

Trafficking in Human Beings in Ireland

Evaluation of the Implementation of the EU Anti-Trafficking Directive

Irish Human Rights and Equality Commission
June 2022



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

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Foreword

The Commission, as independent Rapporteur on trafficking¹, is delighted to bring the first *Evaluation of the Implementation of the EU Anti-Trafficking Directive* report on the States' actions to combat human trafficking. With this new function, the Commission is committed to ensuring that Ireland meets the European Union and other international standards on tackling the scourge of human trafficking.

The Commission's task as Rapporteur is to provide effective, independent and meaningful oversight of the State's actions to combat human trafficking and protect victims by highlighting the strengths, gaps, and identifying trends. 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 contributes to the specific obligations emanating from Article 19 of the EU Anti-trafficking Directive,² which require the National Rapporteur to undertake assessments of trends in trafficking in human beings, measure results of anti-trafficking actions, gather data and report. The Report offers a high-level overview of Ireland's compliance with the EU Anti-Trafficking Directive's requirements. It includes an evaluation of the implementation of the directive's articles, followed by a concise analysis of the data provided to the Commission by the State and specialist Non-Governmental Organisations (NGOs) with a view to illustrating relevant trends in human trafficking.

This report provides a strong and credible baseline for external evaluations and is expected to underpin effective monitoring and policy development in addressing trafficking in human beings. Furthermore, the report introduces a template for periodic national reporting by the Commission as a National Rapporteur. Ultimately, the aim of this report is to act as a resource for national policy makers, practitioners and researchers, as well as for informing the general public on the human trafficking situation in Ireland.

Trafficking in human beings in Ireland remains a hidden but pervasive crime that predominantly affects people of migrant backgrounds. Victims of trafficking for sexual exploitation are almost exclusively migrant women, who are often hidden within mixed populations of independent, exploited and coerced people in the sex industry and in mixed migration flows.³ Whereas certain sectors, such

1 In October 2020 the Commission was 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.

2 Article 19 of the Anti-Trafficking Directive establishes that the tasks of national rapporteurs or equivalent mechanisms "shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting".

3 EC (2016), Study of the Gender Dimension of Trafficking in Human Beings. EU: Luxembourg.

as hospitality, fishing, agriculture and construction may rely on the workforce of people (primarily migrant men) who are in a vulnerable situation.⁴

Human trafficking is a serious and heinous human rights violation that is deeply gendered and racialized. If we are serious about tackling human trafficking this fundamental fact must be at the core of the response. In the overall response to date, there has been limited attention paid to trafficking for sexual exploitation as a serious form of gender based violence. The Commission sincerely hopes this will be rectified in the Third National Strategy on Domestic, Sexual and Gender-Based Violence and in its implementation. Similarly, the Commission has also recommended the National Action Plan against Racism directly include core priorities to combat human trafficking.

While there have been commendable positive efforts, including our appointment as Rapporteur, the first successful trafficking conviction in 2020 and an innovative decriminalisation approach, the reality today is that urgent action is required, including in the form of policy, legislation and action.

This monitoring report includes a number of detailed recommendations relating to the overall coordination and, importantly, specific recommendations to State agencies involved in the implementation of the anti-trafficking response. Key commitments to protect victims of trafficking remain unfulfilled; significant 'gaps' in the ability of State agencies to identify trafficked persons; compensation and other mechanisms to recover unpaid wages are inadequate or non-existent, and; the failure to safely accommodate victims in gender-specific accommodation all remain "chronic" problems.

Our particular and special appreciation goes to the survivors who shared their time, insights and experiences with the Commission. The survivors generously shared their opinions and lived experiences to ensure that other victim/survivors do not have to endure what they have. We sincerely hope their indomitable courage is reflected in this Report and the recommendations are faithfully implemented.

We would also like to thank the Department of Justice in their role as National Coordinator who have supported us greatly in all aspects of our work since our establishment as the National Rapporteur. Special thanks goes to AkiDwa, Doras Lumini, DRCC, ICI, ITF, MECPATHS, MRCI, RUHAMA, SVC for their tireless work and invaluable contribution to the survivors of trafficking and to this report. A further thank you to the academics and practitioners, such as Dr Susan Leahy, Fiona Murphy BL, Colin Smith BL, Patricia Brazil BL, Dr Conor O'Mahony, Dr Monica O'Connor, Ruth Breslin, and Dr Cliodhna Murphy who shared both their time and their expertise with the Commission. To An Garda Síochána, in particular, the Garda National Protective Service Bureau who have worked to support survivors

4 EU (2021), EU Strategy on Combatting Trafficking in Human Beings 2021-2025

and shared their experience and knowledge openly with the Commission. Other State agencies that assisted the Commission to bring this report to fruition include IPO, HSE, TUSLA, IPAS (DCEDYI), LAB, WRC all of whom shared their information, data and experiences and without whom this report would not have been possible.

The recent mass displacement of people and the enduring humanitarian crises caused by the war against Ukraine has compounded the vulnerabilities that make people susceptible to trafficking. Traffickers exploit this chaos leaving women and children at a heightened risk of falling into the hands of human traffickers. This, coming on the back of the global Covid-19 pandemic, has revealed serious fault-line in the response to date and the urgent need to tackle the evolving nature and forms of trafficking, especially focusing on the increased use of digital technology in and against trafficking.

The Commission is committed to working with the State, international partners, stakeholders, academics and NGOs to ensure that Ireland not only fulfils, but also exceeds its international obligations on tackling the scourge of human trafficking.

We hope this report acts as a catalyst for change and look forward to working to bring about the reforms that are so necessary to: prevent trafficking; ensure perpetrators are held accountable, and; that supports are improved for all victims to assist them in their recovery from this awful crime.

List of Acronyms / Glossary

AGS	An Garda Síochána (Irish police force)
AHTT	Anti-Human Trafficking Team (Health Service Executive)
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
Budapest Convention	Council of Europe Convention on Cybercrime 2001
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
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	Department of Justice
DP	Direct Provision
DPP	Office of the Director of Public Prosecutions
DPSUs	Divisional Protective Services Units (An Garda Síochána)
DSGBV	Domestic, Sexual and Gender Based 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
EIGE	European Institute for Gender Equality
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Co-operation
GVB	Gender-based Violence
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
ILO	International Labour Organization
INTERPOL	International Criminal Police Organisation

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
MLA	Mutual Legal Assistance
MOOC	Massive Open Online Course
MRCI	Migrant Rights Centre of Ireland
NAP	National Action Plan
NGO	Non-governmental Organization
NRM	National Referral Mechanism
OAP	Operational Action Plan
ODIHR	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
RSE	Relationships and Sexuality Education
SPHE	Social, Personal and Health Education
TCA	Trafficking for Criminal Activity
TFB	Trafficking for Forced Begging
THB	Trafficking in Human Beings
The Commission	Irish Human Rights and Equality Commission
TIP	Trafficking in Persons
TSE	Trafficking for Sexual Exploitation
Tusla	Child and Family Agency
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child 1989
UNODC	United Nations Office on Drugs and Crime
Victims' Compensation Directive	Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
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
VOT	Victim of Trafficking
WHS	Women's Health Service (Health Service Executive)
WRC	Workplace Relations Commission

Executive Summary

Extent and nature of Human Trafficking in Ireland

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 affects migrant women and girls disproportionately in terms of harm-related consequences.

Ireland is not immune to trafficking. Year after year, the experiences of front-line responders, the accounts of victims, and the data itself show clearly that human trafficking crimes are being committed in Ireland and people are being exploited in various ways for profit.

Trafficking for the purposes of sexual exploitation, labour exploitation, and to a lesser extent, forced criminal activities, are the most represented types of exploitation in Ireland, accounting for 55%, 38% and 7%, respectively between 2013 and 2021. More women (66%) are trafficked than men (33%), and almost all are from a migrant background. This situation mirrors the picture from other EU Member States. Children account for 9% of the victims, which is significantly less than the EU average (22%).

In 2021, trafficking for the purposes of sexual exploitation (57%), followed by trafficking for the purposes of labour exploitation (43%) were the prevalent forms of exploitation. The data indicates that the latter form of trafficking is increasing, while the former retains its steady levels. No victims of trafficking for the purposes of criminal activities were referred into the National Referral Mechanism ('NRM'), which indicates a need for increased efforts. On the contrary, the increased number of victims of trafficking for labour exploitation could be an indication of more systematic efforts to detect this form of trafficking.

More women (64%) were trafficked than men (36%) in 2021, which mirrors existing trends in Ireland and in the EU to date. While male victims are more represented in trafficking for the purposes of labour exploitation, victims of trafficking for sexual exploitation remain almost exclusively female, with rare exceptions. No child victims were identified in 2021, for the second year in a row. Only one victim was not of migrant origin. Africa remains the prevalent source region for victims in Ireland, followed by the European Economic Area ('EEA') and to a lesser extent Asia. 2021 saw one Irish victim trafficked for the purposes of sexual exploitation. [Appendix 5](#) of the report offer information on trends in greater detail.

Evaluation focus on the implementation of binding EU law

Ireland adheres to the European Union legal framework of response to trafficking, which represents a modern comprehensive system containing the strongest international approach to the protection of victims. The new EU Strategy (2021-2025) 'sets out a renewed commitment and a strong policy framework to protect

vulnerable individuals from being trafficked, and women and children are at the centre of this commitment.⁵ Detailed information on the national and international legal context, relevant to human trafficking is available in [Section 1](#).

Ireland has fully transposed the main EU legal anti-trafficking instrument – the Anti-Trafficking Directive.⁶ It contains 25 Articles, including an article providing for the establishment of a National Rapporteur (Article 19). The Commission would like to emphasise the importance of the State’s legislative step to that effect demonstrating a genuine commitment to strengthening the national anti-trafficking response.

In fulfilment of its role as the independent National Rapporteur, the Commission has reviewed the obligations that exist under the relevant provisions of the Directive (Articles 1 - 18). This included research and evaluation of the State’s implementation efforts, with a view to establishing good practice approaches, as well as identifying existing areas in need of improvement. The report also includes detailed recommendations, setting out key priority areas for the States’ consideration.

Key findings and matters of priority

Coordination

The overall responsibility for coordination of the trafficking response is vested in the Department of Justice (as the designated National Coordinator). An important aspect of this role is ensuring that relevant State departments, agencies and bodies are fulfilling their obligations as part of the overall implementation of the EU Anti-Trafficking Directive. The Commission welcomes the announcements of a new NRM and revised (new) National Action Plan. However, implementation appears slow and the Commission is concerned about the level of inclusion of specialist Non-Governmental Organisations (‘NGOs’) and survivor voices in the process. To ensure the survivor voice is included in these important reforms, the Commission has recommended the establishment of a Survivor Council. The Commission welcomes the increase in annual funding and recommends a multi-annual approach to funding frontline NGOs and Civil Society Organisations who work to prevent trafficking and to support victims, to ensure they have sufficient resources for future planning and engagement in the overall trafficking response.

5 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.19

6 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, OJ L 101

Consistency in support and assistance to victims

The Commission finds that Ireland boasts a comprehensive modern legislative framework criminalising human trafficking and provides measures for the protections of victims in criminal proceedings. However, beyond the criminal justice system, the areas pertaining to assistance and support for victims remain insufficient and have not, for the most part, been placed on a statutory footing (Article 1). The Commission recommends placing assistance and support in primary legislation applicable to all victims.

Focus on obtaining prosecutions

Significant expertise exists in the realm of investigation and prosecution of trafficking crimes. The first successful conviction demonstrates the effective collaboration between An Garda Síochána, the Director of Public Prosecutions and the Courts Service although the Commission is concerned that the number of prosecutions remains low (Article 9). As such, this must remain an area of increasing effort and persistent attention for the State.

