims of trafficking where the person has a pending application, including an appeal or reconsideration, before an Operational Committee [Panel].

**The Commission recommends that the protections from deportations be extended to include transfers under the Dublin III Regulations.**

## **Head 21 Protection from prosecution for a human trafficking offence**

The Commission welcomes the inclusion of Head 21, but is deeply concerned by the limited nature of the provision, as currently drafted.

**The Commission is of the view that Head 21 be expanded to include a statutory defence where a suspected victim of trafficking has been involved in unlawful activities where such involvement is a direct consequence of their situation as a trafficked person.**

This would bring Ireland into compliance with international standards which, according to the United Nations High Commissioner for Human Rights, require that:

*“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”*<sup>712</sup>[emphasis added]

Similarly, Guideline 4(5) provides that States should consider:

*“Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.”*

In 2005, for the first time, an explicit reference to these ideas was included in Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings provides that:

*“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”*

The Commission is of the view that Head 21, even when read in conjunction with the DPP Prosecutors Guidelines<sup>713</sup> does not honour fully the non-prosecution requirement.

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712 Office of the High Commissioner for Human Rights, [Recommended Principles and Guidance on Human Rights and Human Trafficking](#), para. 7

713 “The prosecutor should consider whether the public interest is served by a prosecution of the suspect.” Director of Public Prosecutions (2019) [Guidelines for Prosecutors](#), pp. 12-13

The non-prosecution principle aims to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators (where they so choose). The non-prosecution of victims principle does not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in (Directive 2011/36/EU). Article 8 of the EU Anti-Trafficking Directive does not confer an enforceable right on a suspected victim of trafficking not to be prosecuted.<sup>714</sup> But, importantly, when a victim is identified as a suspected victim of trafficking the prosecution is obliged to give due consideration to this status when making a decision whether to maintain its prosecution against them.<sup>715</sup> In order to ensure such a right is safeguarded, the Commission is of the view that the insertion of a statutory defence to crimes that are committed as a direct consequence of the person being trafficked is both necessary and proportionate.

The importance of the non-prosecution principle received considerable attention within the Commission's first National Evaluation Report wherein the report specifically outlined a number of cases where evidence would suggest that convicted persons were likely, or at least potentially, victims of trafficking. As such, the recommendations relating to non-prosecution fully align with the position of the Commission.

As currently drafted, the General Scheme provides that victims of trafficking will not be deported for immigration offences committed during the time they have been trafficked and/or for their role in their own trafficking; Heads 20 and 21, respectively. While the Commission takes no issue with Head 20 and indeed welcomes such a provision, Head 21 is considerably problematic.

GRETA called on the Irish authorities to ensure:

*“the principle of non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so.” (GRETA, 2022)*

There is no specific provision in Irish law on the non-punishment of victims of trafficking, and while the DPP “has issued guidelines for prosecutors,” GRETA recommends, *inter alia*, that:

*“consideration should be given to adopting a specific legal provision.” (GRETA, 2022)*

Evidence suggests that victims (or potential victims) of trafficking continue to be imprisoned and charged for criminal offences associated with trafficking (IHREC, 2022),

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714 THP v. Chief Superintendent of Garda National Immigration Bureau and Others [2015] 2 ILRM 1, para. 200

715 Court considers that the prosecution of victims, or potential victims, of trafficking may, in certain circumstances, be at odds with the State's duty to take operational measures to protect them where they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual has been trafficked.” See *VCL and AN v. United Kingdom*, no.77587/12 and 74603/12, para. 159, ECHR 2021

beyond that of trafficking offences (IHREC, 2022). This suggests that the *principle of non-punishment* of victims for crimes they have committed as a direct consequence of them being trafficked is not being honoured fully and thus is in contravention of both Article 8 of the EU Anti-Trafficking Directive and Article 26 of the UN Convention Against Human Trafficking.

As stressed by GRETA in its 2017 report:

*“the criminalisation of victims of human trafficking not only contravenes the State’s obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the State’s obligation to investigate and prosecute those responsible for human trafficking. GRETA considers that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of treating them differently depending on the prosecutor in charge of the case.”(GRETA, 2017)*

Citing, *inter alia*, P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors. Greta recommended:

*“adopting a specific legal provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, and/or developing detailed, updated guidance for police officers and prosecutors on the aims and scope of the non-punishment provision.”<sup>716</sup>*

In line with this recommendation, and in light of the likely criminalisation of victims of trafficking by the Irish criminal justice system a statutory defence could potentially be useful in making the application of the non-prosecution principle (by the DPP) less dependent on the identification process (GRETA, 2022). Whether the defence arose on the evidence, and whether the prosecution could disprove it would be considered by the directing officer of the DPP as part of the general consideration of the strength of the evidence. Given the clandestine nature of trafficking it will always be the case that not all victims are formally identified and may only come to light once they have already entered the criminal justice system, such a defence would act as a safety net ensuring that victims of trafficking are not themselves criminalised.

The Commission acknowledges, and indeed welcomes, the State’s innovative approach to decriminalisation of potential victims of trafficking for sexual exploitation, and sees either this Bill, or a standalone Bill as an opportunity for its full realisation. As

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716 GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Trafficking in Human Beings by Ireland. Second Evaluation Round](#). Strasbourg: Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA and Committee of the Parties) Council of Europe, para. 207

part of that measure, in 2021, the Minister for Justice announced plans for legislation to retrospectively expunge over 600 convictions obtained for ‘sale of sex’ under the preceding 1993 legislation (Department of Justice, 2021). In her [statement \(Department of Justice, 2021\)](#), 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>717</sup>*

This novel approach has been welcomed by the Commission. 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>718</sup>

In recognition of the Commissions call for the wider application of retrospective expungement of criminal records of victims of trafficking the Commission would recommend that the Oirachtas Committee examine this important aspect as part of their deliberations.

**The Commission recommends that to adhere fully to the non-punishment principle, the Bill should amend the 2008 Anti-Trafficking Act, to include a specific statutory defence for victims of trafficking where they have committed crimes as a direct consequence of them being trafficked.**

**The Commission recommends that the legislative process of this Bill examine the feasibility of extending the expungement of criminal convictions to victims of other forms of human trafficking.**

717 Department of Justice (2021) [Minister McEntee announces initiative to expunge previous convictions for ‘sale of sex’](#) [press release] 25 April,

718 P. v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General [2015] IEHC 222; IHREC (2022) [Trafficking in Human Beings in Ireland](#), pp. 63-64

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## APPENDIX 2: Compensating Victims of Trafficking (Article 17)

Extract from the

Commission's Submission

on *Compensating Victims of Crime* made to the Law Reform Commission on their Fifth Programme of Law Reform

March 2023

### Background

The Commission welcomed the inclusion of the project *Compensating Victims of Crime* in the Law Reform Commission's Fifth Programme of Law Reform and views such as an opportunity to have a profound positive effect on trafficking victims with regard to their right to compensation. This submission was made to the Law Reform Commission in March 2023 and is based on the findings of the IHREC First National Evaluation Report of the National Rapporteur on Human Trafficking.<sup>719</sup> It represents the Commission's current opinion. To date, no victim of trafficking has received any compensation in Ireland. This is a cause for constant criticism from various international bodies and monitoring mechanisms. It is also an indication of the lack of viable avenues for compensation of such victims, within the existing compensation schemes, which for victims of trafficking offer purely theoretical opportunities.

### EU legal framework on compensation of victims of human trafficking

Victims of crime, including those of human trafficking, have a right to compensation enshrined in several instruments of EU law, outlined below. The right to compensation for victims of human trafficking offences are specifically provided for in Article 17 of the EU Anti-Trafficking Directive (2011/36/EU), which requires Ireland to ensure that

*“victims of trafficking have access to existing schemes of compensation to victims of violent crimes of intent.”<sup>720</sup>*

The Directive also clarifies that victims of trafficking:

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719 IHREC (2022) *Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive*

720 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101

*“should be given access without delay to... legal representation, including for the purpose of claiming compensation.”<sup>721</sup>*

In the spring of 2023 the European Commission reported that Ireland is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive, since Ireland does not compensate victims of trafficking for pain and suffering:

*“In IE [Republic of Ireland], the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation Schemes) only recovers verifiable expenses, and not pain and suffering.”<sup>722</sup>*

Article 12.2 of the Compensation Directive (2004/80/EC) obliges the State to have a compensation scheme for victims of violent crime,<sup>723</sup> and Article 16.1 of the Victims’ Directive (2012/29/EU) establishes a victims’ right to compensation from offenders in criminal proceedings unless national law allows for a decision on compensation in separate proceedings (alternative mechanisms of compensation).<sup>724</sup> Yet, Article 16.2 of the Victims’ Directive requires States to promote measures to encourage offenders to provide adequate compensation to victims.<sup>725</sup>

It has to be noted that not all victims of trafficking are third country nationals. In fact, a sizeable number of victims are EEA nationals, and some are Irish citizens, with habitual residence rights. In that regard, the National Rapporteur refers to the recent Case C-129/19 BV, wherein the European Court of Justice clarified that the right to fair and adequate compensation applies to all victims of violent intentional crimes, namely, not only to cross-border victims but also to habitually resident victims.<sup>726</sup> ‘Fair and appropriate’ compensation was described as that which takes into account ‘the seriousness of the consequences for the victims of the crime committed’ and

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721 Recital 19 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101

722 European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

723 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

724 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

725 Directive 2012/29/EU of The European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

726 C-129/19 *Presidenza del Consiglio dei Ministri v BV*. ECLI:EU:C:2020:566

‘represent and appropriate contribution to the reparation of the material and non-material harm suffered’.<sup>727</sup>

### Compensation to victims of trafficking in Ireland

Compensation plays a crucial role in combatting human trafficking as a key factor that contributes to the recovery of the victims. Best practice involves compensating victims of trafficking in a pecuniary manner, covering both material injuries (such as the cost of medical treatment or unpaid wages) and non-material injuries (such as pain and suffering resulting from the trafficking ordeal),<sup>728</sup> which is often especially severe for victims of trafficking for the purposes of sexual exploitation.<sup>729</sup> Compensation strengthens victims’ access to justice, punishes perpetrators and can act as a prevention tool of the State against these heinous crimes.<sup>730</sup>

To the Commission’s knowledge, no victim of trafficking has received compensation for the harms of trafficking, either in criminal or tortious action.<sup>731</sup> The current compensation mechanisms for victims of trafficking are not effective.<sup>732</sup> There is a lack of compensation for pain and suffering in the Criminal Injuries Compensation Scheme, which sets Ireland apart from other countries.<sup>733</sup> Victims in the State continue to face obstacles to obtaining compensation, due in part to a lack of awareness of their rights,<sup>734</sup> a lack of understanding of the criminal and civil compensation proceedings,<sup>735</sup> and the lack of legal representation.<sup>736</sup> Lack of support to pursue compensation (as distinct from legal advice) represents a major barrier for victims in Ireland.<sup>737</sup> In relation

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727 Ibid

728 GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 20

729 Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

730 GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 20

731 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

732 OSCE (2020) *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combatting Trafficking in Human Beings, Valiant Richey*, p. 8

733 European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

734 During the Survivors’ Consultation performed in 2021-2022, the National Rapporteur learned that survivors were not informed about their right to compensation.

735 European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 15

736 GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 24

737 OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 230



to obtaining compensation from the perpetrator, it should also be born in mind that traffickers often spend or transfer the proceeds of their crimes out of the country. Therefore, it is important to consider the utilisation of the confiscation and seizure of alleged perpetrator assets early in the criminal investigation process.<sup>738</sup>

The Council of Europe has raised serious concerns around victims' access to compensation in Ireland, both from the State and the perpetrator. According to the Group of Experts, the access to information on seeking compensation is not guaranteed by the existence of a leaflet and website,<sup>739</sup> as victims might need expert assistance in completing forms and with providing additional supporting documents.<sup>740</sup> The Commission believes that compensation avenues should be provided to victims of trafficking, in an accessible and inclusive manner. Additionally, the Commission believes that compensation for victims of trafficking should not be contingent on their cooperation with An Garda Síochána in the criminal investigation.

**The Commission reiterates its recommendation that the condition requiring victims of trafficking to cooperate in investigations in order to be referred to assistance and support be removed in the new National Referral Mechanism, which includes access to compensation.**

**The Commission recommends that any proposed compensation scheme should include effective and accessible access to translation, interpretation and cultural mediation.**

**The Commission is of the view that any compensation scheme should honour fully the non-punishment/prosecution requirement.**

#### **Avenues for compensation of victims of trafficking in Ireland**

Article 17 of the EU Anti-Trafficking Directive specifically requires that victims of trafficking have access to existing schemes of compensation involving violent crimes of intent, in accordance with the existing national provisions. In relation to compensation for victims of trafficking, the Commission is of the view that the avenues for compensation have remained unworkable and have not benefitted victims of trafficking. The compensation avenues remain the same:

738 Ibid

739 Legal Aid Board website, please see: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/common-legal-problems/human-trafficking/legal-advice-for-potential-victims-of-human-trafficking.html>

740 GRETA (2022) 'Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings', p. 24

- ▶ Criminal Injuries Compensation Scheme;
- ▶ Section 6 of Criminal Justice Act 1993, and;
- ▶ Civil legal action.

While employment-related compensation *may* be available to some victims of trafficking for the purposes of forced labour, this is separate from compensation of a person as a victim of trafficking crime *per se*.<sup>741</sup>

### Criminal Injuries Compensation Scheme

In 2021, the Minister for Justice, Helen McEntee, T.D., published the revised Criminal Injuries Compensation Scheme.<sup>742</sup> This is a long-standing State mechanism that provides compensation to victims of violent crime. The significant changes increased capacity and requires the publication of decisions. The monetary threshold has also been increased. The removal of the prohibition of the granting of awards where a member, or members of the same household committed the crime is also to be welcomed.<sup>743</sup>

Still of concern to the Commission is the fact that the Criminal Injuries Compensation Scheme only provides compensation for ‘verifiable expenses’ and not for ‘pain and suffering’. This continues to render the Scheme wholly unusable to victims of trafficking.

Additionally, the tribunal adjudicating the Scheme will be able to accept applications on an ‘exceptional basis’ for up to two years after an incident – previously there was no time limit for receipt of consideration on an exceptional basis. Therefore, the introduction has, in effect, reduced the time period for applications.<sup>744</sup> Following a legal challenge, a recent judgement has found that the introduction of this two-year limit without a transitional provision for potential applicants to seek an extension breaches the legal principle of effectiveness.<sup>745</sup> The Minister for Justice has agreed to amend the scheme following the judgement and pending Government approval.<sup>746</sup>

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741 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 114

742 Department of Justice (2021) Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme [press release] 20 April

743 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

744 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

745 Carolan M. (2023) [‘Minister to amend crime compensation scheme after two victims win legal challenge’](#). The Irish Times, 30 January [accessed 16 February 2023]

746 Ibid

GRETA has reported that the Criminal Injuries Compensation Tribunal has received two applications in which the applicants have stated they are victims of human trafficking; one of the applications was subject to plenary proceedings in the High Court and the other sent for decision in early 2022.<sup>747</sup> The Commission has no further information on the outcome of these two cases.

### Section 6 of the Criminal Justice Act 1993

In the 2021 first successful trafficking for the purpose of sexual exploitation convictions, the Commission understands that Section 6 of the Criminal Justice Act 1993 was not applied. It has come to the attention of the Commission that a financial investigation uncovered that the defendants had assets in other countries.<sup>748</sup> The Judge did not order compensation to be paid by the convicted traffickers to the victims. The Commission notes with concern, that Section 6 compensation orders are the exception, rather than the norm. Nor is there any ring fencing of confiscated funds which is directed to supporting victims.<sup>749</sup>

The Commission is of the view that legislative change is required to underpin and strengthen the criminal injuries compensation process for victims of trafficking, in particular for the broader application of Section 6 Compensation orders. Senior criminal law practitioners at the meeting of Irish lawyers with GRETA, organised by the Bar Council in December 2021, told GRETA that while a compensation order can be made in criminal cases under the Criminal Justice Act 1993, compensation in this context is usually something that is offered by a defendant when they are admitting their guilt.

Victims of trafficking do not have viable avenues to compensation for pain and suffering, which sets Ireland apart from other countries.<sup>750</sup> Recently, the European Commission reported that Ireland is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive (ensuring trafficking victims' access to existing schemes of compensation to victims of violent crimes of intent) since Ireland does not compensate victims of trafficking for pain and suffering:

*“In IE [Republic of Ireland], the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation*

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747 GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 24

748 Ibid, p. 21

749 Council of Europe (2005) Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, para. 198

750 European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

*Schemes) only recovers verifiable expenses, and not pain and suffering.”<sup>751</sup>*

### Civil Legal Aid for compensation claims

Access to Civil Legal Aid is not straightforward, particularly for victims of trafficking. Given the unique aspect of trafficking cases, victims may have difficulties satisfying the ‘merit test’ to qualify for Civil Legal Aid.<sup>752</sup> Moreover,<sup>753</sup> the exceedingly long waiting lists; an absence of jurisprudence of civil suits for trafficking harms; the difficulty and fear in facing ones traffickers; and the possible re-traumatising effects of entering another legal process, all act to impede victims of trafficking.<sup>754</sup>

Civil Legal Aid for tortious action is not part of the service the Legal Aid Board provides to victims of trafficking.<sup>755</sup> However, victims are entitled to receive free legal advice – as distinct from legal representation- in regards to such matters. If a victim wishes to seek free Civil Legal Aid, they must apply through the usual channels, which have a number of barriers for victims and there is no prioritisation of trafficking cases within the system as it currently operates.<sup>756</sup>

From the Commission’s consultations with survivors in 2021 and 2023, it transpired that the information provided to them was in the form of a leaflet. The leaflet is not in plain English and is not available on their website. It was clear from consultations with survivors that this was not sufficient to meet their needs. When asked whether they received information on compensation, all responded by saying that they had not. Therefore, it is not surprising that there have been no successful awards of compensation to victims of trafficking.<sup>757</sup>

The Commission is of the view that a victim-centred approach that supports trafficked victims with all their legal needs, whether that is criminal or civil, must be a priority in the proposed reform of the Legal Aid Scheme.<sup>758</sup>

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751 Ibid, p. 40

752 “Depending on your case, if you want civil legal aid, your case will need to satisfy a “merits test “. The main purpose of the merits test is to see if a person paying for a lawyer out of their own money would be likely to pay for the case, and if a lawyer would advise a person to take a case, knowing that they would be paying for it themselves.” See Legal Aid Board (2016) Civil Legal Aid and Advice

753 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

754 Ibid, p. 116

755 As distinct from free legal advice provided to victims of trafficking by the Legal Aid Board; see Legal Aid Board Legal Advice for potential Victims of Human Trafficking

756 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

757 Ibid, p. 116

758 Ibid; Houses of the Oireachtas Seanad Éireann debate (2021) Commencement Matters: Legal Aid (17 February 2021)

The Commission considers that for victims of human trafficking to effectively access their right to compensation access to legal advice and representation is necessary and, as such would require amendment of the Civil Legal Aid Act.

### Confiscation and use of criminal assets

According to Article 7 of the EU Anti-Trafficking Directive, competent authorities should be entitled to seize and confiscate instrumentalities and proceeds from human trafficking offences. Confiscation of assets of criminal organisations and individuals implicated in human trafficking remain an important element of the fight against crime in general, and against human trafficking in particular.<sup>759</sup>

Ireland has a robust legislative framework in place allowing for the freezing, seizure and confiscation of assets that derive from criminal conduct.<sup>760</sup> Importantly, a recent decision of the Court of Justice of the EU held that civil proceedings for confiscation (that are unrelated to a finding of a criminal offence) are compatible with EU law.<sup>761</sup> As such, the legitimacy of the Criminal Assets Bureau<sup>762</sup> is further strengthened.<sup>763</sup>

The confiscation and seizure architecture also includes Section 9 confiscation orders,<sup>764</sup> which apply to offences other than drug trafficking offences, and allows a court to order a convicted person to pay such sum as the court thinks fit to the Exchequer (to be used at the discretion of the Minister for Finance).<sup>765</sup>

**The Commission recommends that the Law Reform Commission considers the specific needs of trafficked victims in its review of compensation, especially in regards to: the inclusion of ‘pain and suffering’ as a ground for compensation from the Criminal Injuries Compensation Scheme; the need to make provision for expert witness reports to substantiate claims related to ‘pain and suffering’ in compensation**

759 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

760 In accordance with the provisions of the Proceeds of Crime Acts 1996-2016, the Criminal Justice Act 1994, as amended, and related statutes, all confiscations relating to the proceeds of crime are transferred to the Minister for Finance to be paid into, or disposed of, for the benefit of the Exchequer

761 ‘Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v, BP and others’ [2019] Case no. C-234/18.

762 CAB is a multi-disciplinary body, made up of members of An Garda Síochána, officials from the Office of the Revenue Commissioners (Taxes and Customs), officials of the Department of Social Protection, together with staff from the Department of Justice, including the Bureau Legal Officer, Forensic Accountants, Financial Crime Analysts, IT experts and Administrative Staff

763 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

764 Criminal Justice Act 1994

765 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

**claims, and; the use of Section 6 Orders<sup>766</sup> as a means of compensating victims within the criminal process.<sup>767</sup>**

**The Commission recommends that the State explore the feasibility of establishing a ring-fenced fund to compensation victims of trafficking with the confiscated proceeds of crime from trafficking and other related offence.<sup>768</sup>**

### Employment Related Compensation

The line between labour exploitation and trafficking for forced labour remains less than clear. However, in Irish law a contractual right depends on the existence of a valid and legal contract.<sup>769</sup>

A key ingredient of a valid contract is consent, whereas trafficking is characterised by an absence of consent: the victim’s acquiescence is obtained by fraud, deceit, coercion or abuse of vulnerability. Another difficulty is that a contract, which is illegal, is normally unenforceable.<sup>770</sup> Where, for instance, the victim has no right to be in the State, any contract of employment between that person and the trafficker will be unenforceable except in the very narrow circumstances covered by sections 2B and 2C<sup>771</sup> of the Employment Permits Act 2003, as amended in 2014. Furthermore, if the agreement concerned something illegal — such as to cultivate cannabis — then it will likewise be illegal and unenforceable.<sup>772</sup>

Following the recent decision of the Labour Court in *TA Hotels Limited et al*,<sup>773</sup> employees without valid immigration permissions will be prevented from bringing

766 *Criminal Justice Act 1993*

767 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

768 *Ibid*

769 *Ibid*, p. 117

770 *Quinn v. IBRC* [2016] 1 IR 1

771 Section 2B of the Employment Permits Acts 2003-2014 seeks to provide a route for migrant employees, without valid immigration permissions, to recover monies owed to them by their employer. The Acts empower such employees (or the Minister for Employment Affairs and Social Protection) to take “civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.” However, “Civil Proceedings” does not include claims brought before the WRC or the Labour Court because “[i]n law, the Labour Court was not such a court” but is instead a “quasi-judicial tribunal exercising a specialist jurisdiction in respect to statutory employment rights.” The Labour Court’s reasoning was that “civil proceedings” were not defined by the Acts to include the Labour Court. The Labour Court considered that the Acts used “civil proceedings” only to distinguish from criminal proceedings.