Urgent introduction of a new mechanism for identification of victims

The mechanism for early identification and assistance of victims (Article 11.4), remains a weak link in the State's anti-trafficking response. The Commission, like many experts and practitioners, recommend a swift replacement of the current NRM. The announcement by the Minister of Justice in May 2021, outlines plans for a modern mechanism based on a consortium of State and civil society partners that is placed on statutory footing. In anticipation of this imminent development, the Commission expects an end to the divergent approach to assisting victims based on their nationality and immigration status, and without prejudice to the right to seek International Protection. The Commission emphasises the importance of a child-specific identification procedure within the new mechanism.

Urgent completion of the process to secure gender-specific shelter

Considering the central importance of safe accommodation for the recovery of victims, the Commission sees the current implementation of this duty within the system of Direct Provision as substandard and contravening the requirement for gender-specificity (Article 11.5-safe accommodation). The responsibility for this essential support has been consistently shifting between State agencies and Government departments, without any tangible improvement for victims to date. While the winding-down of Direct Provision continues, the Commission urges the International Protection Accommodation Service, formerly the Reception

and Integration Agency ('IPAS') to use its considerable capacity to accommodate victims of trafficking in a gender-specific, self-budgeting way. Single-gender centres, in proximity to specialised services are an interim solution to the lack of specialised shelters. Conflicting policies at national and local authority level should be abolished, as they are preventing eligible victims from exiting Direct Provision. A swift resumption of work to complete the establishment of gender-specific shelters is needed.

Strengthening the principle of non-prosecution of victims

Evidence suggests that victims (or potential victims) of trafficking continue to be imprisoned and charged for criminal offences associated with trafficking. This suggests that the *principle of non-prosecution* of victims for crimes they have committed (as a direct consequence of them being trafficked), is not being honoured fully (Article 8). The Commission welcomes the novel approach to expunging of past criminal records for some potential victims of trafficking, and urges its wider application. The report details a number of recommendations that are aimed at improving the detection and identification of victims. The new NRM presents an opportune time to address this problem, in addition to the potential introduction of legislation, strengthening victim's rights within the criminal justice system.

Avoiding secondary victimisation

The likelihood victims of trafficking experiencing secondary victimisation within the criminal justice system, especially through repeated, unscheduled interviews was of particular concern among survivors (Article 12.4). Victims of trafficking for the purposes of sexual exploitation often experience severe sexual trauma and assault, and while the Irish justice system provides a number of protections, victims of this form of trafficking are not afforded the full scope of protections available to victims of rape and sexual assault. The Commission has called for this to be examined and for the policing response to be further focused on victim-centred and trauma-informed approaches.

Strengthening the compensation avenues for victims

The Directive requires that victims of trafficking have access to existing compensation schemes (Article 17). While compensation schemes appear to be available in Ireland, the Commission is deeply concerned that such schemes remain inaccessible to victims. The Commission was unable to find clear examples of victims receiving compensation in practice. The Commission is pleased to hear of the Law Reform Commission's examination of criminal compensation and hopes the situation can be significantly improved for victims of trafficking. Similarly, the effective exclusion of irregular migrants from accessing the Workplace

Relations Commission, puts potential victims of trafficking at a disadvantage. The Commission proposes a number of recommendations on strengthening access to compensation, including the need for urgent reform of legal aid to be expanded to include advice and representation in relation to seeking compensation.

Separate legislation on forced labour, slavery and servitude

The definition of human trafficking is fully transposed into Irish law. However, the open-ended feature of the definition, allowing for the inclusion of novel forms of exploitation, such as forced marriage or illegal adoptions remain outside of the current scope of the law. (Article 2 and 3). Forced labour, slavery and servitude need to be legislated for, as separate offences, to ensure that the crime of human trafficking is clearly positioned on the continuum of labour exploitation. This is an area of particular concern for the Commission.

Other findings

Ring-fenced fund for victims of trafficking

The law in Ireland provides dissuasive penalties against individual traffickers, exceeding the minimum levels outlined in the Directive (Article 4). In relation to crimes committed by legal persons, the full range of sanctions remain outside of the trafficking framework in Ireland (Article 5 and 6). However, the laws relating to seizure and confiscation of criminal assets are strong and sufficient (Article 7). To further strengthen this, the Commission has recommended that such assets should be placed into a ring-fenced fund to compensate victims of trafficking.

The importance of cross-border cooperation

The extra jurisdictional application of the Irish human trafficking law is sufficiently developed (Article 10). Trafficking crimes detected in Ireland often hold transnational elements, and a recent report indicates that trafficking for criminal activities, in particular, remains a cross-border issue on the island of Ireland. The Commission urges the continued cooperation with the UK to the fullest extent possible post Brexit. For these reasons, the Commission urges the continued cooperation.

Conditionality in assistance and support

Assistance and support for victims has to commence early; be of sufficient duration; and be independent of the victim's cooperation with criminal proceedings (Article 11.1, 11.2 and 11.3). In this regard, the State does not display

a consistent approach. While basic assistance within Direct Provision is offered relatively easily, the central referral point for all State assistance remains An Garda Síochána, which, in effect, amounts to conditional assistance. The extension (and duration) of the assistance and support for third country nationals is similarly conditional on their cooperation with law enforcement, and the Commission makes a range of recommendations in this regard.

Proactive screening to detect victims

The proactive screening for human trafficking victims has to continue with persistence and innovation. In this regard, the work of An Garda Síochána in screening the commercial sex industry as a high-risk environment for trafficking for sexual exploitation, and the work of the WRC in screening high-risk sectors for labour exploitation remains essential. Similarly important in the early detection of potential cases, is the work of the HSE, Tusla, IPAS, the International Protection Office (IPO) and others. All such frontline services and agencies are encouraged by the Commission to develop and maintain expertise, through regular training, to become proactive and alert in screening for potential cases, and diligent with their data collection and website maintenance.

A victim-centred approach

To ensure that victims can give genuine, informed consent to receiving assistance (Article 11.5 – informed consent), the new NRM has to assign the key referring role(s) to assistance-oriented State agencies.

Ireland has adopted a generous approach to the provision of medical and psychological assistance of victims (Article 11.5 – medical and psychological assistance). However, the resources for translation and interpretation need to be broadened and extended to specialist NGO services, and the overall provision of this important support mainstreamed. Victims of trafficking in Ireland receive sufficient information on their rights to seek International Protection by the Legal Aid Board or by solicitors in independent law centres (Article 11.6).

The Directive mandates 'attention to victims with special needs' deriving from pregnancy, disability, health or the seriousness of the violence they have experienced (Article 11.7). This important provision of the Directive is implemented by the HSE, aided by expert service provision organisations. The Commission strongly encourages the State to convene a council (or forum) of survivors of human trafficking to inform the response to victims in Ireland.

Protections for victims within the criminal justice system

Victims of trafficking have benefitted greatly from the introduction of the Criminal Justice (Victims of Crime) Act 2017, which has secured their right to protection within the criminal justice system in law. While the Commission welcomes this significant development, concerns remain around the levels of understanding of the particulars of human trafficking, including the unique risks and harms associated with this crime. Given the complexities and vulnerabilities created by trafficking, access to legal advice and assistance '*without delay*' is essential for matters such as recovery, reintegration, non-punishment and redress (Article 12.2). The Commission remains concerned that the legal assistance offered to victims is limited, often delayed, and at times inconsistent; and recommends that adequate early legal assistance is established as a principle.

Child victims of trafficking

Children are among the most vulnerable victims of trafficking. As such, the Directive outlines a number of obligations specifically for child victims (Articles 14, 15 and 16). One of the most challenging aspects in the State's response remains the identification of child victims. Another issue of note is the manner in which child sexual exploitation cases are classified. This report details a number of recommendations around identification, operational responses, unconditional assistance, age assessments, data collection, and child-victim specific supports. The overarching recommendation of the Commission is that the new NRM must adopt a child-specific identification procedure that addresses the particulars of a child's situation. In that regard, the Commission would call on the State, and relevant State agencies responsible for children to examine and implement the recommendations carefully.

The Commission is of the view that substantial work needs to be done in the area of child trafficking. In particular, the need for Tusla to amend their policies and procedures to specifically and purposefully include child trafficking. Children must, as a matter of policy, have prompt access to comprehensive legal advice. Additionally, the Commission found a general lack of knowledge and understanding of child trafficking within State agencies and has recommended, *inter alia*, that child trafficking be specifically included in the Children First Guidelines to ensure a broadened understanding of the phenomena of child trafficking. The Commission recommends Tusla ensure that any professional (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. In the context of the criminal justice system, the advances that have been made in interviewing vulnerable children, potentially including victims of trafficking, in an appropriate non-traumatic settings are truly commendable.

Prevention by awareness raising

The Commission notes that there are considerable efforts being made to raise awareness of trafficking, particularly by State funded initiatives, usually coordinated and run by NGOs or Civil Society Organisations (Article 18). The Commission commends these collaborative efforts and recommends the expansion of trafficking-specific campaigns to raise general awareness of trafficking, in all its forms. The Commission also welcomes the dedicated *Days of Action* and cross border initiatives undertaken by the State with European and British counterparts.

Ending demand

Beyond awareness raising, this report highlights the need to reduce the demand that fuels trafficking (Article 18.4). This area is increasingly of interest in the EU and the broader international sphere, especially as it relates to supply chains, sex trafficking and child trafficking. As such, the Commission has paid particular attention to these aspects of prevention and has offered practical recommendations to ensure Ireland implement the most effective strategies for tackling trafficking and stays abreast of its international obligations.

In addressing the specific high-risk environments for trafficking, the Commission recommends that the State consider the introduction of occupation-specific work permits allowing mobility within sectors, as a measure to reduce labour exploitation. Regarding prostitution, a recognised high-risk environment for trafficking for sexual exploitation, the Commission recommend the State 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.

Addressing technology-assisted trafficking

Technology-assisted trafficking is increasing exponentially, particularly in trafficking of children and trafficking for sexual exploitation. Tackling this aspect of current trafficking crimes requires special expertise and innovative responses. It is increasingly evident that all cases of trafficking involve some element of digital assistance. Given that children are at particular risk, the report recommends a child-specific, multi-faceted approach to address the particulars of child trafficking, separate from those that are recommended generally to tackle technology-assisted trafficking. The Commission recommends that the State considers steps to target technology facilitated trafficking by addressing online advertising that fosters trafficking of women and children for sexual exploitation.

Recommendations to the State

National Anti-Trafficking Coordinator, Department of Justice

- **Key recommendations**

Overall Coordination and response

- To coordinate and support the urgent completion and introduction of the two main policies: a new National Action Plan (NAP) and a new National Referral Mechanism (NRM)
 - To ensure survivor voices inform the overall anti-trafficking response (in particular, the new NRM and NAP) a dedicated Survivor Council should be established.
 - To improve planning, coordination and sustainability, increased multi-annual funding should be made available to frontline NGOs and Civil Society Organisations who are working to prevent and support victims of trafficking.
 - To monitor and ensure that all State agencies maintain up-to-date websites with trauma-informed, accurate information and working links; especially in sections intended for vulnerable populations, such as victims of human trafficking.
-

National Action Plan (NAP)

- The revised NAP must incorporate and address the recurring recommendations of GRETA, IHREC and other monitoring and oversight bodies, including clear timelines and progress indicators, in line with best practice for strategic action documents. This should include a commitment to placement of core provisions for identification, assistance, and support on a statutory basis.
 - The revised NAP 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.
 - The new NAP should commit to a review of the criminal justice approach to human trafficking (with the involvement of An Garda Síochána and Office of the Director of Public Prosecutions at the minimum) as a means of identifying and reducing any potential barriers to prosecution.
 - The new NAP should include specific measures that proactively ensure cross-border cooperation aimed at combatting human trafficking. Such measures must be preserved, strengthened and adapted where necessary.
 - The new NAP must align with, and include reference to, other relevant strategic plans adopted. This should include the Third National Strategy on Domestic, Sexual and Gender Based Violence and the National Action Plan against Racism.
 - The new NAP should establish a 'roadmap' to track the support and integration needs of victims, detailing how their needs are met, and by whom (State and/or NGOs services).
 - The new NAP must incorporate concrete actions to strengthen the gender-specific approach to services. In particular, regarding the urgent need for safe, gender-specific accommodation.
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**New National
Referral
Mechanism (NRM)**

- The establishment of a new NRM must be progressed as a matter of utmost urgency. This new NRM must apply to all victims and must include a dedicated child-specific NRM.
 - The condition requiring victims of trafficking to cooperate with investigations in order to receive the full range of assistance and entitlements, including the issuing or renewing a Temporary Residence permit where necessary, must be removed.
 - The reformed NRM must also remove the requirement that unaccompanied child victims of trafficking (15 years of age or younger) wait three years to change residence status.
 - Those designated as 'competent authorities' and 'trusted partners' under the new NRM must undertake mandatory child trafficking training.
 - Staffing and capacity building must be provided to the agencies and departments tasked with responsibility under the new NRM.
 - The reformed NRM must be available to all suspected victims through transparent decision-making with timely confirmation of victim status to the individual and their legal representative, and include an appeal process.
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- Legislative Reform**
- The core provisions of the NRM (identification, assistance, and support) must be placed on a statutory footing.
 - The introduction of separate offences to criminalise holding a person in slavery or servitude or subjecting them to forced labour must be considered as a matter of priority.
 - The State should support legislative and other efforts aimed at removing all reference to 'child pornography' in legislation, policy and official usage, referring instead to such acts as forms of child sexual abuse and child sexual exploitation.
 - Undertake a thorough review of the protections available to victims of trafficking for sexual exploitation and the possible expansion of protections to align with those afforded to victims of sexual assault and rape offences. For example, through extended the O'Malley report protections to all trafficking cases involving sexual exploitation.
 - To adhere fully to the non-punishment principle, the State should consider amending the 2008 Anti-Trafficking Act to include a specific defence for victims of trafficking where they have committed crimes as a direct consequence of them being trafficked, and should examine the feasibility of extending the expungement of criminal convictions.
 - The review of the Legal Aid Scheme (due to commence this year) must consider, where necessary, any legislative reform needed to expand the remit of the LAB to offer legal advice, assistance and representation to victims of human trafficking in all matters required⁷.
 - Consideration of the need for a legislative amendment to remove the reference to trafficking in section 3 of the 1998 Act, and the insertion into s. 2 of the 2008 Act to include trafficking for sexual exploitation⁸.
 - Legislative action must be taken to criminalise and target technology-facilitated trafficking. In particular, the online advertising and coordination of prostitution-related activities, which predominantly targets of women, girls and children for sexual exploitation.
 - The Communications (Retention of Data) Bill 2017 must be progressed as a matter of priority
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7 IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#). Dublin, p. 7

8 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.

Child victims of trafficking

- The Department of Justice must disaggregate child trafficking data by type of exploitation in all future annual reports.
 - The Department of Justice should work 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.
 - Trafficking, as a form of child abuse, must be specifically included in Children First Guidelines and associated trainings, with the aim of broadening the scope of understanding amongst persons who work with children.
 - The Department of Justice must achieve clarity regarding the 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).
 - Tusla must be 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 NRM.
 - Child victims of trafficking must be afforded the same access and supports to education, training and employment as Irish Nationals.
 - Specific guidelines be drawn up to provide clarity on sections 14 and 15 of the International Protection Act 2015. Providing clear guidance on the criterion on which officers use to determine when a person may be a child, and as to when an adult is entitled to 'take responsibility' for a child. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training. .
 - A policy mandating the appointment of a specially trained legal advisor to every child (in the care of the State) suspected of being a victim of trafficking must be established at the earliest stage.
 - As a matter of policy, all child trafficking victims should be included in the 'Barnahus model' already operating in the State.
 - The Assisted Human Reproduction Bill 2022 must contain adequate safeguards to protect against the risk of child trafficking and exploitation of women and girls.
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Assistance and support**Accommodation**

- DCEDIY must recognise and treat accommodation for victims of trafficking as an issue of utmost priority within the process of ending Direct Provision.
- The Programme Board overseeing the end of Direct Provision (as outlined in the White Paper) should include at least one board member with specific expertise on human trafficking.
- Provision of specific accommodation for victims of trafficking must be underpinned by a gender-specific and trauma-informed approach. In particular, with respect to victims of sexual violence and exploitation in all accommodation options.
- The Department of Housing must ensure that all policies at national/ IPAS and Local Authority level are aligned and that Local authorities cease their refusal of assistance to victims of trafficking on short-term residence permits with immediate effect.

Material Assistance

- Access to assistance and support measures must be made available to all victims of trafficking, regardless of their nationality/citizenship, or a pending International Protection claim. There must be an explicit provision to ensure that International Protection can be pursued at any moment in time.
- Department of Employment Affairs and Social Protection should formally exempt EEA-national victims of human trafficking from the Habitual Residence condition when accessing statutory assistance.
- A clear and transparent approach to material assistance for victims of trafficking that is independent from the International Protection, is urgently needed. The Commission reiterates its recommendations for the equitable treatment of victims irrespective of their nationality and their universal right to claim asylum.

Translation

- Translation, interpretation and cultural mediation services used by State agencies should be extended and made available to all NGOs who support victims of trafficking.
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Compensation

- The Law Reform Commission should consider 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 claims, and; the use of Section 6 Orders⁹ as a means of compensating victims within the criminal process.
- Confiscated proceeds of crime from trafficking and other related offences should be put into a ring-fenced fund that is used to compensate victims of trafficking.

Employer –Related Compensation

- With a view to improving accesses to compensation for victims of trafficking for forced labour, the Commission recommends that State considers and acts upon:
 - The reformed Criminal Injuries Compensation Scheme should include compensation for unpaid wages where there has been trafficking and/or 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.
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9 *Criminal Justice Act 1993*

Prevention

- Enact firewalls between immigration enforcement and trafficking in human beings, in the broader provision of public service, including labour inspections, policing and victim support.
 - Accredited trafficking-specific training modules must be embedded into professional qualifications and other relevant professions who are likely to work with, or encounter victims of trafficking.
 - Reform of Social Personal and Health Education and Relationships and Sexuality Education programmes should include modules on human trafficking, including information on the demand that drives various types of exploitation as well as risk factors that make people susceptible to become victims of this crime.
 - The Department of Justice should coordinate awareness raising campaigns that specifically target younger audiences in Ireland.
 - The State should issue occupation-specific work permits (including in the Irish fishing industry), removing the control/dependence of migrant workers on one particular employer and facilitating mobility.
 - The State should conduct a comprehensive human rights-led revision of the State's procurement practices in the wider context of the UN Guiding Principles on Business and Human Rights and the State's National Action Plan on Business and Human Rights, as well as in the context of its obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014.
 - The Department of Public Expenditure and Reform's Office of Government Procurement should update its National Public Procurement Policy Framework to clearly outline human rights due diligence requirements, including a requirement for demonstrable engagement by businesses with the new EU Guidance on Due Diligence in Addressing the Risks of forced labour in business operations and supply chains.
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Recommendations to departments and agencies

Department/ Agency	Recommendations
All	<ul style="list-style-type: none"> • All relevant State agencies involved in the anti-trafficking response are encouraged to support and engage fully with the development and implementation of the revised NAP and new NRM. • All relevant State agencies should adopt a pro-active response to the detection of victims of trafficking through the introduction of mandatory trafficking training of staff and embedded systematic trafficking screening tools.
International Protection Accommodation Service (IPAS, formerly the Reception and Integration Agency)	<ul style="list-style-type: none"> • Undertake an immediate review of the accommodation of victims of trafficking, and devise a better strategy utilising its single-gender shelters for victims of trafficking recovering from sexual violence, giving consideration to availability of services and self-budgeting. • Gender-specific accommodation for victims of trafficking, in particular those recovering from sexual violence, must be given their own room and self-catering accommodation that is located near specialised anti-trafficking support services. • The IPAS Resettlement Teams should assist all victims of trafficking, regardless of their status, when they are moving on from Direct Provision. • Any person conducting Vulnerability Assessments must be trained in human trafficking competence and basic identification skills. • Keep annual data records on the number and profile of the victims of trafficking that receive accommodation, as well as the type of accommodation and the outcome for the victims in terms of their immigration status or further housing progression. • Any and all communication between IPAS and victims of trafficking must be victim-centred and trauma informed.

Tusla Child and Family Agency

- As a matter of priority, develop a 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 policy.
- Assist in the development of guidelines for identification and referral of child victims of trafficking, as part of the new NRM.
- Establish of a dedicated team within Tusla that focuses on child trafficking and child exploitation (including separated/unaccompanied among them but also those united with families) that is distinct from International Protection for unaccompanied minors.
- Develop a national policy or approved national internal guidelines on age-assessments for use in determining the age of suspected victims of human trafficking, unaccompanied minors and/or separated children.
- Develop procedures to ensure that all persons who work with child victims of trafficking (including guardian ad litem, social workers, guardians, intermediaries) undertake mandatory child-trafficking training.
- Amend current policies to ensure every child victim receives legal counselling without delay.
- Ensure that any decision regarding application for International Protection on behalf of an unaccompanied trafficking victim is taken only after a consultation with a legal advisor.
- Amend and configure the data system to capture clearly potential cases of trafficking in children.

Health Service Executive (HSE)

- Develop a policy that prioritises access to the public psychological support system for victims of trafficking and ensure that all persons providing psychological support to victims are suitably qualified in supporting trafficking victims.
 - Ensure a geographical spread of medical and mental health assistance for all victims of trafficking.
 - Increase funding to frontline organisations who are providing psychological support to victims, taking account of the need for clinical supervision of support staff.
 - Retain and expand the 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.
 - Maintain clear disaggregated data, aligned with the requirements for data protection that is informative in discerning trends in arising needs and recovery of victims of trafficking of different forms of exploitation, with a view to informing costs and future investments
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An Garda Síochána	<ul style="list-style-type: none"> • The Garda Inspectorate should consider launching a standalone inspection (review) of the police response to trafficking in human beings. • To avoid secondary victimisation through unnecessary or repeated interviews victim-centred training should be continuously rolled out, and any contact with a victim should be pre-arranged ensuring that victims have sufficient support at all times. At the same time, the recent advances made in interviewing vulnerable children in an appropriate non-traumatic settings are truly commendable, and should be a standard in interviewing child victims of trafficking.
Workplace Relations Commission (WRC)	<ul style="list-style-type: none"> • Ensure that all inspectors are trained on trafficking in human beings and identification of victims. • Keep records of whether inspections are in-person or remote, and their respective outcomes. • Keep disaggregated data on the potential victims of trafficking that are uncovered and reported to An Garda Síochána.
Legal Aid Board	<ul style="list-style-type: none"> • All potential victims of trafficking must be proactively provided with adequate, early legal support to avoid prosecution as a result of being trafficked and in order to avail of remedies and redress for any harm caused to them. • Provide legal support to potential and self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána • Ensure that the website content intended for victims of trafficking is maintained appropriately.
The International Protection Office (IPO)	<ul style="list-style-type: none"> • As part of a pro-active response to trafficking, IPO should develop and implement a systematic screening tool to detect and identify potential victims of trafficking that is rolled out across all International Protection, immigration and border management services. • Specific trafficking training should be made mandatory for all staff working in International Protection, immigration and border management services. • Policies and procedures should be amended to ensure that the needs of potential victims of trafficking are prioritised over all other immigration issues.