772 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 117

773 *t/a Lynam’s Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam’s Hotel v Preeti Khoosye* [2019] 12 JIEC 0408

employment rights claims through the statutory bodies set up to deal with such claims.<sup>774</sup> The consequences of this decision reach far beyond victims of trafficking, by severely undermining the protections for irregular migrant workers per se. Likewise, this may affect victims of trafficking who wish to recoup unpaid wages owed to them. Notably, this will not be an avenue for all forms of trafficking (such as those trafficked and exploited in illegal trades such as the drug or sex trade). However, it may have particular relevance for some victims, particularly in the context of labour exploitation and those who may not wish (or are unable or unsuccessful) to pursue criminal proceedings against their exploiters.<sup>775</sup>

For those legally employed, seeking compensation for unpaid wages, loss of earnings and other employment breaches is possible through the Workplace Relations Commission adjudication service and the Labour Court.<sup>776</sup> Legal practitioners have stated that it is rare for victims of trafficking to take civil proceedings against perpetrators due to the lack of legal aid, among other reasons<sup>777</sup> (as outlined above, LAB provides legal advice as distinct from legal representation). Seeking redress in the Workplace Relations Commission is especially challenging for victims of trafficking mainly due to fear of repercussions such as losing their employment and immigration permit.<sup>778</sup>

The lack of protections for irregular migrants inevitably create an anomalous situation in which employers found in breach of labour laws may face lesser financial penalties where they have employed undocumented workers. A serious question arises for the State as to whether the current framework provides an incentive for potentially rogue employers involved in human trafficking chains.<sup>779</sup>

In 2019, Ireland ratified the Protocol to the ILO Convention No. 29 on Forced Labour, which provides for access to compensation to victims of forced labour irrespective of their immigration status. Given the analysis outlined above (and elsewhere in this submission) the National Rapporteur remains concerned that the rights of irregular migrants who are victims of forced labour and/or trafficking are not being sufficiently upheld, potentially, bringing the State out of compliance with its obligations under the ILO Convention and the EU Anti-Trafficking Directive.<sup>780</sup>

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774 Such as the WRC and the Labour Court.

775 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p.p. 117- 118

776 GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 21

777 Ibid

778 Ibid

779 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 118

780 Ibid

**The Commission recommends, with a view to fostering better possibilities for compensation for victims of trafficking for forced labour, that the Law Reform Commission recommends that the State consider:**

- ▶ **The introduction of an effective criminal compensation scheme that compensates for unpaid wages where there has been trafficking and labour exploitation;**
- ▶ **A legislative amendment to permit irregular migrant workers access to the WRC and the labour court;**
- ▶ **The expansion of free legal aid to employment and equality cases to ensure appropriate access to justice.<sup>781</sup>**

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781 Ibid



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## APPENDIX 3: Civil Legal Aid for Victims of Trafficking

### Review of Civil Legal Aid for victims of Human Trafficking

Article (12.2) of the EU Anti-Trafficking Directive requires ‘member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources’. As with all regional instruments, this is the minimum standard required. As such, Ireland should strive to exceed this in any way it can. In addition to the obligations under Article 12(2) that requires the legal assistance be provided to victims for the purposes of obtaining compensation, Article 17 specifically requires that victims of trafficking have access to existing schemes of compensation involving violent crimes of intent, in accordance with the existing national provisions. In relation to compensation for victims of trafficking, the Commission is of the opinion that the avenues for compensation have remained unworkable and have not benefitted victims of trafficking. The compensation avenues remain the same: Criminal Injuries Compensation Scheme; Section 6 of Criminal Justice Act 1993; and civil legal action. While employment-related compensation may be available to some victims of trafficking for the purposes of forced labour, this is separate from compensation of a person as a victim of trafficking crime per se.

In 2021, the Minister for Justice, Helen McEntee, T.D., published the revised Criminal Injuries Compensation Scheme.<sup>782</sup> This is a long-standing State mechanism that provides compensation to victims of violent crime. The significant changes included increased capacity and the publication of decisions. The monetary threshold has also been increased. It is also positive that the prohibition of the granting of awards where members of the same household committed the crime have been removed.

In June 2022 the Minister announced the review of Civil Legal Aid Scheme and established a Review Group chaired by retired Chief Justice, Frank Clarke, with membership drawn from those who work with marginalised groups, legal practitioners, academics, department officials and representatives from the Legal Aid Board, which administers the current Scheme to undertake this review.

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<sup>782</sup> Department of Justice (2021) Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme [press release] 20 April

These important developments, along with the publication of the General scheme of the Criminal Law (Sexual Offences and Human Trafficking) Bill have the potential to drastically improve the assistance and support received by victims of trafficking.

**The Commission recommends that the necessary reforms of the compensation avenues available to victims, along with the proposed expansion and reform of the Civil Legal Aid Scheme be fully incorporated into the reformed NRM, once enacted.**

Victims of trafficking are amongst a unique category of victims that are statutorily entitled to receive legal advice through the Civil Legal Aid Board in relation to:

- a. any matter connected with the commission of the human trafficking offence (whether or not a prosecution for that offence has been instituted);
- b. any matter connected with the commission of any other offence of which the person is alleged to be a victim, being an offence (whether or not a human trafficking offence) that is alleged to have been committed in the course of, or otherwise in connection with, the commission of the human trafficking offence, or
- c. without prejudice to the generality of paragraph (a) or (b), the prosecution of the human trafficking offence or of the other offence referred to in paragraph (b).<sup>783</sup>

It is of note that the nature of the legal assistance is limited to the provision of legal advice - as distinct from legal representation - to suspected victims of trafficking.

The Commission, as National Rapporteur welcomes the legal support for victims of trafficking provided for within the Civil Legal Aid Act 1995. However, the Commission remains concerned about a number of aspects of the provision of free civil legal aid, before considering a number of substantive matters (detailed below) the Commission would like to raise some overarching concerns.

The Commission remains concerned about the use of the term 'alleged victim of a human trafficking offence' used by the Legal Aid Board. This is not sufficiently clear and is not used elsewhere in any official working documents, legislation or policy papers on human trafficking.

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<sup>783</sup> Section 26 of *Civil Legal Aid Act 1995* (as amended by section 3 Civil Law (Miscellaneous Provisions) Act 2011) extended the remit of the Legal Aid Board to grant legal advice to a person who is an alleged victim of a human trafficking offence.

**The Commission recommends that the term ‘suspected victim of human trafficking’ be used in place of ‘alleged victim of human trafficking’.**

During consultations survivors of trafficking raised the extremely long waiting lists and difficulty in making contact with their solicitor as particular barriers that need to be addressed urgently.

**The Commission calls for the LAB to be adequately resourced to ensure that waiting times are reduced.**<sup>784</sup>

According to the Legal Aid Board website,<sup>785</sup> legal assistance to suspected victims of trafficking is provided by a specialist unit within the LAB, and includes provision of free legal advice relating to:

- ▶ Immigration status and matters set out in the Administrative Immigration Arrangements for the Protection of Victims of Human
- ▶ Trafficking (AIA)
- ▶ Information about the role of a witness in a criminal trial
- ▶ Information about available mechanisms for compensation
- ▶ Information about seeking redress regarding employment breaches.<sup>786</sup>

As noted above, full legal representation is not provided to victims of trafficking, except in the context of International Protection applications and in limited criminal matters.<sup>787</sup> Additionally, this does not cover proceedings before quasi-judicial settings.

In 2021, the LAB received a total of 19 referrals by An Garda Síochána, pertaining to request to provide legal advice to potential victims of trafficking.<sup>788</sup> These cases were

784 IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the United Nations Committee on the Elimination of Discrimination against Women on Ireland’s combined sixth and seventh periodic reports](#). Dublin, p. 39

785 Legal Aid Board website is available [last accessed 19.01.22] < <https://www.legalaidboard.ie/en/our-services/legal-aid-services/common-legal-problems/human-trafficking/> >

786 Legal Aid Board website is available [last accessed 19.01.22] < <https://www.legalaidboard.ie/en/our-services/legal-aid-services/common-legal-problems/human-trafficking/> >

787 Such as separate legal representation under section 4A of the Criminal Law (Rape) Act 1981

788 The profile of the victims who obtained legal advice from the Legal Aid Board in 2021, the types of exploitation and the regions of origin, align with the general statistical trends. Of the 19 victims of trafficking referred to the LAB 2021, 14 were female and 5 were male. There were no minors but some were as young as 19 (no further age disaggregation was submitted). 7 were victims of trafficking for labour exploitation (6 male and 1 female), and respectively 12 were victims of trafficking for sexual exploitation of whom all were female. The majority of the victims were from Africa (9), which accords with the predominant type of exploitation – sexual exploitation. This followed by EEA victims (8), among who all but two were trafficked for labour exploitation. There were also individual cases from a non-EEA country and from Asia.

part of a total of 85 ongoing cases involving human trafficking. According to LAB, all of the 19 cases involved collaboration with the HSE Anti-Human Trafficking Team.<sup>789</sup>

Legal advice (informing the victim of her rights) is not enough to ensure that victims of trafficking in Ireland receive the assistance they are entitled to under Directive 2011/36/EU. Victims of trafficking with similar recovery needs will receive different supports depending on whether or not they have a legal representative navigating the process of access to assistance to the relevant statutory systems of support.

Furthermore, the nature of the present identification process, which does not include written acknowledgement that the person is a suspected victim of human trafficking (bar in rare cases),<sup>790</sup> leaves victims of trafficking without protection vis-à-vis their participation in and dealings with various systems instrumental in their recovery and reintegration – social welfare, child benefit claims, renting, housing, employment, education etc. In other words, legal advocacy and legal representation provided ‘without delay’ is of particular importance in the national context because the rights to assistance and the positive result of identification do not exist in clear and explicit terms, and do not accompany victims on their journey to recovery.

### Access to Legal Advice and Assistance for Children

Children are among the most vulnerable victims of trafficking. According to a recent EU Study, the social, economic and personal cost from the crime committed against children is exceptionally high.<sup>791</sup> Given their unique vulnerability, child victims of trafficking need child-specific processes and procedures, legal assistance is but one example where supports to child victims of trafficking is in need of reform.

There were no child trafficking victims identified in Ireland in the last two years. Over the period 2013 to 2020, there were 34 child victims of trafficking identified in the State, which represents 9% of all victims. This proportion is significantly lower than the EU average of 22%. The markedly lower than EU levels of child trafficking in Ireland and the complete lack of identified cases in the last two years, exposes the challenges facing the State in the identification and categorisation of such victims in Ireland, and logically the appropriate assistance they require that flows from this.

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

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789 To be updated following data collection 2023

790 Written acknowledgement of positive identification could be issued in relation to undocumented third country nationals who are not claiming International Protection.

791 European Commission (2020) [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#)

victims of trafficking.<sup>792</sup> The Commission has criticised the use of such prospective and exploratory language, regarding it as a weak commitment on the part of the State to implement the Council of Europe Group of Experts on Action against Trafficking ('GRETA') recommendations of the need for child-specific responses.<sup>793</sup>

The Commission has emphatically called for the inclusion of child-specific identification and, for present purposes, *assistance* measures to be included in States anti-trafficking response. Such calls are reiterated throughout the National Evaluation Report,<sup>794</sup> and owing to the significant reforms that are urgently required, these are included in a dedicated chapter within the First National Monitoring Report. In the report, the Commission explicitly recommends that children should be appointed a Children's Legal Advisor, (IHREC, 2022).

In principle, Section 26(3B) of the *Civil Legal Aid Act 1995* applies equally to children. However, it is clear that provision is not sufficiently child-specific, to meet the needs of suspected child trafficking victims. Where a child is in the care of their (safe) parent/guardian and the child is sufficiently mature, they may instruct their solicitor but where a child does not have the requisite maturity, the child's parent or guardian will need to give instructions. At present, this is not possible under the *Civil Legal Aid Act 1995*.

Separately, where a child trafficking victim is in the care of the State, there is no requirement that Tusla seek legal advice (legal aid) on behalf of the child. A model for such a mechanism might be section 23D(5)(b) of the *Child Care Act 1991*. To recognise the significant benefit to child victims and to ensure that all children receive the legal support they require and are entitled to, the Commission would urge that consideration be given to providing each child with a 'Children's Legal Advisor'.