1. Introduction and policy context

The EU Anti-Trafficking Directive¹⁰ provides a comprehensive legal framework covering all aspects of the fight against trafficking in human beings - criminalisation of the offences, prevention, investigation and prosecution, as well as protection, assistance and support to victims. It offers an advanced system for responding to victims that remains unmatched in all other international legal instruments. By endorsing and transposing this Directive, Ireland adheres to the best minimum standards in combatting human trafficking and protecting its victims.

This report provides a detailed overview of the individual provisions of the EU Anti-Trafficking Directive accompanied by observations and analysis of the status of their implementation in Ireland as well as recommendations for future improvement, where necessary.

Before embarking on analysis of the specific Directive Articles, this chapter sets out an overview of the national policy context.

Overview of the National Context

A combination of legislation and policy governs Ireland's approach to addressing and ending human trafficking. While the approach to criminalisation of human trafficking and the protection of victims in court proceedings is clearly outlined in national law,¹¹ 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)¹² and Guide to Procedures for Victims of Human Trafficking.¹³

In the absence of any other comprehensive policy outlining the route to identification and assistance for all victims,¹⁴ the AIA is, by default, at the core of the National Referral Mechanism (NRM).¹⁵ Among its various shortcomings, the AIA is extremely limited in scope as it only applies to undocumented third-country nationals who cooperate with An Garda Síochána.¹⁶

10 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, OJ L 101, p. 1.

11 Notably, the Criminal Law (Human Trafficking) Act 2008 and Criminal Justice (Victims of Crime) Act 2017

12 Government of Ireland (2011) [Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking](#)

13 Department of Justice and Equality (2015) [Guide to Procedures for Victims of Human Trafficking in Ireland](#)

14 It is noted that both the AIA and the Guide to Procedures for Victims of human trafficking are significantly out of date and do not reflect the latest policy developments, clearly evident in Appendix 4 of the latter.

15 NRM represents a system for identification and referral of victims of human trafficking for the purposes of their escape and recovery, involving various statutory and independent entities with specialised and complementary expertise.

16 The AIAs provide for the issuing of a sixty-day recovery and reflection period; a six-month renewable

The assistance measures and the access to rights apply in different ways according to a victim's nationality and residency status. As things currently operate, all State bodies offer only assistance upon referral by An Garda Síochána, which effectively means that assistance is conditional on cooperation with the law enforcement authorities.¹⁷ In a promising step, in May 2021, the Minister for Justice announced the Government's intention to introduce a new NRM that will be placed in statute. The Commission will follow this development with great anticipation.

Unbound by any specific implementation timeline of progress, the 2016 *National Action Plan to Prevent and Combat Human Trafficking in Ireland* (NAP)¹⁸ remains, by default, the operating policy to this day. The Organization for Security and Cooperation in Europe (OSCE) has identified the NAP as one of the key policies in need of a thorough review, noting that the important strategic objectives outlined therein are yet to be achieved.¹⁹ The Department of Justice has begun initial discussions regarding the development of a new NAP in 2020/2021. However, the Commission understands that the drafting process is still ongoing in 2022. In the interim, the Commission is of the view that key actions contained in the current plan require prioritisation and completion.

The primary statutes that give effect to Ireland's international obligations to combat human trafficking are the Child Trafficking and Pornography Act 1998²⁰ and the Criminal Law (Human Trafficking) Act 2008. The Human Trafficking Act was subsequently amended in 2013 by the Criminal Law (Human Trafficking) Amendment Act 2013 to include forced begging and forced engagement in criminal activities as new forms of trafficking. Importantly, the Act also includes a definition of forced labour. The legislation provides for dissuasive penalties of up to life imprisonment and, at the discretion of the court, and an unlimited fine. Additionally, other statutes containing trafficking-related offences²¹ are particularly important to consider in the overall human trafficking response.²²

temporary residence permission conditional upon: (i) the person being a non EEA national (ii) the person cooperates with authorities in an ongoing investigation; more favourable immigration provisions for child victims; provisions voluntary repatriation, and/or changes of status to longer-term immigration status, after certain conditions have been met.

17 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 \(GRETA\)](#). Dublin, p. 33

18 Department of Justice and Equality (2016) [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#)

19 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*.

20 Whilst it is common in Irish statutes to refer to child sexual exploitation as 'child pornography', this is not currently acceptable terminology. This report adopts the [Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse](#), also known as the Luxembourg Guidelines, by the Interagency Working Group on Sexual Exploitation of Children in 2016

21 *Criminal Law (Sexual Offences Act) 2017* and the *Criminal Justice (Victims of Crime) Act 2017*.

22 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*

In June 2021, the first conviction for human trafficking was secured,²³ which was a significant step in the fight against trafficking and illustrates the ability of the criminal justice system to successfully prosecute human trafficking. However, Ireland's consistently low prosecution and conviction rate for this crime has been the subject of much international criticism and remains problematic.²⁴

Given the highly gendered nature of trafficking, in particular for the purposes of sexual exploitation, there are other important national policies that, by their very nature, impact greatly on Ireland's response to trafficking. Examples of which include, the *Second (and imminent Third) National Domestic, Sexual and Gender-Based Violence Strategy*,²⁵ the recently concluded *National Strategy for Women and Girls 2017-2020*.²⁶ Although, it must be noted that until recently these strategies have been particularly limited in application to trafficking, thus prompting the Commission's recent recommendations to the State²⁷ to fully utilise the general

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. While the availability of lesser but related offences to An Garda Síochána and prosecutors is not a substitute for a charge of human trafficking, it is an important ingredient in a comprehensive prosecutorial strategy. It is worth noting that lesser or associated offences are prosecuted in other jurisdictions and this meets with international approval.

23 Department of Justice (2021) [Minister Naughton welcomes the first convictions for Human Trafficking handed down today](#) [press release] 11 June. The women were also found guilty of money laundering and organisation of prostitution offences. The offences occurred between September 2016 and June 2018. The victims were recruited from Nigeria, and on arrival in Ireland were forced into prostitution. The victims testified to having been issued false IDs, having their earnings withheld, suffering threats, and being moved around the country. McCárthaigh, S. (2021) [‘Two women guilty of human trafficking in first conviction of its type’](#) *The Irish Times*, 11 June [accessed 22 April 2022]; Alicia Edosa (44) and Edith Enoghaghase (31), both Nigerian nationals, were each found guilty on two (2) counts of trafficking women into Ireland, on dates between September 2016 and June 2018, contrary to the provisions of section 4 of the Criminal Law (Human Trafficking) Act 2008, following a six-week jury trial at Mullingar Circuit Criminal Court. Alicia Edosa and Edith Enoghaghase were also each convicted of one (1) offence of organising prostitution contrary to the provisions of section 9 of the Criminal Law Sexual Offences Act 1993. Alicia Edosa was also convicted in respect of a total of thirty-eight (38) counts of money laundering, contrary to the provisions of section 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. While Edith Enoghaghase was convicted in respect of four (4) counts of the said section 7 of the Act of 2010. Edith Enoghaghase's husband, Omonuwa Desmond Osaighbovo (30), a Nigerian national, was found not guilty of one (1) charge of prostitution but guilty of four (4) money laundering offences.

24 US State Department (2021). [Trafficking in Persons Report](#), p. 302. It is to be noted that while the 2021 State Department assessment reiterates its concern with regard to the lack of convictions for trafficking, that in June 2021 the first such conviction was secured. The report reflects data provided by An Garda Síochána indicating that its Anti-Trafficking Unit investigated 22 suspects in 2020 (15 for sex trafficking and seven for labour trafficking). This is down from 39 in 2019. Three prosecutions for sex trafficking were initiated in 2020, while none were initiated for labour trafficking.

25 Department of Justice and Equality (2016) [Second National Strategic on Domestic, Sexual and Gender Based Violence Strategy 2016-2021](#).

26 Department of Justice and Equality (2027) [National Strategy for Women and Girls 2017-2020: Creating a Better Society for All](#).

27 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 \(GRETA\)](#). Dublin, p.29: "The Commission recommends that the new National Action Plan aims at alignment

Gender-Based Violence response in the fight against human trafficking and to synchronise the national responses.

Consultations are underway for the development of a new National Action Plan against Racism under the aegis of the Anti-Racism Committee.²⁸ As part of its engagement with this consultation,²⁹ the Commission has emphasised the highly gendered and racialized nature of human trafficking,³⁰ and has recommended that the new plan directly address core priorities to combat human trafficking.³¹ In this regard, the Commission notes the importance of ensuring that the integration of anti-trafficking priorities in the new National Action Plan against Racism are done with due regard to the need to address racial profiling in policing.

The Commission has previously recommended³² that the State should conduct a comprehensive human rights-led revision of the State's procurement practices in the wider context of the *UN Guiding Principles on Business and Human Rights* and the State's *National Action Plan on Business and Human Rights*,³³ as well as in the context of its obligations under section 42 of the *Irish Human Rights and Equality Commission Act 2014*.³⁴ A National Public Procurement Policy Framework was published in November 2019,³⁵ outlining the overarching approach to public procurement in Ireland, provided for in national and EU legislation. This

with, and includes references to, other relevant strategic plans adopted in Ireland. This should include the upcoming new Strategy on Domestic, Sexual and Gender-Based Violence and the new National Action Plan against Racism".

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

29 IHREC (2021) [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#). Dublin.

30 Trafficking victims are predominantly of migrant background. Irish citizen victims are rarely encountered, and primarily number among those recorded as child victims of trafficking. Note the reclassified statistical data in the annual State report in 2017 (Department of Justice and Equality (2017) [Trafficking in Human Beings in Ireland: Annual Report 2017](#), p. 5)

31 Minority ethnic communities in Ireland can be under-protected and over-policed, including due to racial profiling, and the Commission has called for profiling to be addressed, including via its prohibition in statute. See IHREC (2019) [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#). Dublin: Irish Human Rights and Equality Commission, pp. 137-138.

32 IHREC (2016) [The Commission Submission to GRETA in advance of its Second Evaluation Round of Ireland](#)

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

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

35 Office of Government Procurement (2019) [National Public Procurement Policy Framework](#)

includes reference to EU standards that include human trafficking as grounds for exclusion of potential suppliers.³⁶ The Commission highlights again the important publication in 2021, of new EU Guidance on Due Diligence for EU Businesses to address the risk of forced labour in operations and supply chains.³⁷

In addition to the specific calls to individual agencies to collect data on human trafficking³⁸ the Commission would like to reiterate its recommendation that all State agencies must maintain clear disaggregated data. This data should be aligned with the requirements for data protection that is informative in discerning trends in arising needs and recovery of victims of trafficking of different forms of exploitation, with a view to informing costs and future investments³⁸.

EU anti trafficking law relevant to Ireland

Article 5 of the Charter of Fundamental Rights of the European Union specifically prohibits trafficking in human beings. Ireland, as a member of the EU, is bound by a number of EU-wide legislative initiatives that seek to address and combat trafficking in persons. Chief amongst these is the EU Trafficking Directive,³⁹ which operates as the primary EU law detailing Member States' obligations and responsibilities in regards to their response to the crime of human trafficking.

There are a number of other relevant EU provisions that also greatly affect the overall EU trafficking response. Namely, the Victim Rights Directive⁴⁰ that establishes minimum standards on the rights, supports and protections that

36 Office of Government Procurement (2019) [National Public Procurement Policy Framework](#), p. 5. Directive 2014/24/EU of the European Parliament and of The Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (goods, services and works); Directive 2014/25/EU of the European Parliament and of The Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; Directive 2014/23/EU of The European Parliament and of the Council of 26 February 2014 on the award of concession contracts. It is not known the degree to which, in practice, notice is taken of human rights compliance by tenderers during the procurement process, including where links to human trafficking and forced labour are concerned. The Commission notes the publication in July 2021, of new EU guidance on due diligence to address the risk of forced labour in business operations and supply chains, see European Commission (2021) [Guidance on Due Diligence for EU Businesses to Address the Risk of Forced Labour in Their Operations and Supply Chains](#).

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

38 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 \(GRETA\)](#). Dublin, p.48

39 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

40 Directive 2012/29/EU of the European Parliament and 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 of crime are entitled to receive. This Directive was transposed into Irish Law in 2017 through the Criminal Justice (Victims of Crime) Act.

The Child Sexual Abuse and Exploitation Directive⁴¹ requiring Member States to criminalise a wide range of child sexual abuse and child sexual exploitation (20 offences and attempts) has also been transposed into Irish law.⁴²

Ireland can be said to partially participate in the Common European Asylum System (CEAS). In 2018, Ireland opted into the (recast) Reception Conditions Directive⁴³ for the first time placing reception conditions on a statutory footing, this includes the introduction of a mandatory Vulnerability Assessment⁴⁴ which specifically recognises human trafficking as a ground for vulnerability. It is important that the asylum process has a formal, proactive mechanism to identify victims of human trafficking and the Vulnerability Assessment represents a valuable tool in this regard.

The State opted out of the EU Directive⁴⁵ regulating the issuing of Residence Permits to third country national victims. While the Victims' Compensation Directive was deemed to be transposed by virtue of the "existing national scheme of compensation for personal injuries criminally inflicted."⁴⁶ Notably, the Law Reform Commission's (LRC) Fifth Programme of Law Reform, which was approved by the Government in March 2019, includes a project on Compensating Victims. This has the potential to positively effect trafficking victims in regards to their right to compensation, which, at present, is theoretical.

41 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

42 Prior to coming into force of the *Criminal Law (Sexual Offences) Act 2017*, Ireland could not be said to be in (full) compliance with the Directive. The commencement of the 2017 Act puts in place a more effective response to sexual offending perpetrated against children in Ireland, especially through the use of the internet, social media; new criminal offences targeting the sexual exploitation and grooming of children; new offences to counter the demand for sexual services through prostitution and; a statutory definition of 'consent' in Irish law, according to the 12th report of the Special Rapporteur on child Protection. See Shannon G., (2019) [*Twelfth Report of the Special Rapporteur on Child Protection: a Report Submitted to the Oireachtas*](#), p. 300

43 S.I. No. 230/2018 - *European Communities (Reception Conditions) Regulations 2018*

44 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Art. 22

45 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

46 See Department of Justice, Equality and Law Reform (2006) [*Written answer to Parliamentary Question: EU Directives*](#) (25 January 2006)

International Anti Trafficking Law Relevant to Ireland

Ireland is also party to the key international anti-humantrafficking treaties, namely the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 and the Council of Europe Convention against Human Trafficking, 2005. Other international legal tools adopted by Ireland that are of particular relevance to human trafficking include the UN Convention on the Elimination of Discrimination Against Women, (CEDAW), 1985;⁴⁷ the UN Convention on the Rights of the Child (CRC), 1990⁴⁸ and the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007.⁴⁹ By ratifying the Protocol of 2014 to the Forced Labour Convention, 1930, a legally binding instrument for combating all forms of forced labour, including trafficking in persons, Ireland joined the most advanced international standards in this area.

Important international treaties awaiting ratification by Ireland include the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2002,⁵⁰ and the Budapest Convention on Cybercrime, 2001,⁵¹ while the OSCE recently invited the State to consider the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 2003.⁵²

» **The Commission recommend the new National Action Plan take into consideration the recurring recommendations of the Group of Experts on Action against Trafficking in Human Beings ('GRETA'), IHREC and other monitoring and oversight bodies, and incorporate**

47 Ireland signed and ratified the UN Convention on the Elimination of Discrimination Against Women (CEDAW) on 23 December 1985.

48 Ireland signed the United Nations Convention on the Rights of the Child (UNCRC) on 30th September 1990 and ratified it on 28th September 1992.

49 The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "the Lanzarote Convention", requires criminalisation of all kinds of sexual offences against children. It sets out that States in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators. Ireland is the 48th country to become a Party to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). The Convention will enter into force as regards Ireland on 1 April 2021.

50 "As outlined in my previous reply on this matter, my Department subsequently made a comprehensive submission to the Attorney General's Office in 2019 seeking confirmation as to whether Ireland was in a position to ratify the Second Optional Protocol to the UN Convention on the Rights of the Child". See Department of Children, Equality, Disability, Integration and Youth (2021), [Written answer to Parliamentary Question: International Agreements](#) (22 September 2021)

51 The Budapest Convention was signed by Ireland in 2002 but ratification has been delayed since then. The Department of Justice has committed to drafting a cybercrime bill that would give effect to provisions of the Budapest Convention on Cybercrime, which are not already covered in domestic legislation, see Department of Justice (2021), [Written answer to Parliamentary Question: cyber-security](#) (21 October 2021)

52 *Conclusion and Recommendations for Ireland Following the visit of OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings*, Valiant Richey, p. 5

clear timelines and progress indicators, in line with best practice for strategic action documents. This should, in particular, include commitment to placing core provisions for identification, assistance, and support on a statutory basis.

- » The Commission recommend the new National Action Plan aims at alignment with, and includes references to, other relevant strategic plans adopted in Ireland. This should include the upcoming new Strategy on Domestic, Sexual and Gender Based Violence and the new National Action Plan against Racism.
- » The Commission recommend the new National Action Plan against Racism directly incorporates key actions relevant to combatting human trafficking and that it works to directly compliment and reinforce wider action on human trafficking.
- » The Commission recommend that the new National Referral Mechanism should be introduced urgently, and include child-specific identification measures.
- » The Commission recommend that the State consider acceding to, or ratifying, all relevant EU and international instruments that bolster the anti-human trafficking response, including, the Employer's Sanctions Directive, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2002, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 2003 and the Budapest Convention on Cybercrime, 2001.
- » The Commission recommend the State support the legislative and other efforts aimed at removing all reference to 'child pornography' in all legislation, policy and official usage referring instead to such acts as forms of child sexual abuse and child sexual exploitation⁵³.

53 The term 'child pornography' is frequently used in law but should be avoided outside that context. Law enforcement bodies sometimes use the term 'child sexual exploitation material' to cover all material that is sexually exploitative of children and the term 'child sexual abuse material' covers all material that includes acts of sexual abuse against the child. Online or digital material is included in both of these terms. For a detailed discussion on the importance of terminology, see RCNI (2022) [Breaking the Silence. Terminology for Data Collection on Sexual Violence Against Children](#). The Child Trafficking and Child Sexual Exploitation Material (Amendment) Bill 2022 was brought forward in the Seanad on Thursday by Independent Senator Eileen Flynn who said the term "child pornography" is out of date, completely incorrect and "does not truly reflect the nature of the abuse", see Burns S (2022) ['Coalition not to oppose Bill seeking to remove 'child pornography' term from legislation'](#) *The Irish Times*, 3 February

2. Gender perspective (Article 1)

Anti-Human Trafficking Directive Article 1

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.

Recital 3. *This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate. The 'push' and 'pull' factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.*

Article 1 summarises the aim and purpose of the Directive defining the crime of human trafficking, its punishment, and assistance to victims. In addition, Article 1 establishes the principle that all anti-trafficking measures relating to assistance and prevention be undertaken from a gender perspective.⁵⁴ This provision takes into account the reality that human trafficking is highly gendered and manifests in several ways: in overall trafficking statistics, in exploitation-specific statistics and in the specific harms inflicted on victims. The EU Strategy on Combatting Trafficking in Human Beings 2021-2025 reports that 72% of the registered human trafficking victims are women and girls.⁵⁵ The Department of Justice stated that female victims account for 71% of all victims, since 2009.⁵⁶ The official data review by the Commission in 2021 established that during the period of reclassified data collection (2013 to date), the proportion of female victims is 66%.⁵⁷ An independent data-oriented study for the period 2014-2019 revealed that in unofficial data available in Ireland, the vast majority of the uncovered cases involved female victims (70%).⁵⁸

The present report shows the profile of victims within the various types of trafficking exploitation is also highly gendered. For example, trafficking for the purposes of labour exploitation affects a higher proportion of men (69%), while trafficking for sexual exploitation affects almost exclusively women (96%).⁵⁹

In addition to the statistical gender disparities, of note are the gendered harms associated with human trafficking that manifest, in particular, in trafficking for sexual exploitation. This is due, in part, to the very particular way in which the human body is used in the process of exploitation.⁶⁰ A recent 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

54 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'.

55 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. 1

56 Department of Justice (2017) [Trafficking in Human Beings in Ireland: Annual Report](#), p. 6

57 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 \(GRETA\)](#). Dublin, p. 7

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

59 The situation in Ireland mirrors that of the European Union, where the latest data collection study showed that women represent 92% of the victims of trafficking for sexual exploitation, while men represent 80% of the victims of trafficking for labour exploitation. European Commission (2020) [Data Collection on Human Trafficking in Human Beings in the EU](#). Luxembourg: Publications Office of the European Union, p. 22

60 Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

“victims of trafficking tend to have higher utilisation of health and welfare services for many years.”⁶¹ In 2018, European Institute for Gender Equality (EIGE) published the report *Gender Specific-Measures in Anti-Trafficking Actions*, which examined the assistance and protection of victims from the gender-based violence perspective and issued practical recommendations.⁶² The EU Victims’ Rights Directive defines trafficking in human beings as one of the forms of gender-based violence (GBV).⁶³ On the basis of existing knowledge regarding the gender dimension of human trafficking as a form of GBV⁶⁴ the Commission has been observing the developments of the National Strategy on Domestic, Sexual and Gender-based Violence, which, to date, has omitted human trafficking and other forms of violence affecting migrant women from its scope.

The gendered character of trafficking⁶⁵ requires a gender-specific approach to the prevention of trafficking in human beings and in assistance to its victims, as Article 1 provides. In this regard, Ireland is a mixture of both insufficient and promising practices. 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. Due to the complete absence of gender-specific shelters for victims, it is publicly known that the present accommodation for victims of trafficking is problematic and in urgent need of reform - this is addressed, in detail, in [Section 4](#).

61 Walby S., et al., (2020) [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#). Luxembourg: Publications Office of the European Union, p. 21

62 EIGE (2018) [Gender-Specific Measures in Anti-Trafficking Actions](#). Luxembourg: Office of the European Union, pp. 57-61

63 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, Recital 17: ‘Violence that is directed against a person because of that person’s gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called ‘honour crimes’. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.’

64 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. 18. “The trafficking of women and children is a lucrative industry internationally. This briefing argues that trafficking is a form of gender-based violence and that interventions to address trafficking should be located within this context”, see Watson J. and Silkstone C., (2011) [Human trafficking as a form of gender-based violence—protecting the victim](#), Agenda Empowering Women for Gender Equity, 20:70, pp. 110-118. The US government recognizes that comprehensive efforts to reduce human trafficking must include efforts to prevent and respond to GBV due to the intertwined relationship of the two crimes. Human trafficking and GBV are interrelated issues that must be tackled together; see United States Agency International Development (2016) [United States Strategy to Prevent and Respond to Gender-Based Violence Globally](#), US Department of State.