Whether a child has been taken into the care of the State, in which case Tusla are acting *in loco parentis* (and/ or as the child's legal guardian), or where the child is in the care of their parent/guardian they must have access to a Children's Legal Advisor. The Children's Legal Advisor would act as an advocate for the child to ensure the highest protection and support for the child, regardless of the form of trafficking the child has been subjected to, the family background, and/or the child's immigration status.<sup>795</sup>

The Commission is of the view that legal assistance has to be extended to parent/guardians of suspected child victims of trafficking. Similarly, a mechanism would be needed in cases where Tusla is acting *in loco parentis* with respect to a suspected

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792 Department of Justice and Equality (2016) *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*

793 IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#)

794 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

795 OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#)

child victim of trafficking.<sup>796</sup> There are a number of recommendations outlined in the *O'Malley Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* that are directly relevant to child victims of trafficking that are particularly relevant. While the full implementation of the O'Malley report has the potential to assist victims of trafficking for sexual exploitation (further detailed below), the Commission would like to emphasise the importance of the recommendations that relate to the new child sexual exploitation offences created by sections 3 to 8 of the 2017 Criminal Law (Sexual Offences).<sup>797</sup> In particular, the need to bring these new child sexual exploitation offences within the free Legal Aid scheme;<sup>798</sup> to extend Legal Aid to parents/guardians of child victims;<sup>799</sup> and; to ensure that all victims receive the same level of support irrespective of their location.<sup>800</sup>

**The Commission recommends that a system of 'Children's Legal Advisors' be established to provide child-specific legal advice to child victims of trafficking and<sup>801</sup> where a child is in the care of the State that Tusla shall provide the child with access to a Children's Legal Advisor. Further, that Legal Aid be extended to (safe) parents/guardians of child victims of trafficking.**

### Non-conditional Access to Free Legal Assistance

Victims of trafficking are often made aware of the provision of free legal advice upon their first contact with An Garda Síochána. Alternatively, victims may receive legal representation and information from frontline specialist support NGOs, including a licenced law centre such as the Immigrant Council of Ireland or the Irish Refugee Council. This may include coordination with the Legal Aid Board, but not necessarily.

The LAB website indicates that a referral by An Garda Síochána is required in order to access legal advice. Despite this, a self-referral option also appears to be available to victims of trafficking by completing and posting of an application form.<sup>802</sup> The requirement for a referral by Garda Síochánain essence means that that only victims

796 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p.138

797 See O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), p.45

798 Ibid, para 7.16

799 Ibid, para 7.17. Needless to say, this would not apply where the parent or adult in question was the suspected or alleged offender.

800 O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), para 9.24

801 IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 25

802 Legal Aid Board (2016) [Legal Advice for potential Victims of Human Trafficking](#)

who are cooperating with the investigation are considered eligible for legal advice from the LAB, a position that is clearly not conducive to early assistance to victims of trafficking.

The principles of non-punishment and non-prosecution apply, in particular, to the cases involving victims of trafficking for criminal activities. However, the principle also arises in the context of other types of human trafficking exploitation, such as sexual exploitation and penalties related to organised prostitution, and trafficking for labour exploitation, where the victim may have contravened employment law. In almost all cases of human trafficking pertaining to victims of trafficking, who are third country nationals, the contravention of immigration and personal documentation related offences remains a high possibility and is of particular relevance to the application of the principle of non-prosecution. The UN Special Rapporteur on Trafficking in Persons, Especially Women and Children recently emphasised that upholding the principle is critical to the recognition of trafficking as a serious human rights violation.<sup>803</sup> The provision of early legal assistance is an important aspect of this principle and one which is essential in safeguarding the victims from criminalisation of crimes they were forced to commit.

**The Commission recommends that all potential victims of trafficking be proactively provided with adequate, early legal support. This is especially important in order to guard against criminal prosecution for offences that have been committed as a consequence of a person having been trafficked and to ensure that victims can avail of an effective remedy and appropriate redress for any harm caused to them.**

**The Commission recommends that the LAB offer legal assistance to potential and self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána. This must align fully with the new National Referral Mechanism.<sup>804</sup>**

**The Commission recommend all State agencies maintain an up to date websites with trauma-informed,<sup>805</sup> accurate information and working links especially in sections intended for vulnerable populations, such as victims of human trafficking. This is especially important in the provision of comprehensive information provided to enable victims of trafficking to navigate the complex immigration process.**

803 United Nations Human Rights Council (2021) *Implementation of the Non-Punishment Principle. Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Siobhán Mullally, A/HRC/47/34*

804 General Scheme Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022

805 Including quick 'exit buttons', careful consideration of images (do not use stock images that portray violence and can be triggering), ensuring that safety alerts and support services are unmissable, design with mobile and touchscreen capabilities such as 'call' buttons.

## Separate Legal Representation for Victims of Sexual Exploitation

The Commission, in its role as Rapporteur, has expressly called for victims of trafficking for the purposes of sexual exploitation be afforded the same protections as victims of rape and other sexual assault offences in criminal trials.<sup>806</sup>

Separate legal representation is available at a trial for a rape offence, an offence under the Criminal Law (Sexual Offences) Act 2006, an offence under s. 6 of the Criminal Law (Sexual Offences) Act 1993, aggravated sexual assault and associated offences (e.g. attempted aggravated sexual assault, aiding, abetting, etc.). Currently, this does not extend to trial for “sexual assault offences” which would include sexual assaults or for offences of sexual exploitation.<sup>807</sup> The Working Group of the O’Malley Review recommended that the provision for separate legal representation (and the associated right to legal aid) should extend to all trials for sexual assault offences.<sup>808</sup> O’Malley notes, “The experience of a victim as witness in a trial for sexual assault may be no less difficult or traumatic than in a trial for a rape or aggravated sexual assault offence”. It follows that the experience of a victim as witness in a trial for trafficking for the purposes of sexual exploitation<sup>809</sup> may too be no less difficult or traumatic than in a trial for rape or aggravated sexual assault. In fact, given the control associated with of trafficking, such victims may have particular vulnerabilities that require this level of protection within the criminal trial.

Traffickers commonly use sexual violence as a tool to assert power and control over women, children, and men, regardless of the type of trafficking they are engaging in. Additionally, a trafficking offence is not, by definition, a sexual offence, although the sexual exploitation (without the element of trafficking) of a person, may constitute rape and/or sexual assault of the victim. The difficulty arises where the accused trafficker is not (exclusively, or possibly at all) the person who is actually perpetrating the sexual exploitation, but rather the person ‘recruiting, harbouring, etc.’ the victim for the purposes of sexual exploitation. Given the heinous nature of what a victim is subjected to when they have been sexually exploited, it is essential they are afforded the same protections as other victims of rape and sexual assault with regard to separate legal representation and that victims of all sexual exploitation (whether an identified victim of trafficking or not) have access to legal advice and assistance through amendment of the Civil Legal Aid Act.

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806 IHREC (2022) [Submission on Part 3 of the General Scheme of the Criminal Justice \(Sexual Offences and Human Trafficking\) Bill 2022](#); IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#)

807 If passed this will be amended by the Criminal Law (Sexual Offences and Trafficking) Bill 2022

808 The Third National Strategy on Domestic Sexual and Gender identifies Trafficking in Human Beings as a form of gender-based violence, in line with Directive 2012/29/EU.

809 Offences under section 4 Criminal Law (Human Trafficking) Act 2008



**The Commission recommends that the Civil Legal Aid Act be amended to provide separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experiences) be extended to victims of sexual exploitation offences committed under section 4 of the Criminal Law (Human Trafficking) Act 2008.**

### Access to Legal Advice and Assistance in Criminal Matters

At present, victims of trafficking and victims of rape and serious sexual assault offences are entitled to free legal advice either as a suspected victim of trafficking or as a complainant, respectively. As set out above, section 26 of *Civil Legal Aid Act 1995* (as amended by section 3 Civil Law (Miscellaneous Provisions) Act 2011) extended the remit of the Legal Aid Board to grant legal advice to a person who is an suspected victim of a human trafficking offence. Whereas section 26(3A) of the Civil Legal Aid Act 1995, as inserted by the Civil Law (Miscellaneous Provisions) Act 2008, provides:

*“Notwithstanding any other provision of this Act, the [Legal Aid] Board shall grant legal advice to a complainant in a prosecution for –*

*(a) the offence of rape under the common law,*

*(b) the offence of rape under section 2 of the Criminal Law (Rape) Act 1981,*

*(c) the offence of aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990,*

*(d) the offence of rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990,*

*(e) an offence under section 6 (substituted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the Criminal Law (Sexual Offences) Act 1993.*

*(f) an offence under the Criminal Law (Sexual Offences) Act 2006,*

*(g) an offence of incest under section 1 or 2 of the Punishment of Incest Act 1908.”*

The O’Malley Review expressly recommends the range of offences to which the section applies ‘be extended to include sexual assault and any offence under sections 3 to 8, 18, 21 and 22 of the Criminal Law (Sexual Offences) Act 2017’.<sup>810</sup> Importantly, the

810 O’Malley Review, para. 7.14

O'Malley Review also recommended that the provision of this legal advice not be contingent on there being a prosecution.<sup>811</sup>

The Third National Strategy on Domestic Sexual and Gender identifies Trafficking in Human Beings as a form of gender-based violence. The sex industry is recognised as being a high-risk environment for sexual exploitation and sex trafficking. The profound violence and sexual violence that people in the sex industry are often subjected to necessitate their inclusion in the protections (including access to legal aid) provided to witness/victims of other sexual offences. This is especially important to consider as the recommendations of the O'Malley Review are currently being implemented.

It is recognised that there are a number of offences relating to sexual exploitation wherein a victim/witnesses may be called upon to act as witnesses in a criminal trial. Perhaps the most relevant are the purchase of sex laws and those relating to organised prostitution – at a minimum, relevant offences include sections 6, 7 and 7A (as amended) of the Criminal Law Act 1993. Consideration must also be given to the protections necessary for victim/witnesses in other offences contained in the 1993 Act, such as sections 8-12.<sup>812</sup> This aligns fully with the Commission's recommendation that there needs to be increased support for exit pathways out of the sex industry for people, which of course includes potential victims of trafficking.

Owing to the victim/witnesses recognised vulnerability and the need for greater protection of this cohort there is an opportunity to ensure that no victim/witness of sexual exploitation is excluded from the expansion of criminal justice protections. It is also an opportunity to greater adhere to the obligations under the Anti-Trafficking Directive and the Victims' Rights Directive through preventing re-victimisation and increasing prosecutions. Prostitution has been recognised as a form of GBV thus it follows that these people, who are disproportionately women, are afforded greater supports within the criminal justice system.

Providing legal assistance to victim/witnesses of sexual exploitation ensures that they are afforded the opportunity to be fully and thoroughly prepared for a case, as well as a means protecting victims from re-traumatisation through the court process. Such measures would greatly enhance the capacity of victims to give their best evidence.

The objective must be to ensure that all victims of sexual exploitation have an opportunity to discuss their concerns confidentially and thoroughly with a professional lawyer who has the knowledge and experience to deal with any questions they may have. This is especially important following an investigation or police operation into

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811 O'Malley Review, para. 7.13

812 Loitering for purposes of prostitution; Organisation of prostitution; Living on earnings of prostitution; Brothel keeping

the sex industry by An Garda Síochána, after a person reports an offence, and/or any further questions that may arise as a case progresses.

**The Commission recommends that the Civil Legal Aid Act 1995 be extended to include sexual exploitation offences and that such legal advice should not be contingent on their being a prosecution or on the person having been identified as a suspected victim of trafficking.**

### Separate Legal Representation for Section 6 Orders

In the recent successful conviction of traffickers for the purposes of sexual exploitation, the Commission understands that the provisions of Section 6 of the Criminal Justice Act 1993 were not applied. Therefore, the Judge did not order compensation be paid by the convicted traffickers to the victims. The Commission notes with concern, that section 6 compensation orders are the exception, rather than the norm. Nor is there any 'ring fencing' of confiscated funds which is directed to supporting victims.<sup>813</sup> In addition to the substantive reforms of section 6 Compensation Orders that are required, it is also necessary that victim/witnesses are provided with separate legal representation for the purposes of securing such compensation and to act (independently from the State) on behalf of the rights of the victim.