65 For details of the gendered disaggregated data, see Appendix 5.

Similarly, the present NRM for identification of victims that centrally positions the Gardaí does not amount to a gender-specific, victim-centred or 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 central involvement of the HSE Anti-Human Trafficking Team (AHTT) with expertise in GBV and developing individual care planning for victims is already a positive example of the States' response in this regard. So too is the increased State funding for gender and exploitation-specific assistance and awareness campaigns in recent years.

- » **The Commission recommends that the new National Strategy on gender-based violence clearly recognises trafficking in human beings as a form of gender-based violence, in line with the EU position.**
- » **The Commission recommends 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.⁶⁶**
- » **The Commission recommends that the State considers increasing funding to Gender-Based Violence organisations to allow them to increase their capacity to provide trafficking-specific services to victims who have experienced domestic, sexual or gender-based violence, especially for victims of sexual exploitation.**

66 For further details on the urgent need for gender-specific accommodation, refer to [Section 4](#).

3. Criminalisation of Human Trafficking

- » Definition (Article 2 and 3)
- » Penalties (Article 4)
- » Liability of legal persons (Article 5 and 6)
- » Seizure and Confiscation (Article 7)
- » Non-prosecution (Article 8)
- » Investigation and Prosecution (Article 9)
- » Jurisdiction (Article 10)

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

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.

Section 3 covers all aspects of the Directive relevant to the criminalisation of human trafficking, contained in Articles 2 to 10. This includes a review of: human trafficking offences (Articles 2 and 3); minimum penalties against individual traffickers (Article 4); culpability and penalties against legal persons (Articles 5 and 6); confiscation of criminal assets of traffickers (Article 7); non-punishment of victims for crimes they were compelled to commit (Article 8); mandatory features in investigations and prosecutions of trafficking offences (Article 9), and extra-jurisdictional provisions (Article 10).

Definition and Offences (Article 2 and 3)

Article 2 of the Directive introduces the definition of the crime of human trafficking, providing clarifications regarding some central terms used therein. Such as, 'position of vulnerability', 'consent' and 'exploitation'. It draws a distinction between trafficking of adults and trafficking of children. The transposition and implementation of these provisions in Ireland are discussed in this section. Article 3 stipulates that the attempt to commit the crime of human trafficking is also a crime, including in cases where the exploitation has not taken place.

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*, broadens the scope of the definition of 'exploitation' to include forcing a person to engage in criminal activity for financial gain⁶⁷ and expands the definition of 'labour exploitation' to include forcing a person to beg.⁶⁸ The expanded definition brings the Irish legislative framework into compliance with Article 2 of the Anti-Human Trafficking Directive. However, several definitional questions are worth bearing in mind when considering the transposition of the definition of trafficking in human beings in Ireland.

Definition of Human Trafficking in the EU

EU Directive 2011/36/EU, Article 2

[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 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, 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'

⁶⁷ *Criminal Law (Human Trafficking) (Amendment) Act 2013, s.1(a)*

⁶⁸ '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*.

For instance, it is important to note that the EU Directive envisages a broader interpretation (and application) of the human trafficking definition, evident in the wording of Article 2.3 and in Recital 11:

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

It would appear that the open-ended definition of human trafficking has not been meaningfully implemented to date, bearing in mind the reported refusal by the State to formally identify victims of trafficking for the purposes of forced/exploitative marriages.⁶⁹ It remains to be seen what the State’s approach will be in cases of potential sale of children and illegal adoptions, which have been reported elsewhere in Europe.⁷⁰

In this regard, the Commission notes, the potential that exists for exploitation of women’s reproductive capacity, and for child trafficking, in the absence of regulation for assisted human reproduction and surrogacy. The Special Rapporteur on Child Protection has underscored the importance of this, commenting that:

“Any model of regulation of domestic surrogacy must provide sufficient safeguards to ensure that domestic surrogacy arrangements do not fall foul of the prohibition of the sale and trafficking of children.”⁷¹

The UN Special Rapporteur on the Sale and Sexual Exploitation of Children has stressed that provision for altruistic surrogacy requires strong regulation in order to mitigate the risk of *de-facto* commercial and for-profit surrogacy arrangements occurring in practice.⁷²

The Assisted Human Reproduction Bill 2022 is currently before the Houses of the Oireachtas. The Bill, as currently drafted, intends to provide for regulation of a range of assisted human reproduction practices, including provision for and regulation of altruistic domestic surrogacy.⁷³

69 O’Connor, M., Cosgrave, C. and Yonkova, N. (2016) [Exploitative Sham Marriages and Human Trafficking in Ireland](#), Dublin: Immigrant Council of Ireland, p. 13

70 Varenikova, M. (2020) [“Mothers, Babies Stranded in Ukraine Surrogacy Industry”](#), *The New York Times* [online] 15 August; Ekathimerini (2021) [“Probe launched following allegations of illegal adoptions”](#), *Newsroom* [online] 7 January.

71 O’Mahony C. and O’Callaghan E. (2020) [A Review of Children’s Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law](#), Department of Children, Equality, Disability, Integration and Youth, p. 20.

72 United Nations Human Rights Council (2018) [Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#), A/HRC/37/60, p. 69

73 House of the Oireachtas Dáil Éireann Debate (2020) [Proposed legislation](#) (27 May 2020)

» **The Commission recommend the State ensure the Assisted Human Reproduction Bill 2022 contains adequate safeguards against the risk of child trafficking and exploitation of women and girls, in line with the recommendations of the Special Rapporteur on Child Protection and the UN Special Rapporteur on the Sale and Sexual Exploitation of Children.**

While the text of the human trafficking legislative framework can be said to comply with the Directive *de jure*, particular interpretations of what constitutes trafficking may limit this provision *de facto*. For example, the abuse of position of vulnerability is a particular tactic of control commonly used by human traffickers. The Anti-Human Trafficking Directive defines a position of vulnerability as:

“[A] situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.”⁷⁴

Whereas, the Human Trafficking Act 2008 (that does not define vulnerability *per se*), stipulates:

“[Where the trafficker] 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.”⁷⁵

This could be interpreted as a requirement for the trafficker to cause ‘the lack of real and acceptable alternatives’, as opposed to taking advantage of already existing ‘lack of real and acceptable alternatives’, thus potentially adding an unwarranted conditionality in the national definition. The specific vulnerabilities of trafficked victims and the intersection of multiple vulnerabilities such as gender, race, economic dependence, disability, fragile health, insecure migration status, youth, and poverty are not always recognised and fully incorporated into the interpretation of what constitutes a ‘vulnerable’ human trafficking victim, in particular, in instances where the trafficker uses the position of vulnerability to control or coerce into exploitation.⁷⁶ How vulnerability is conceptualised and interpreted by the Gardaí, prosecutors, the judiciary and the jury has a significant bearing on how the law is understood and applied. From the limited case law available there appears to be instances where the law is potentially misunderstood.⁷⁷

74 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, Art. 2.2

75 Criminal Law (Human Trafficking) 2008 Act, s.4(1)(c)

76 Criminal Law (Human Trafficking) 2008 Act s.4(2)(c) provides that it is an offence where a trafficker ‘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’ for the exploitation of that person.

77 For example, in *Lin v. Governor of Cloverhill Prison* [2014] IEHC 214, a Chinese man arrested in a locked

- » **The Commission recommend special attention is paid to the position of vulnerability, as a constitutive element of the means for coercion, and that an intersectional perspective is specifically included in human trafficking trainings intended for the investigation, prosecution and the legal profession.**

As currently constituted, there is a failure to criminalise slavery, servitude and forced labour as separate offences in Irish law.⁷⁸ At present, these offences are only criminalised indirectly as a part of a trafficking offence - when a person subjects another to forced labour, he commits the offence of human trafficking insofar as he harbours the person, takes custody of the person or provides the person with employment and/or accommodation (the action) by means of coercion for the purposes of forced labour. This situation needs to be addressed as it is incompatible with Article 4 of the European Convention on Human Rights, which requires criminalisation of slavery, servitude and forced labour.⁷⁹

cannabis grow-house challenged the legality of his detention under Article 40.4.2 of the Constitution on the basis that he had an entitlement under Article 8 of the EU Anti Human Trafficking Directive not to be prosecuted because he was a victim of trafficking. The Gardai did not accept that he was a victim, and photographs found on his phone showed that he had a degree of liberty before being locked into the grow-house. The Court found that he had been kept in servitude in the grow-house but that he was not a victim of trafficking because it did not believe his account of travel to Ireland and because he had been at liberty between his entry to the State and his being locked in. There was evidence that Mr Lin had been living in the grow-house, and the fact that he was kept in servitude there is evidence that the purpose of his traffickers was to subject him to that state. Arguably, this ought to have been sufficient for Gardai to identify him as a suspected victim of an offence under section 4 of the 2008 Act for the purposes of the Administrative Immigration Arrangements. Also see *In People (DPP) v. Xiao Fei Weng and Shi Dong He* [2015] IECA 261, the appellants pleaded guilty to offences contrary to sections 15 and 17 of the 1977 Act arising out the search of an industrial unit in County Mayo, in the course of which the Gardai found a sophisticated cannabis growing operation. Both appellants were described as live-in 'gardeners' who could not leave and to whom food was supplied daily. The Court of Appeal quashed the sentences of six years imprisonment in both cases and substituted in each case sentences of four years imprisonment instead.

78 Under section 4(1) of the 2008 Act, a person who trafficks another person for the purposes of the exploitation of the trafficked person is guilty of an offence if, in or for the purpose of trafficking the trafficked person, the trafficker employs any of the means listed in section 4(1)(a)-(e). The act of trafficking defined in s 1 is framed more broadly in Irish law than in EU or international law, so that while it includes the action elements of the core definition, it incorporates other actions not found there, including causing a person to enter or leave the State or to travel within the State and providing the person with accommodation or employment.

79 See *CN v. United Kingdom*, no. 4239/08, ECHR 2012

Case Study Migel

This case study demonstrates the often blurred lines between trafficking for forced labour, labour exploitation and servitude.

Migel is from southern Africa and was trafficked via Northern Ireland (with UK documents) to work on a vessel in the Republic of Ireland. Migel was put living on the boat with no wash facilities and was unpaid for his labour. After three weeks Michael challenges the owner of the vessel but he was told that he had to work off the cost of his journey from his home country to Belfast and to the South. This incriminating admission of smuggling was captured in a recording and the vessel owner threatened to send Migel home. Migel escaped, presented himself to the ITF. He provided corroborating WhatsApp correspondence relating to the manner he was recruited, the recordings of his argument with the vessel owner and documentary evidence of his journey via the UK. Yet, the Garda 'refused to' interview him. Migel absconded to Northern Ireland and was not heard from again.

(Case study courtesy of ITF)

Relatedly, the European Court of Human Rights (ECtHR) has recognised the particular vulnerability of migrant workers, owing especially to a lack of proper documentation (such as residence or work permits) and who, as a result of their irregular status and the risk of arrest, detainment, and expulsion become more susceptible to threats, exploitation, and abuse by employers. The court further noted that there was a positive obligation on States to take measures to prevent forced labour (including human trafficking), "to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking."⁸⁰ This has particular relevance for the State as it relates to all migrant workers but in particular to fishers employed under the Atypical Working Scheme.⁸¹ Moreover, this position may have implications for Directive obligations as they relate to prevention (Article 18)⁸² and compensation (Article 17).⁸³

80 *Chowdury and Others v. Greece*, no. 21884/15, paras. 95 and 97, ECHR 2017

81 A notable number of holders of Atypical Workers Scheme permits have been formally recognised as suspected victims of human trafficking, even though this trend has subsided in the last couple of years. This has been particularly the case in the aftermath of the Agreement for reforms of the Atypical scheme in 2019, following the Court case *International Transport Workers Federation v. Minister for Justice and Others*, and even though few formal identification have taken place since then, the reports of exploitation and forced labour affecting third country nationals crew continue to linger in the public space. Further consideration on the Atypical Working Scheme are available in Section 7 on prevention of trafficking. See also Murphy, C., Doyle, D. and Thomson, S (2021) [Experiences of Non-EEA Migrant Workers in the Irish Fishing Industry: Working Conditions Immigration Status and Enforcement](#), Maynooth University Department of Law; Casey, R. (2019) ["We hide: Abused migrants say Irish fishing reforms will fail"](#) Reuters [online] 13 June

82 See page 87 (Article 17 EU Anti-Trafficking Directive)

83 See discussion relating to the Labour Court decision in *TA Hotels Limited et al*, see page 89

On the spectrum of labour ranging from decent employment to severe exploitation, there is a distinct lack of forced labour-related or lesser offences.⁸⁴ The possibility of charging trafficking-related or lesser offences⁸⁵ in cases of forced labour make investigations easier to start and maintain, and 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.

In conclusion, it is clear that the national legislation complies with *de minimis* definition of what constitutes trafficking. Despite this, perhaps three observations are warranted. First, the specific offences are limited to trafficking for sexual exploitation, forced labour, forced criminality and organ removal. It remains to be seen if trafficking for other exploitations such as forced adoption or forced marriage remain within the scope of trafficking offences. As such, the domestic legislation is more limited than the spirit of the Directive. Second, there appears to be a concerning dearth in the interpretation and understanding of what constitutes trafficking, when it is predicated on the concept of abuse of position of vulnerability. Third, while forced labour is included in the trafficking legislative regime, the full continuum of exploitation⁸⁶ – ranging from slavery to employment violations – is not sufficiently covered in Irish law, resulting in an *all or nothing* situation.

» **The Commission recommends the introduction of separate offences to criminalise holding a person in slavery or servitude or subjecting them to forced labour.**⁸⁷

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

84 The general lack of offences relating to labour exploitation is connected to a long-standing policy of treating exploitation of workers as a private law matter. This policy can only be an obstacle to effective investigation and prosecution of trafficking for labour exploitation. Part of the difficulty is systemic, in that Irish law is peculiarly sanguine about over-work and under-pay of workers. For example, although an employer who over-works an employee commits a minor offence under the *Organisation of Working Time Act 1997*, such offences are investigated and prosecuted not by Gardaí but by the Workplace Relations Commission, and are summary only, so that they could not be included in an indictment with a trafficking offence. On conviction, they attract only class C fines (the maximum class C fine is €2,500). Failure to pay wages which are properly payable under the *Payment of Wages Act 1991* is not a crime at all. For migrant workers, the system of employment permits established under the *Employment Permits Act 2003* actually creates conditions which promote exploitation by tying residence permits to employment, and this problematic model is replicated in administrative schemes such as the Atypical Working Scheme for Non-EEA Crew in the Irish Fishing Fleet.

85 'Lesser offence' is used to denote a crime that may be an element or constituent part of a more serious crime.

86 Numerous authors refer to the need to see illegal work or exploitation on a continuum, see Skrivankova K. (2010) [*Between decent work and forced labour: examining the continuum of exploitation*](#), York (UK) Joseph Roundtree Foundation, p. 19

87 Similar to section 1 of the Modern Slavery Act 2015 in England and Wales

both adult and child victims⁸⁸ in respect of the offences set out in s.2, 3 and 4 of the 2008 Act.⁸⁹

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:
 - was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims; EN L 101/6 Official Journal of the European Union 15.4.2011
 - 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);
 - deliberately or by gross negligence endangered the life of the victim; or
 - was committed by use of serious violence or has caused particularly serious harm to the victim.

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

89 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](#). Dublin. 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

Article 4 regulates the penalties against traffickers in human beings, by providing minimal thresholds and aggravating circumstances in sentencing where the victim is in position of vulnerability – such as all child victims and crimes perpetrated by criminal gangs or by public officials. In accordance with Article 4 of the Directive, the Criminal Law (Human Trafficking) Act 2008 (as amended) provides for dissuasive penalties of up to life imprisonment and, at the discretion of the court, an unlimited fine for trafficking of human beings, for all forms of exploitation covered by the Act.⁹⁰ This exceeds the minimum penalties of five and ten years under Article 4.1 and 4.2 of the Directive, respectively.

Furthermore, the Criminal Law (Trafficking) (Amendment) Act 2013 increased the penalties where trafficking offences are committed by public officials, making such an aggravating factor at sentencing⁹¹ which accords with Article 4(3) and Article 4 (4) of the Directive.

Nonetheless, the sentences handed down for the first trafficking convictions were on the lower end with Edosa receiving a five years and eight months sentence and Enoghaghase receiving five years and one month.⁹² Given that the Judge explicitly recognised the vulnerability of the victims and the sustained and degrading period of prostitution that did great harm to the victims⁹³ arguably, the minimum penalties set forth in Article 4(2) could have been applied. As the Director of Public Prosecutions (DPP) has started an appeal against the undue leniency of the five-year prison terms imposed on the women, this matter may be resolved in time. Likewise, both Edosa and Enoghaghase have lodged appeals against their

90 Trafficking of a child (excluding sexual exploitation) – up to life imprisonment – s. 2(5)(a); Trafficking of a child for sexual exploitation – up to life imprisonment – S.3(a)(1)(a); Trafficking a person for exploitation – up to life imprisonment – S. 4(7); In line with Article 4(3) of the Anti-Trafficking Directive trafficking offence committed by a public official is an aggravating factor – S. 4A

91 Sections 2 and 3, *Criminal Law (Trafficking) (Amendment) Act 2013*

92 McCárthaigh S. (2021) [‘Two women who ran midlands prostitution ring jailed for five years each after State’s first human trafficking convictions’](#) *Irish Independent*, 28 September

93 Judge Comerford said the offences did not relate to trafficking the women into Ireland but the control exercised over them once they arrived here when the victims had become “indentured slaves.” “They coerced the victims into a sustained and degrading period of prostitution which did great harm to all victims for financial gain,” the judge remarked. He said the two accused had taken advantage of vulnerable women who had no real alternative but to accept their exploitation before finally summoning enough courage to break free. See Houses of the Oireachtas Seanad Éireann Debate (2021), [Criminal Justice \(Smuggling of Persons\) Bill 2021: Second State](#) (29 September 2021)

convictions and sentences, so equally there is a possibility that the sentences could be lessened. If it were the latter, this would certainly call into serious question the effectiveness of the sentencing regime as a dissuasive penalty.

Other offences that may be trafficking-related or lesser offences⁹⁴ provide for penalties from a fine⁹⁵ up to life imprisonment.⁹⁶ As stated elsewhere, such offences play an important role in the investigation and prosecution of trafficking offences⁹⁷ and in some instances the penalty for such related offences may, in fact, exceed that which is required by the Directive,⁹⁸ which shows similarly strong dissuasive quality of the criminal justice.

The Commission deems Article 4 to be transposed accurately and in full and does not have recommendations at this point. In light of the ongoing appeals in the aftermath of the anti-trafficking conviction mentioned earlier, this space remains of interest for the Commission.

Liability of 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 power of representation of the legal person;
 - an authority to take decisions on behalf of the legal person; or
 - an authority to exercise control within the legal person.

94 Such as: 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.

95 For example, organisation of prostitution under s.9, Criminal Law (Sexual Offences) Act 1993. On summary conviction (first offence) A class a fine (up to €5,000) or imprisonment for a term not exceeding 12 months. On indictment (first offence) or both a fine or imprisonment for a term not exceeding 10 years or both.

96 Possession of controlled drugs for unlawful sale or supply under s.15, Misuse of Drugs Act 1977. On summary conviction (first offence) a fine not exceeding €1,300 or, at the discretion of the court, imprisonment for a term not exceeding twelve months, or both. On indictment (first offence), a fine of such amount as the court considers appropriate or, at the discretion of the court, imprisonment for life or such lesser period as the court shall determine, or, at such discretion, both.

97 See Section 'Investigation and Prosecution (Article 9)'

98 See Appendix 2 for the full range of penalties that may be applied to trafficking related offences.

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:

- 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;
- temporary or permanent closure of establishments which have been used for committing the offence.

Article 5 of the Directive provides for human trafficking offences perpetrated by, for the benefit of, or under the supervision (or negligence) of legal persons or entities (for example companies), distinct and in addition to possible criminal proceedings against individual traffickers. Article 6 stipulates penalties to such legal persons. In Ireland, offences by legal persons or bodies corporate are provided for in section 6 of the Criminal Justice (Human Trafficking) Act 2008⁹⁹. The body corporate is capable of being convicted of any of the offences as set

⁹⁹ 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.

out in the 2008 Act and section 6 of the Act creates what is, in effect, a secondary liability offence. 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 vicarious liability of the employer. As such, 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 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 2014.¹⁰⁰

There is no provision in Irish law for 'judicial supervision' or temporary or permanent disqualification from the practice of commercial activities or exclusion from entitlement to public benefits or aid - save in the context of a winding up where a director can be disqualified in certain circumstances.

Importantly, "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".¹⁰¹ 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".¹⁰²

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

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

101 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

102 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. 199

yet to be developed by Government. A Private Members' Labour Exploitation and Trafficking (Audit of Supply Chains) Bill has been recently introduced to the Oireachtas seeking:

"to provide for transparent reporting by undertakings in relation to the risk of labour exploitation and human trafficking occurring in their supply chains or in any part of their business and of the steps taken by them to ensure such activities do not take place; and to provide for connected matters."¹⁰³

Under the Bill, Irish businesses 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. The Commission considers this development as a space of particular interest. The Commission notes that the new EU Strategy for Combatting Trafficking in Human Beings 2021-2025 has identified such measures as a priority.¹⁰⁴

The Commission has previously recommended¹⁰⁵ that the State conduct a comprehensive human rights-led revision of the State's procurement practices in the wider context of the *UN Guiding Principles on Business and Human Rights* and the State's *National Action Plan on Business and Human Rights*,¹⁰⁶ as well as in the context of its obligations under section 42 of the *Irish Human Rights and Equality Commission Act 2014*.¹⁰⁷ In strengthening prevention of human trafficking, Articles 5 and 6 of the Directive may apply to the online space where companies are complicit in, and often dependent on, the exploitation and trafficking of persons. In this regard, the Commission notes that the Media Regulation Bill¹⁰⁸

103 Houses of the Oireachtas Dáil Éireann Debates (2021), [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021: First Stage](#) (1 April 2021)

104 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. 7

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

106 Department of Foreign Affairs (2017) [National Plan on Business and Human Rights 2017-2020](#). Government of Ireland.

107 *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](#)

108 The [Online Safety and Media Regulation Bill](#) 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 Bill will, *inter alia*, establish a new regulator, the Media Commission to which an Online Safety Commissioner will be appointed. The Media Commission will be responsible for overseeing updated regulations for broadcasting and video on-demand services and the new regulatory framework for online safety created by the Bill. The Media Commissioner will govern this new framework through binding online safety codes and robust compliance, enforcement and sanction powers. Online safety codes will deal with

and subsequent Safety Codes will be extremely important and represent a point of interest for the Commission. The issue raised above are debated and further discussed in the section pertaining to prevention of human trafficking by reduction of demand under Article 18 where detailed recommendations are made.