**The Commission recommends that the Civil Legal Aid Review consider the specific needs of trafficked victims especially as it relates to compensation, most notably the use of Section 6 Orders<sup>814</sup> as a means of compensating victims within the criminal process, and the potential need for separate legal representation for this purpose.**

### Legal Aid as it relates to Civil Compensation

Of concern to the Commission is the fact that the Criminal Injuries Compensation Scheme only provides compensation for 'verifiable expenses' and not for 'pain and suffering'. This continues to render the Scheme wholly unusable to victims of trafficking to date. Additionally, the tribunal adjudicating the Scheme will be able to accept applications on an 'exceptional basis' for up to two years after an incident – previously there was no time limit for receipt of consideration on this exceptional basis. Therefore, the introduction has, in fact, reduced the time period for applications. Given

813 Council of Europe (2005) [Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings](#), para. 198

814 *Criminal Justice Act 1993*

a recent High Court decision it is likely that this absolute time limit will be removed and the ‘exceptional circumstance’ rule be reintroduced.<sup>815</sup>

To the Commissions knowledge no victim of trafficking has received compensation for the harms of trafficking, either in criminal or in tortious action.

Access to free Civil Legal Aid is not straightforward, particularly for victims of trafficking. Given the unique aspect of trafficking cases, victims may have difficulties satisfying the ‘merit test’ to qualify.<sup>816</sup> Moreover the exceedingly long waiting lists; an absence of jurisprudence of civil suits for trafficking harms; the difficulty and fear in facing ones traffickers; and the possible re-traumatising effects of entering another legal process, all act to impede victims of trafficking.

The Law Reform Commission’s (LRC) Fifth Programme of Law Reform includes the project *Compensating Victims of Crime*. This examination and the subsequent recommendations could have a profound positive effect on trafficking victims in regards to their right to compensation. A victim-centred approach that supports trafficked victims with all their legal needs be that criminal or civil must be a priority in the proposed reform of the Legal Aid Scheme.<sup>817</sup>

From the Commission’s consultation with survivors, it is clear that a significant number of victims were not provided with the full ambit of legal assistance they are entitled to receive. This was particularly the case in regards to legal advice relating to compensation, where none of the survivors received *any* information or advice, let alone representation. To the Commissions knowledge no victim of trafficking has received compensation for the harms of trafficking, either in criminal or in tortious action.

### Legal Aid for Tortious Actions

Free Civil Legal Aid for tortious action is not part of the service the Legal Aid Board provides to victims of trafficking.<sup>818</sup> Although, victims are entitled to receive free legal advice in regards to such matters. The access to free Civil Legal Aid is not straightforward, particularly for victims of trafficking. Given the unique aspect of trafficking cases, victims may have unique difficulties satisfying the ‘merit test’ to

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815 Irish Times, 30/01/2023, ‘Minister to amend crime compensation scheme after two victims win legal challenge Planned changes to scheme will need Government approval, High Court told’, Mary Carolan

816 “Depending on your case, if you want civil legal aid, your case will need to satisfy a “merits test “. The main purpose of the merits test is to see if a person paying for a lawyer out of their own money would be likely to pay for the case, and if a lawyer would advise a person to take a case, knowing that they would be paying for it themselves.” See Legal Aid Board (2016) Civil Legal Aid and Advice

817 See Houses of the Oireachtas Senead Éireann debate (2021) Commencement Matters: Legal Aid (17 February 2021)

818 As distinct from free legal advice provided to victims of trafficking by the Legal Aid Board; see Legal Aid Board [Legal Advice for potential Victims of Human Trafficking](#)

qualify for free Civil Legal Aid for tortious actions.<sup>819</sup> Moreover the exceedingly long waiting lists; an absence of jurisprudence of civil suits for trafficking harms; the difficulty and fear in facing ones traffickers; and the possible re-traumatising effects of entering another legal process, all act to impede victims of trafficking from accessing civil remedies.

Importantly, the Law Reform Commission’s (LRC) Fifth Programme of Law Reform, which was approved by the Government in March 2019, is examining *Compensating Victims of Crime*. This could have a profound positive effect on trafficking victims in regards to their right to compensation and therefore the associated rights to legal aid.

**A victim-centred approach that supports trafficked victims with all their legal needs, whether that is criminal or civil, must be a priority in the review of Legal Aid.<sup>820</sup>**

The Commission reiterates its longstanding concern that Civil Legal Aid is unavailable in a number of legal and administrative areas, which has proved to be a barrier to access to justice for those on low incomes, women, victims of domestic violence, victims of trafficking and labour exploitation, International Protection applicants, Travellers, Roma, and minority ethnic communities.<sup>821</sup> The Legal Aid Board is precluded from providing representation to individuals before quasi-judicial tribunals and bodies<sup>822</sup> dealing with social welfare appeals, housing issues, and employment and equality cases.<sup>823</sup>

**The Commission recommend the review of Legal Aid Scheme consider legislative reforms needed to expand the remit of the Legal Aid Board to offer legal advice, assistance and, where necessary representation to victims of human trafficking in all relevant matters.**

819 “Depending on your case, if you want civil legal aid, your case will need to satisfy a “merits test “. The main purpose of the merits test is to see if a person paying for a lawyer out of their own money would be likely to pay for the case, and if a lawyer would advise a person to take a case, knowing that they would be paying for it themselves.” See Legal Aid Board (2016) [Civil Legal Aid and Advice](#)

820 See Houses of the Oireachtas Senead Éireann debate (2021) [Commencement Matters: Legal Aid](#) (17 February 2021)

821 IHREC (2020) [Submission to the Citizens’ Assembly on Gender Equality](#), Dublin, pp. 29-30; IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5th to 9th Report](#). Dublin, pp. 110-111, 142-143; IHREC (2017) [Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the United Nations Committee on the Elimination of Discrimination against Women on Ireland’s combined sixth and seventh periodic reports](#). Dublin, pp. 38, 62, 68; IHREC (2015) [Ireland and the International Covenant on Economic, Social and Cultural Rights](#). Dublin, pp. 14-15.

822 Including the Labour Court, the Social Welfare Appeals Office, and the Workplace Relations Commission.

823 UNHRC (2011) [Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland](#), A/HRC/17/34/Add.2, p. 4

## Employment Related Compensation

There is no standalone criminal offences of forced or exploited labour in Irish law.<sup>824</sup> Instead, labour exploitation is only criminalised when it forms part of a trafficking offence under the 2008 Trafficking Act. Particularly exploitative working conditions may be the result of trafficking, but not all exploitation occurs in the context of human trafficking.<sup>825</sup> Equally, though, victims of trafficking may be victims of labour exploitation *and* trafficking.

The line between labour exploitation and trafficking for forced labour remains less than clear. However, in Irish law a contractual right depends on the existence of a valid and legal contract.

A key ingredient of a valid contract is consent, whereas trafficking is characterised by an absence of consent: the victim's acquiescence is obtained by fraud, deceit, coercion or abuse of vulnerability. Another difficulty is that a contract, which is illegal, is normally unenforceable.<sup>826</sup> Where, for instance, the victim has no right to be in the State, any contract of employment between that person and the trafficker will be unenforceable except in the very narrow circumstances covered by sections 2B and 2C<sup>827</sup> of the Employment Permits Act 2003, as amended in 2014. Furthermore, if the agreement concerned something illegal — such as to cultivate cannabis— then it will likewise be illegal and unenforceable.

Following the recent decision of the Labour Court in *TA Hotels Limited et al.*<sup>828</sup> it would appear settled that employees without valid immigration permissions will be prevented from bringing employment rights claims through the statutory bodies set up to deal with such claims.<sup>829</sup> The consequences of this decision reach far beyond victims of trafficking, by severely undermining the protections for irregular migrant workers per se. Likewise, this may affect victims of trafficking who wish to recoup unpaid wages

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824 For a detailed discussion on the absence of slavery, servitude and forced labour offences where there has been no trafficking see in IHREC's First National Report

825 European Union Agency for Fundamental Rights (2021) [Protecting Migrants in an Irregular Situation from Labour Exploitation: Role of the Employers Sanction Directive](#). Luxembourg: Publications Office of the European Union, p. 34

826 *Quinn v. IBRC [2016] 1 IR 1*

827 Section 2B of the *Employment Permits Acts 2003-2014* seeks to provide a route for migrant employees, without valid immigration permissions, to recover monies owed to them by their employer. The Acts empower such employees (or the Minister for Employment Affairs and Social Protection) to take "*civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.*" However, "*Civil Proceedings*" does not include claims brought before the WRC or the Labour Court because "[i]n law, the Labour Court was not such a court" but is instead a "quasi-judicial tribunal exercising a specialist jurisdiction in respect to statutory employment rights." The Labour Court's reasoning was that "*civil proceedings*" were not defined by the Acts to include the Labour Court. The Labour Court considered that the Acts used "*civil proceedings*" only to distinguish from criminal proceedings.

828 *t/a Lynam's Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam's Hotel v Preeti Khoosye [2019] 12 JIEC 0408*

829 Such as the WRC and the Labour Court.

owed to them. Markedly, this will not be an avenue for all forms of trafficking (such as those trafficked and exploited in illegal trades such as the drug or sex trade). However, it may have particular relevance for some victims, particularly in the context of labour exploitation and those who may not wish (or are unable or unsuccessful) to pursue criminal proceedings against their exploiters.<sup>830</sup>

The lack of protections for irregular migrants inevitably create an anomalous situation in which employers found in breach of labour laws may face lesser financial penalties where they have employed undocumented workers. A serious question arises for the State as to whether the current framework provides an incentive for potentially rogue employers involved in human trafficking chains.

In 2019 Ireland ratified the Protocol to the ILO Convention No. 29 on Forced Labour, which provides for access to compensation to victims of forced labour irrespective of their immigration status. The Commission remains concerned that the rights of irregular migrants who are victims of forced labour and/or trafficking are not being upheld. Potentially bringing the state out of compliance with its obligations under the ILO Convention and the Directive.

**The Commission recommend the State consider expanding the remit of the Legal Aid Board to other administrative areas and in cases where a person is the victim of trafficking for labour exploitation and requires legal representation to obtain redress from the district court and, subject to reform, a tribunal such as the Workplace Relations Commission.<sup>831</sup>**

Regard must be had to the important reforms contained in the General Scheme of the Criminal Justice (Criminal Law and Trafficking) Bill 2022 and the substantial amendments recommended by THE COMMISSION in its submission to the Joint Oireachtas Committee. The Commission would urge the Civil Legal Aid Review group to consider these in detail and align the reform of Civil Legal Aid fully with the new National Referral Mechanism. Most especially the important role envisioned for Competent Authorities and Trusted Partners within this new identification mechanism. It is essential that both competent authorities and trusted partners have the authority to refer an applicant to the Legal Aid Board where they suspect that the person is a victim of trafficking and that this is possible at the earliest possible time.

830 For a more detailed discussion on the WRC and the Labour Court

831 IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#). Dublin, p. 7. This of course could require : The introduction of a functioning criminal compensation scheme that compensates for unpaid wages where there has been trafficking and labour exploitation and a legislative amendment to permit irregular migrant workers access to the WRC and the labour court.

**Commission recommends that the eligibility threshold for accessing legal aid reflect the recommendations detailed above. In brief, that victims of trafficking be afforded legal advice and/or representation to support them in all civil, criminal and quasi-judicial proceedings to ensure all access to all the assistance and supports they are entitled to receive as set out in the EU Anti-Trafficking Directive. Namely, safe accommodation; social welfare; medical and psychological assistance; immigration permission; compensation (civil and criminal). Additionally, that legal support also be provided to victims of sexual exploitation offences.**

The Commission supports and welcomes the waiving of the financial contribution requirement for victims of trafficking and would recommend that this continue. Owing to the particular vulnerability of victims of trafficking it is essential that their right to legal assistance be free of charge.

The Commission remains concerned about the priority given to human trafficking within the Legal Aid Board, evident in the limited resources allocated to this work. According to the Commission's most up-to-date information. Presently there is a part-time solicitor and the Department of Justice allocated €44,575 to the anti-trafficking work of the Board for 2021.

The legal work of the Immigrant Council of Ireland represents a best practice example of a comprehensive, specialised legal assistance offered to victims of human trafficking in Ireland.<sup>832</sup> Typically, the legal team of the Immigrant Council of Ireland offer a holistic immigration-related legal services to victims of human trafficking. This can include applications for Recovery and Reflection periods, temporary immigration permissions, other forms of residency applications, family reunification, citizenship etc.<sup>833</sup> The Commission welcomes the allocation of State funding (provided for the first time in 2021) to the Immigrant Council of Ireland, which has been providing essential legal assistance and has advanced the standard of access to rights for victims in various aspects.

**The Commission recommends that greater funding be made available to the Anti-Trafficking Unit of the LAB and to specialist frontline law centres to ensure that victims of trafficking receive victim-centred and trauma informed legal assistance. Legal assistance must be geographically spread across the country to ensure support to all victims.**

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832 Source: Immigrant Council of Ireland 2023

833 Ibid



## APPENDIX 4: Data

### Factsheet 1. Trends in Human Trafficking 2013 – 2022

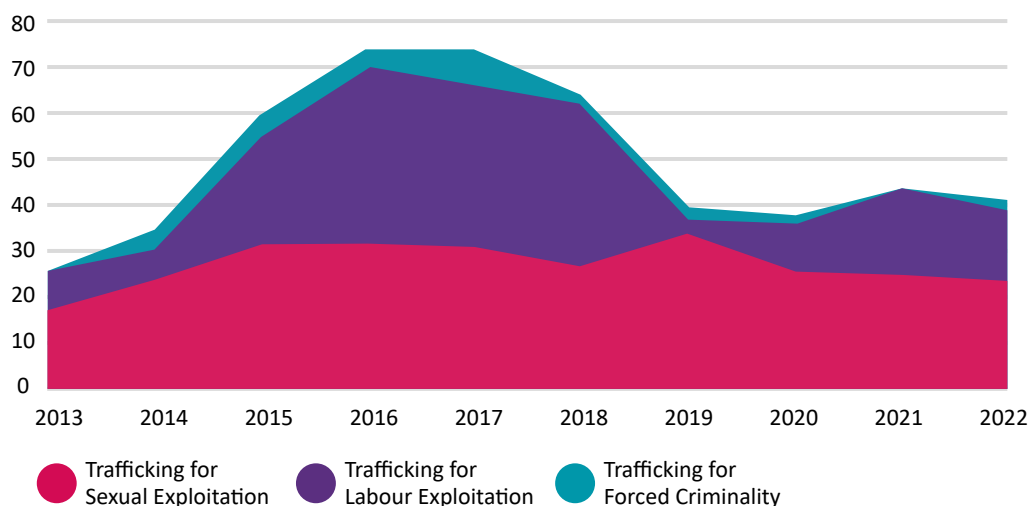
#### Combined Official Data for 2013-2022 Trends in human trafficking

The diagrams are based on official data regarding victims of trafficking referred into the National Referral Mechanism (NRM). The period includes data from January 2013 to December 2022 in order to align with the case reclassification undertaken by the State. The Department of Justice and An Garda Síochána are the sources of data.

#### — Types of exploitation over the years

The most often encountered form of exploitation is trafficking for sexual exploitation (TSE, 55%), followed by trafficking for labour exploitation (TLE, 38%) and to a lesser extent by trafficking for criminal activities (TCA, 6%) (See Diagram 2). TCA ceased its declining trend and picked up with two new cases in 2022, both cases pertaining to exploitation in grow houses. In 2022, for the first time a suspected trafficking for organ removal was recorded. For further information on number distribution, refer to *Comprehensive Data Table* included in Factsheet 4.

#### — Diagram 2. Trends in type of exploitation 2013-2022

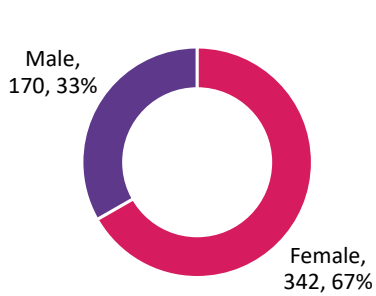


#### — Gender dimension

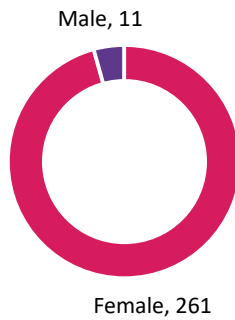
Human trafficking in Ireland is highly gendered, which is a lasting trend in Ireland as well as in the EU. Overall, in Ireland, more women (67%) fall victims of human trafficking than men (33%) (Diagram 3). Over the years, there has been only one case

of transgender victim recorded. The gender dimension is particularly evident in trafficking for the purposes of sexual exploitation, where over 96% of the victims are women (Diagram 5). It must be noted that trafficking for the purposes of labour exploitation is also gendered but to a lesser extent and affects more men (60%). (Diagram 4)

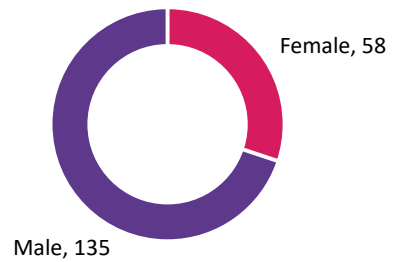
— **DIAGRAM 3.**  
**Victims of trafficking by gender 2013-2022**



— **Diagram 4. Trafficking for sexual exploitation in 2013-2022, by Gender**



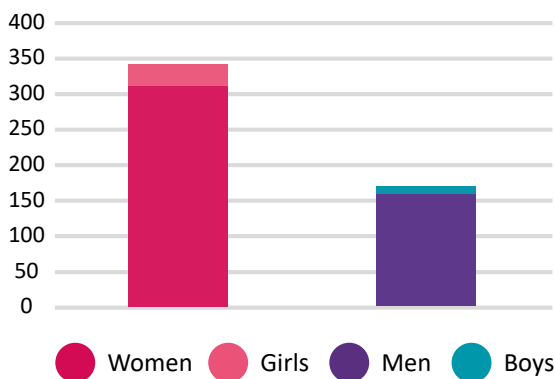
— **Diagram 5. Trafficking for labour exploitation in 2013-2022, by Gender**



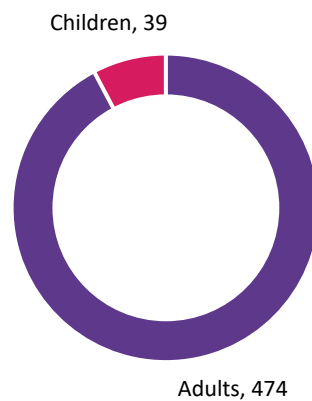
— **Age of victims**

Children represent 8% of all victims in Ireland (Diagram 7). This is significantly less than the EU average (25%). Minors among the women and men in Ireland are 9% and 5% respectively (Diagram 6). In the period 2013 - 2022 the percentage of minors has picked at 21%. No child victims were identified in 2020 and 2021. While in 2022, 5 children victims were identified.

— **Diagram.6 Victims of trafficking by gender and age, 2013-2022**



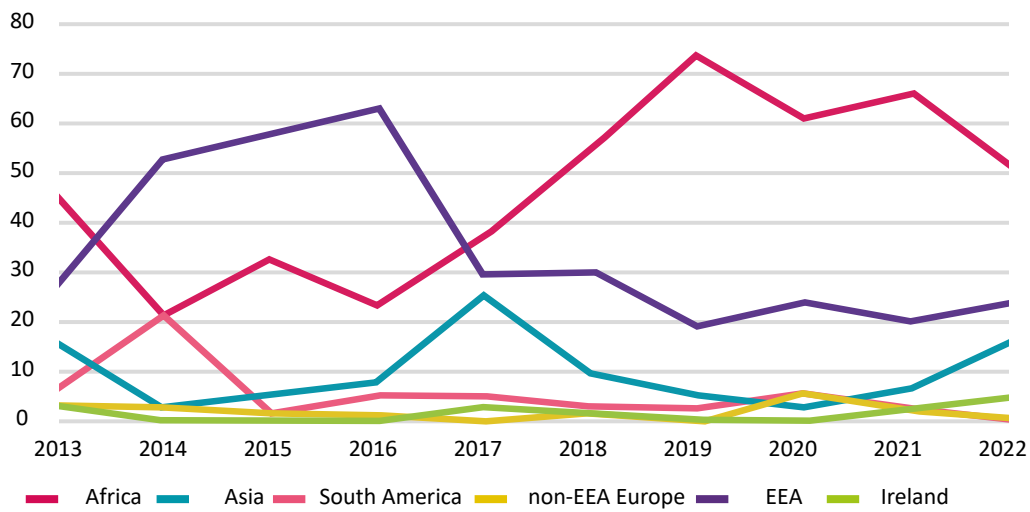
— **Diagram. 7 Victims of trafficking 2013-2022 by age**



— Origin of victims

Africa and the European Economic Area (EEA) and to a lesser degree Asia and Latin America represent the main regions of origin for victims of trafficking in Ireland. The region of Africa among victims of TSE shows a prevalent character feature in the last five years while the trafficking of EEA national victims retains a notable trend (albeit not as high as in other EU countries). Asia is clearly present in the national statistics with respect to trafficking for labour exploitation. Isolated cases of Irish nationals are also observed, which includes two cases of child trafficking for sexual exploitation in 2022. (Diagram 8)

— Diagram.8 Trends in Origin of Victims 2013-2022



## Factsheet 2. Official Data at a Glance in 2022

### 2022 Official Data at a Glance

The diagrams below (presented in absolute numbers unless stated otherwise) illustrate the official data of the State, based on the victims of trafficking in the National Referral Mechanism (NRM) in 2022. The Department of Justice and An Garda Síochána are the sources of data.

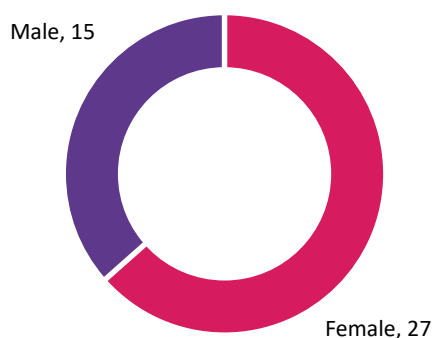
#### Main statistics

The State reported that there were 42 cases officially accepted in the National Referral mechanism for victims of trafficking in 2022. This represents a small decrease (by 2) compared to 2021 and a small increase compared to 2020 (38 cases), overall it remains in line with the lower trends emerging since 2019. Studies have found that the annual data represents an underestimate of around 39%, which would bring the estimated number for total number of victims over the year as high as 60. The overall number of recorded cases depends on the parameters of the National Referral Mechanism, a system, which is currently under review.

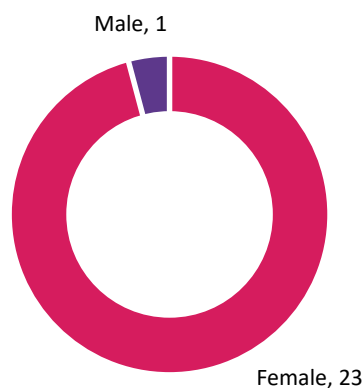
#### Gender

the majority of victims in 2022 were female (64%), which is in line with the gendered character of the crime (Diagram 9). Trafficking for sexual exploitation is particularly gendered, with the level of female victims exceeding 96% (Diagram 10). Trafficking for labour is also notably gendered in 2022 indicating that more men (80%) are exploited than women.

— **Diagram 9. Victims of trafficking referred to the NRM in 2022, by gender**



— **Diagram 10. Victims of trafficking for sexual exploitation referred to the NRM in 2022, by gender**



## Types of exploitation

In 2022, trafficking for sexual exploitation remains the most reported type of exploitation in the National Referral Mechanism (24, 57% of all cases), followed by trafficking for labour exploitation (15, 37%). Trafficking for forced criminal activities (2 cases, 5%) re-emerged in the national statistic, after zero cases in 2021. Of note is the detection of a new type of exploitation, involving a case of suspected trafficking for organ removal. In this regard, the situation in Ireland mirrors the wider EU where novel and less known forms of exploitation, such as forced marriages and illegal adoption/surrogacy are on the rise. (Diagram 11)

— **Diagram.11 Victims of trafficking referred to the NRM in 2022 by, exploitation**

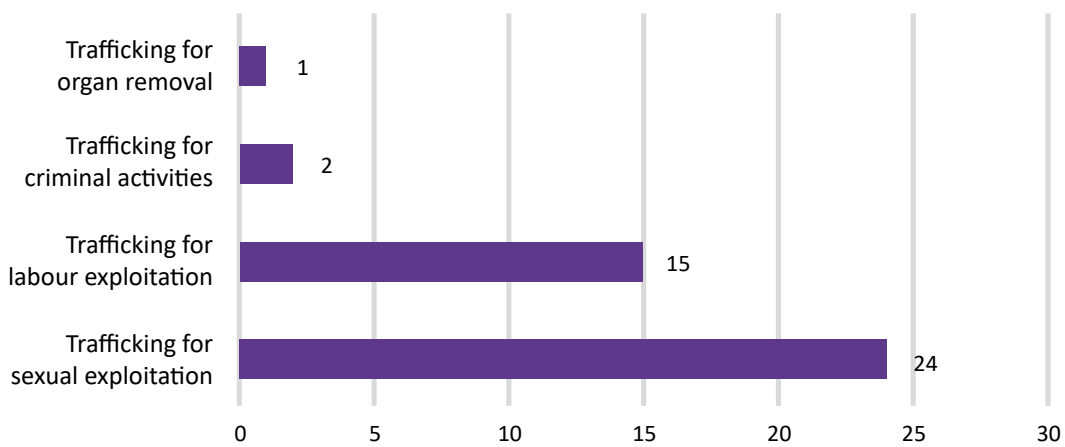
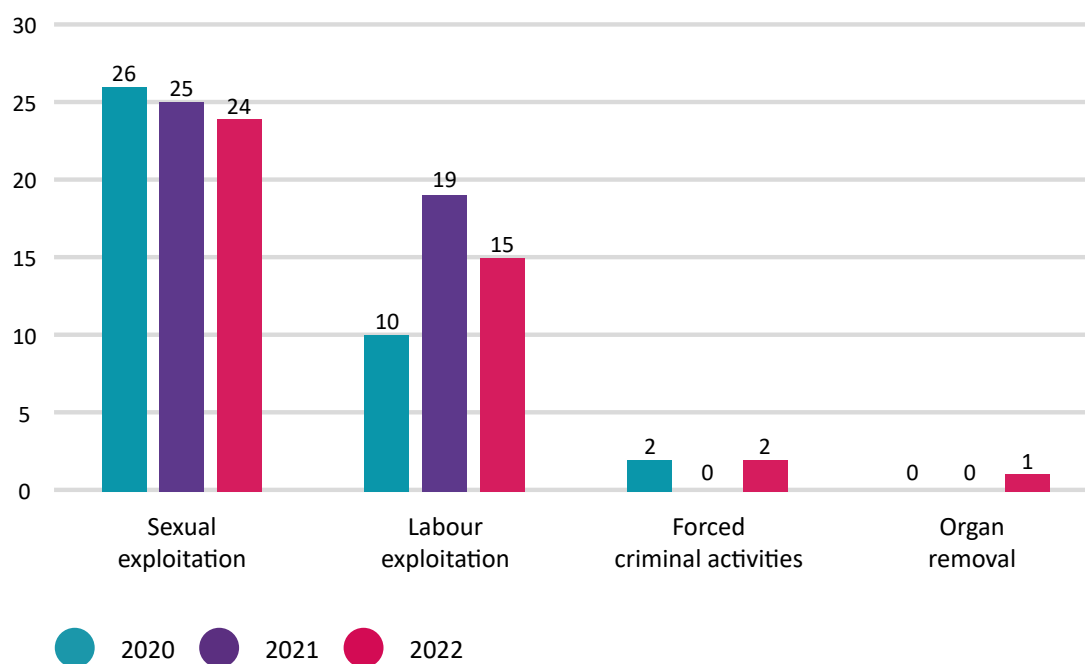


Diagram 12 presents the levels of the different types of exploitation over the years. Trafficking for sexual exploitation shows steady high levels but a slight declining trend over the last three years. On the other hand, trafficking for labour exploitation exhibits fluctuations linked to discovery of greater number of cases in specific employments.<sup>834</sup>

— **Diagram 12. Trends in types of exploitation over the last three years - 2020, 2021, 2022**

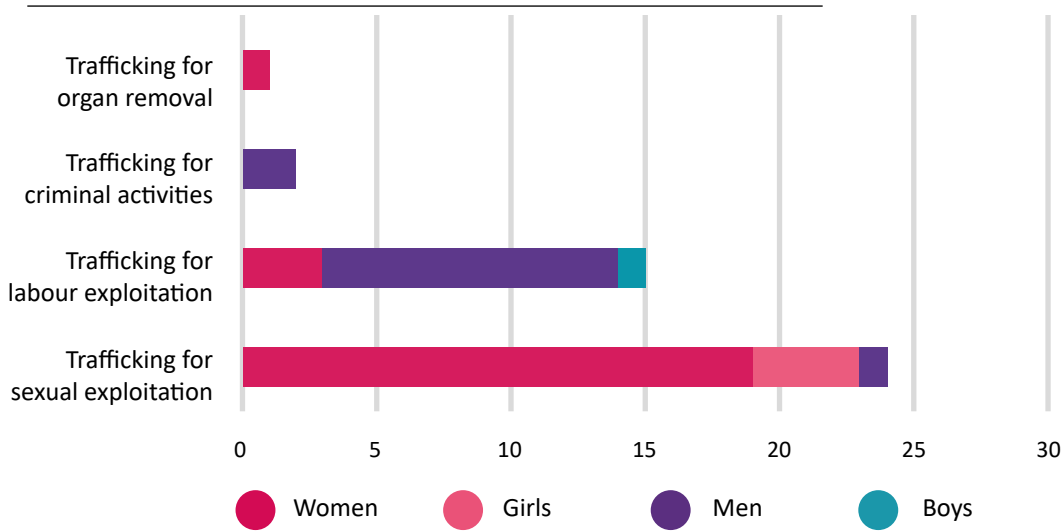


834 The Commission has previously concluded that trafficking for the purposes of labour exploitation sees notable, sporadic surges linked to the operations of various production and service sectors. For instance, in the past, a data surge in 2015 was due to victims discovered in temporary Romanian car wash businesses, 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.

### Age of victims

In 2022, we have 5 reported cases of trafficking of minor victims (12% of all victims in 2022). This is a notable report, as it ceased the complete lack of child victims identification over the previous reporting years - 2020 and 2021. Trafficking of children for the purposes of sexual exploitation is prevalent (almost 10% of all victims in 2022) and represents a concerning phenomenon. It entirely affects female children. (Diagram 13)

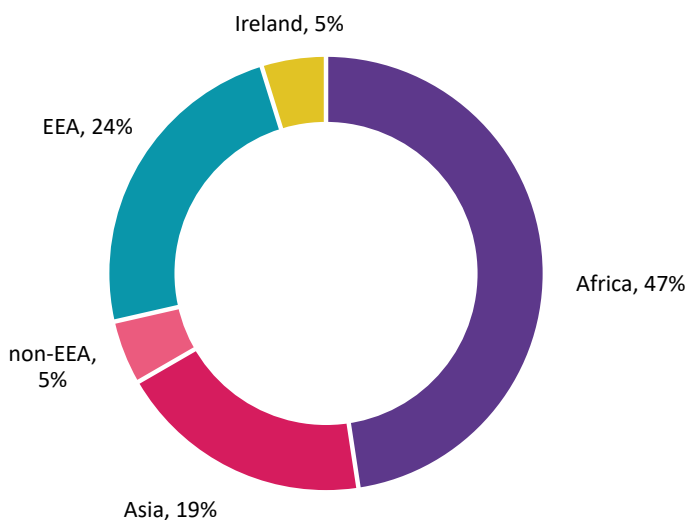
— **Diagram. 13 Victims in 2022 by exploitation, gender and age**



### Regions of origin

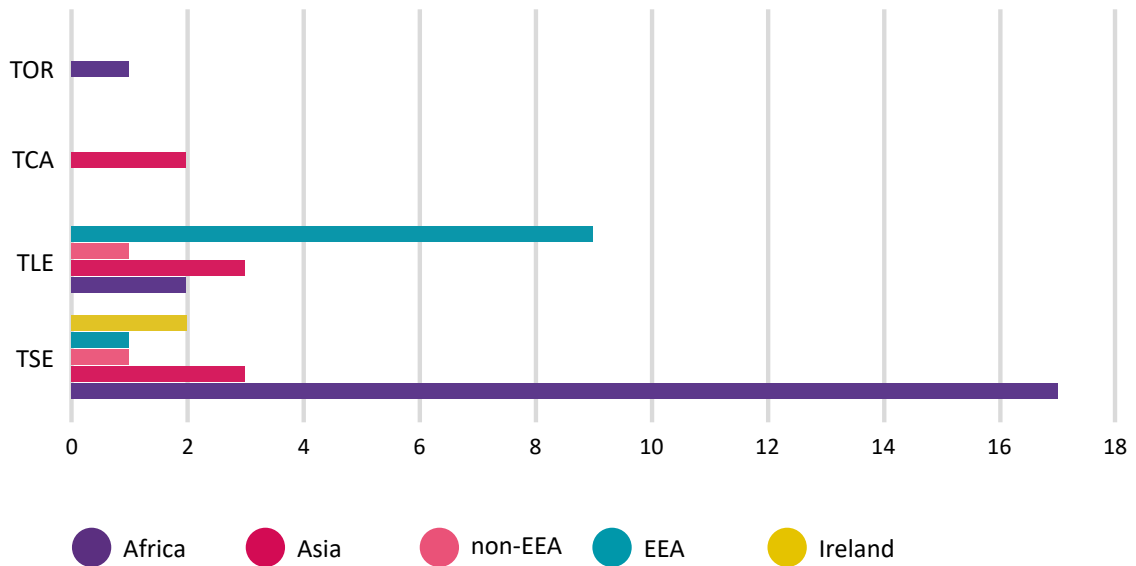
Africa is the primary region of origin for victims of trafficking in Ireland, followed by the EEA and Asia that are also of note. Non-EEA Europe and Ireland are also represented. (Diagram 14)

— **Diagram.14 Victims in 2022, by region of origin**



The data also indicates that Africa is the most important region of origin for trafficking for sexual exploitation, while the EEA is the most represented region in trafficking for labour exploitation. Asia is a notable region of origin for both TSE and TLE, and the sole region for TCA.

— **Diagram 15. Victims in 2022, by region of origin and type of exploitation**





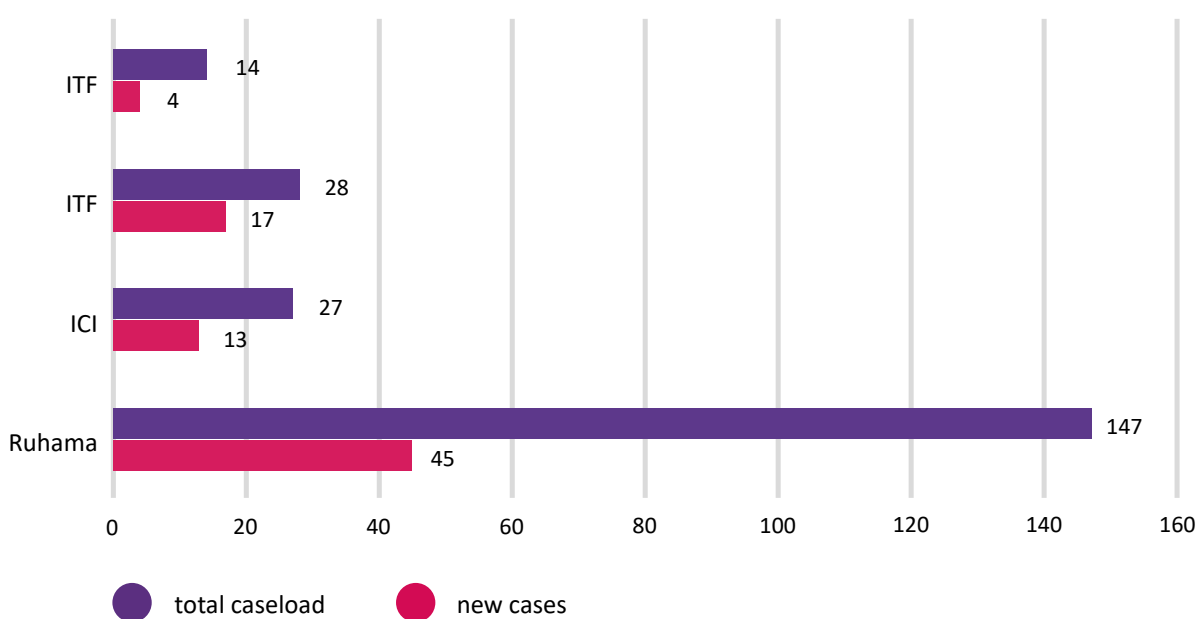
## Factsheet 3. NGO Data at a Glance in 2022

### NGO data at a glance in 2022

With respect to year 2022, statistical data was provided by four independent organisations, working with victims of human trafficking in Ireland: **Ruhama** (specialising in assistance of victims of trafficking for sexual exploitation and other forms of gender-based violence) , the **Migrant Rights Centre of Ireland (MRCI)** (specialising in assistance to victims of trafficking for labour exploitation and criminal activities), the **International Transport Federation, Ireland (ITF)**(specialising in assistance of victims of trafficking in the fishing industry) and the **Immigrant Council of Ireland (ICI)** (Law centre)<sup>835</sup>.

In 2022, the specialised NGOs supported 216 victims of trafficking in total. This is a slight decrease compared to 2021. Of these 79 were new cases and the rest were ongoing cases from previous years, as victims often require multiannual support for their rehabilitation. (Diagram 16)

— **Diagram 16. Victims of Trafficking supported by NGOs in 2023**

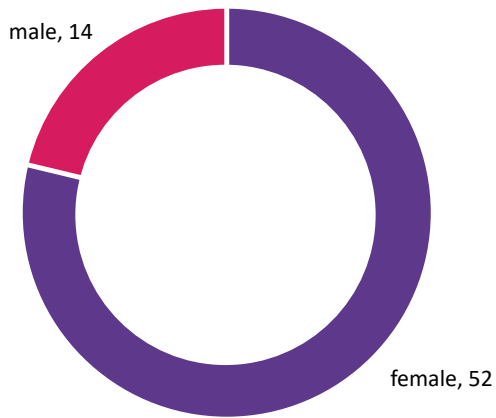


835 The data provided by the ICI was not segregated and cannot be analysed beyond the number of cases, captured in Diagram 16. ICI reported that the vast majority of casework files related to victims of trafficking for sexual exploitation, with a smaller number related to forced labour including forced cannabis production, domestic servitude, and exploitation in the fishing industry, or other forms of exploitation (not disclosed to protect client identity). The majority were female victims-survivors. Nationalities worked with include Albanian, Brazilian, Pakistani, Nigerian, Zimbabwean, Chinese, Vietnamese, Ghanaian, Filipino and Egyptian.

## Gender

The gender breakdown shows that the trend of majority in female victims of trafficking remains unchanged. Female victims represent 79% of all new cases, which indicates an increased gender dimension compared to 2021, when women constituted 64%. (Diagram 17)

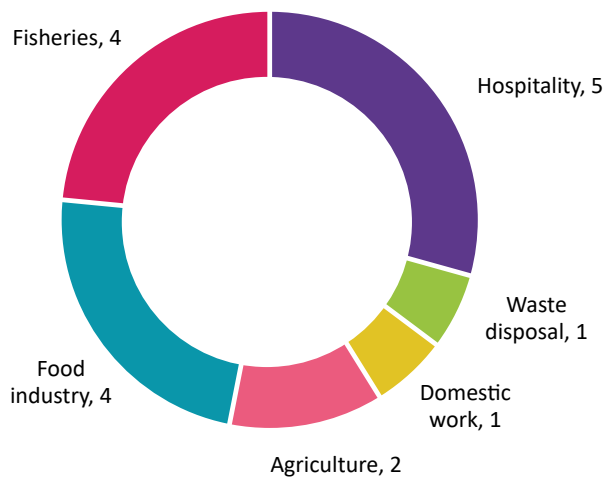
— **Diagram 17. New cases in 2023 reported by NGO, by gender**



## Sectors of exploitation

For victims of trafficking for sexual exploitation prostitution represents the relevant environment of exploitation. The sectors where victims of trafficking for labour exploitation are reported by NGO include hospitality, food industry, fishing industry, agriculture and others. The reported sectors for trafficking in labour exploitation mirror the high-risk sectors for trafficking in the EU. (Diagram 18)

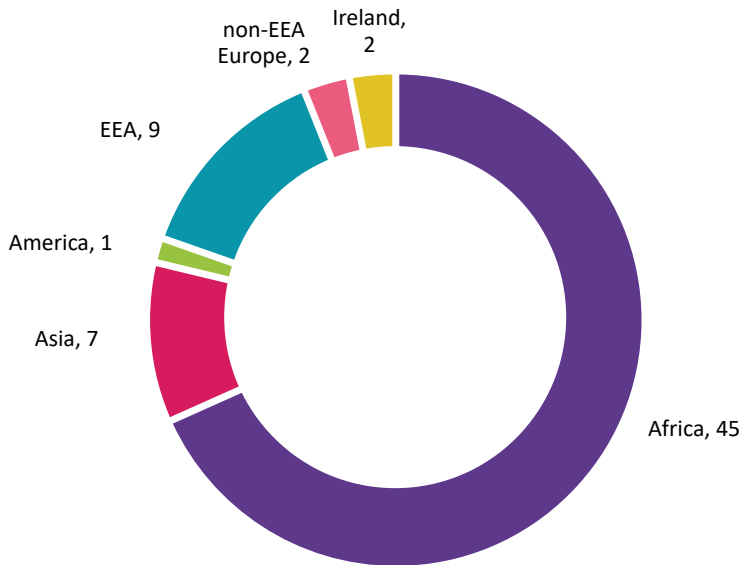
— **Diagram 18. Sectors of Trafficking for Labour Exploitation in 2022, NGO data**



### Regions of origin

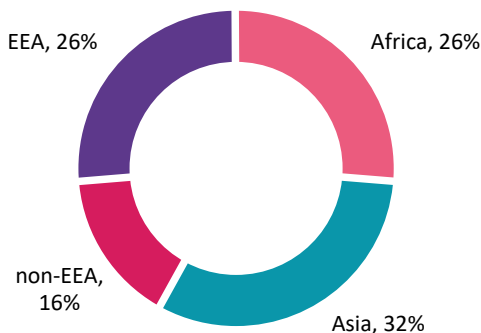
The regions of origin of victims of trafficking in 2022, according to the NGO data, suggest that Africa, Asia and the EEA continue to represent the main source regions for Ireland. This remains largely unchanged from 2021. (Diagram 19)

— **Diagram 19. Regions of Origin of VOT supported by NGOs 2022**

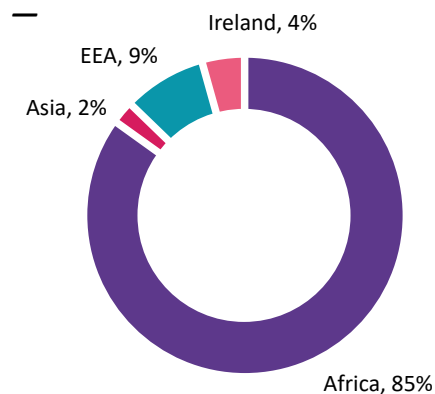


Africa continues to be the primary source regions for victims in Ireland. This is especially so for victims of trafficking for sexual exploitation, where 85% are reported by NGOs as coming originating from Africa. Asia, Africa and the EEA are primary region of origin in trafficking for labour exploitation, where notable number of victims are also from the EEA and Africa. For a second year in a row, small number of Irish nationals are reported as being trafficked for sexual exploitation.

— **Diagram 20. Regions of origin in TLE, NGO 2022**



— **Diagram 21. Regions of origin in TSE, NGO 2022**



## Factsheet 4. Comprehensive Data Table 2013-2022

	Victims Adults & Children						TSE/TLE/TCA combined	Unknown Exploitation	Total by Year	Minor Victims		Annual percentage of minors
		TSE	TLE	TFB	TCA	TOR				Girls	Boys	
2013	Female	18	6				1	5	30	Girls	4	
	Male		2					1	3	Boys	1	
	<b>Total</b>	<b>18</b>	<b>8</b>				<b>1</b>	<b>6</b>	<b>33</b>	<b>Total</b>	<b>5</b>	<b>15%</b>
2014	Female	23	3	1					28	Girls	2	
	Male	1	4		4			1	10	Boys	2	
	<b>Total</b>	<b>24</b>	<b>7</b>	<b>1</b>	<b>4</b>	<b>1</b>		<b>1</b>	<b>38</b>	<b>Total</b>	<b>4</b>	<b>11%</b>
2015	Female	30	8		1	2			41	Girls	6	
	Male	1	15		4				20	Boys	1	
	Transgender	1							1	Transgender		
<b>Total</b>	<b>32</b>	<b>23</b>		<b>5</b>	<b>2</b>			<b>62</b>	<b>Total</b>	<b>7</b>	<b>11%</b>	
2016	Female	32	6			1			39	Girls	1	
	Male	0	32		4				36	Boys		
	<b>Total</b>	<b>32</b>	<b>38</b>		<b>4</b>	<b>1</b>			<b>75</b>	<b>Total</b>	<b>1</b>	<b>1%</b>
2017	Female	28	11	1	5				45	Girls	3	
	Male	3	24		3				30	Boys		
	<b>Total</b>	<b>31</b>	<b>35</b>	<b>1</b>	<b>8</b>				<b>75</b>	<b>Total</b>	<b>3</b>	<b>4%</b>
2018	Female	26	7						33	Girls	3	
	Male	1	28		2				31	Boys	2	
	<b>Total</b>	<b>27</b>	<b>35</b>		<b>2</b>				<b>64</b>	<b>Total</b>	<b>5</b>	<b>8%</b>
2019	Female	33	2		3				38	Girls	7	
	Male	1	1				2		4	Boys	2	
	<b>Total</b>	<b>34</b>	<b>3</b>		<b>3</b>		<b>2</b>		<b>42</b>	<b>Total</b>	<b>9</b>	<b>21%</b>
2020	Female	24	8		1				33	Girls		
	Male	2	2		1				5	Boys		
	<b>Total</b>	<b>26</b>	<b>10</b>		<b>2</b>				<b>38</b>	<b>Total</b>		<b>0%</b>
2021	Female	24	4						28	Girls		
	Male	1	15						16	Boys		
	<b>Total</b>	<b>25</b>	<b>19</b>						<b>44</b>	<b>Total</b>		<b>0%</b>
2022	Female	23	3			1			27	Girls	4	
	Male	1	12		2				15	Boys	1	
	<b>Total</b>	<b>24</b>	<b>15</b>		<b>2</b>	<b>1</b>			<b>42</b>	<b>Total</b>	<b>5</b>	<b>12%</b>
2013-2022 Total	Female	261	58	2	10	1	5	5	342	Girls	30	9%
	Male	11	135		20		2	2	170	Boys	9	5%
	Transgender	1							1	Transgender		
<b>Total</b>	<b>273</b>	<b>193</b>	<b>2</b>	<b>30</b>	<b>1</b>	<b>7</b>	<b>7</b>	<b>513</b>	<b>Total</b>	<b>39</b>	<b>8%</b>	





**16-22 Sráid na Faiche,  
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