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

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.

Confiscation of assets of criminal organisations and individuals implicated in human trafficking remain an important element of the fight against crime, and against human trafficking in particular. Thus, Article 7 of the Directive provides for seizure and confiscation of such assets.

Ireland has a robust legislative framework in place allowing for the freezing, seizure and confiscation of assets that derive from criminal conduct.¹⁰⁹ 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.¹¹⁰ As such, the legitimacy of the Criminal Assets Bureau¹¹¹ is further strengthened.

The confiscation and seizure architecture also includes Section 9 confiscation orders,¹¹² which apply to offences other than drug trafficking offences, and allows

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](#). Dublin

109 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.

110 '[Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v, BP and others](#)' [2019] Case no. C-234/18.

111 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.

112 *Criminal Justice Act 1994*

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).

Relatedly, in Section 2 (Article 17- Compensation) of the report, the Commission has called 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.

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.

Article 8 contains an important provision that removes victims of trafficking from criminal responsibility for offences they may have been compelled to commit as a direct result of them being trafficked. 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.¹¹³

The State has given effect to the principle of non-prosecution through the DPP Prosecutors Guidelines, which make reference to human trafficking victims as an example of where:

113 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](#)

“the prosecutor should consider whether the public interest is served by a prosecution of the suspect.”¹¹⁴

However, this guidance does not go into further detail in this respect. Nor does it reference Ireland’s international obligations. In light of the expected new NRM, it is an opportune time for these guidelines to be reviewed.

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. However, it must be remembered that the principle does not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.¹¹⁵ Article 8 does not confer an enforceable right on a victim of trafficking not to be prosecuted.¹¹⁶ However, a victim is entitled to the benefit of an appropriate identification process, and should they be identified as a victim of trafficking, the DPP is obliged to give due consideration to this status when making a decision whether to maintain its prosecution against them.¹¹⁷

As with all provisions of the Directive, the rights to which victims are entitled flow from identification. Plainly, where the victim identification mechanism is malfunctioning, this has an adverse effect on the application of the principle of non-prosecution, and is likely to result in victims of trafficking being prosecuted and punished for offences inherent in, and as a consequence of, the trafficking they have suffered.

The ineffective victim identification system has arguably led to suspects who are, in reality, victims of trafficking being remanded in custody for lengthy periods without any identification decision to be made.¹¹⁸

114 Director of Public Prosecutions (2019) [Guidelines for Prosecutors: 5th Edition](#), s. 4.7 pp. 12-13

115 EU Anti-Human Trafficking Directive, Recital 14

116 *THP v. Chief Superintendent of Garda National Immigration Bureau and Others* [2015] 2 ILRM 1, para. 200

117 “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. In the Court’s view, the duty to take operational measures under Article 4 of the Convention has two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery”, see *VCL and AN v. United Kingdom*, no.77587/12 and 74603/12, para. 159, ECHR 2021

118 For non-national victims of trafficking, the lack of identity documents and ties to the jurisdiction will potentially lead to refusal of bail. The Irish Penal Reform Trust, in a 2016 research report entitled [The practice of pre-trial detention in Ireland](#) found that the fact that an applicant is not from Ireland and has no ties to the jurisdiction are objections raised as a matter of course by the Gardaí in bail applications involving non-national defendants. Furthermore, in cases where the applicants are in Ireland illegally, the Gardaí will refer to difficulties in establishing the true identity of the non-nationals. In the review of Irish practice, it is noted that many of the potential victims spent long periods — in some cases, several years — on remand in custody. The bail issue highlights again the urgent need for early identification of victims, and shows that because delayed identification impairs the exercise of prosecutorial discretion, it can lead to long periods of pre-trial detention for victims; something the non-prosecution and non-punishment principles are intended to avoid.

Independent research commissioned by the Commission evidenced a series of cases where persons (not formally identified) for whom indicators of trafficking were present, revealing deficiencies in the current system that may have precluded victims from application the protections arising from the non-prosecution principle.

In *Lin v. Governor of Cloverhill Prison* [2014] IEHC 214 the Court found that Mr Lin had been kept in servitude in the grow-house but that he was not a victim of trafficking because his account of travel to Ireland was not believed. The evidence that Mr. Lin had been at liberty between his entry to the State and his being locked in the grow house was the basis upon which the Gardaí did not accept that he was a victim. It is the view of the Commission that the Gardaí and the Court seem to have misapplied the definition of human trafficking in deciding whether he was a victim of trafficking.

In *People (DPP) v. Ba Nguyen and Ha Nguyen* [2014] IECA 55 the Court accepted that both appellants had been trafficked into the jurisdiction and were under the control of unidentified third parties. The fact that the appellants were victims of trafficking was only a mitigating factor in their sentencing, which does not seem to fulfil the obligations under Article 8. The Court of Appeal substituted three-year sentences for the original six-year sentences imposed by the trial judge. Similarly, in *People (DPP) v. Phuc Nguyen Le and Hong Thi Nguyen* [2015] IECA 157, the applicants were not identified as victims of trafficking but, instead, the Court considered the appellants' vulnerability to exploitation to be a mitigating factor and substituted lower sentences for the original sentences in each case. Yet again, in *People (DPP) v. Xiao Fei Weng and Shi Dong He* [2015] IECA 261 both appellants were described as live-in 'gardeners' who could not leave and to whom food was supplied daily, the Court of Appeal quashed the sentences of six years imprisonment in both cases and substituted in each case sentences of four years imprisonment.

In contrast to the outlined cases above - where the non-prosecution principle appears to have been reduced to a mitigating factor - in *DPP v. Hung Ba Tran and Hoang Hu Vo*¹¹⁹ the judge was critical of the failure of Gardaí to investigate the men's claims that they had been trafficked, saying that it was unfair that the Gardaí who investigated the underlying offence committed by the potential victim were the same Gardaí who investigated the complaints of human trafficking against potential traffickers.¹²⁰

In *THP v. Chief Superintendent of Garda National Immigration Bureau and Others* [2015] 2 ILRM 1 the Court concluded that the Irish victim identification mechanism could not be considered to be 'appropriate' for the obligation to carry out early

119 Which came before Carlow District Court on 11 March 2015.

120 The men had been positively identified as victims by the Migrant Rights Centre Ireland. The men had been refused bail, and at the time of their acquittal had already spent a year in prison, indicating that the principle of non-punishment was not upheld in this case.

identification of victims of trafficking (Article 11(4)) because it did not deal clearly with the interaction between the application for recognition as a victim of trafficking and the criminal investigation into the applicant's alleged activities. Although the applicant was awarded €30,000 for violation of her rights under the Directive and she obtained bail in May 2015 following the withdrawal of Garda objections, she did not obtain a positive decision regarding her identification application as a victim of human trafficking. In December 2015 she pleaded guilty in Dublin Circuit Criminal Court to cultivation of cannabis contrary to section 17 of the Misuse of Drugs Act 1977. She was sentenced to two years imprisonment, which she had already served, and was released.

While the above-mentioned cases largely concerned offences relating to trafficking for criminal activities (illegal drug cultivation), the principle of non-punishment is of course equally as applicable to all forms of trafficking and to other 'trafficking-related' offences.¹²¹

By way of example, the Commission acknowledges the State's innovative approach to decriminalisation of potential victims of trafficking for sexual exploitation.¹²² As 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. In her statement, the Minister linked the measures explicitly with the plans to end the unnecessary criminalisation of potential victims of trafficking:

"Given what we know about the levels of exploitation and human trafficking in the sex trade, it is very likely that many of those convicted in the past fall into the exploited category for a number of reasons, including because they were victims of trafficking.

These vulnerable victims should also benefit from the legislative change regarding the sale of sex and be able to move forward and rebuild their lives."¹²³

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.¹²⁴

121 Such as: 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*.

122 Department of Justice (2021) [Minister McEntee announces initiative to expunge previous convictions for 'sale of sex'](#) [press release] 25 April

123 Department of Justice (2021). [Minister McEntee announces initiative to expunge previous convictions for 'sale of sex'](#) [press release] 25 April

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

An additional level of protection to victims could be provided for by the adoption of a special defence for victims of trafficking similar to that set out in Section 45 of the Modern Slavery Act 2015 in England and Wales.¹²⁵ Such a defence could potentially be useful in making the application of the non-prosecution principle (by the DPP) less dependent on the Garda identification decisions because whether the defence arose on the evidence, and whether the prosecution could disprove it, would be considered by the directing officer as part of the general consideration of the strength of the evidence.

- » **The Commission recommend the application of the principle of non-punishment is considered as part of the new NRM.**
- » **The Commission recommend the State examine the possibility of inserting a special defence for victims of trafficking.**
- » **The Commission recommend that the State should examine the possibility of extending the expungement of criminal convictions where it can be established that the crime was committed as a result of that person being a victim of trafficking.**

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.

125 UK [Modern Slavery Act, s.45](#)

Article 9 of the Directive outlines essential features that should underpin the investigation and prosecution of human trafficking crimes. In particular, it states that the investigation and prosecution: should not be dependent on victim's accusations and reporting; withdrawal of a victim's statement or by reaching the age of majority should not, alone, collapse an investigation or prosecution. Investigators and prosecutors should be trained and supplied with effective tools, such as those used to target organised crime, to effectively investigate and prosecute trafficking offences.

The Garda National Protective Services Bureau (GNPSB) is a good example of the increased specialisation and coordination around human trafficking. The Bureau has a broad remit,¹²⁶ there are now ten Divisional Protective Services Units (DPSUs) across nine Garda Divisions. Each are equipped with specialised knowledge, skills and expertise in the protection and treatment of victims of all forms of Domestic, Sexual and Gender-Based Violence, including human trafficking and child sexual exploitation. Further specialisation is provided by the Human Trafficking Investigation and Coordination Unit (HTICU) that sits within the GNPSB. The HTICU participates in the EUROPOL EMPACT¹²⁷ Operational Action Plans to combat, amongst other things, human trafficking in organised prostitution. All new human trafficking related incidents recorded on PULSE (data system used by An Garda Síochána) are assessed by the HTICU. Additionally, the Organised Prostitution Investigation Unit (formally known as Operation Quest) actively targets organised prostitution and brothel keeping. The Unit tackles crime gangs involved in organisation of prostitution, by targeting the demand for prostitution and by safeguarding those persons trafficked for sexual exploitation.¹²⁸ The criminalisation of the purchase of sexual services, through Part IV of the Criminal Law (Sexual Offences) Act 2017 represents a significant turning point in the State's ability to tackle organised prostitution.

The Office of the DPP has a close working relationship with the GNPSB and meets on an ongoing basis in relation to services, policies, and responses in this area. These structured meetings are between senior prosecutors and investigators, and focuses on high-level policy and procedures.

126 Providing advice, guidance and assistance to Gardai investigating: Sexual Crime Investigation; Online Child Exploitation Investigation; Child Protection, Domestic Abuse Intervention and Investigation; Human Trafficking Investigation; Organised Prostitution Investigation; Specialist Interview; Sex Offender Management; Missing Persons; Missing Persons in Care; and, Support for Victims of Crime. See An Garda Síochána, [Garda National Protective Services Bureau \(GNPSB\)](#)

127 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. EMPACT runs in four-year cycles. It is a multidisciplinary cooperation platform of Member States, supported by all EU institutions, bodies and agencies (such as, Europol, Frontex, Eurojust, CEPOL, OLAF, EU-LISA, EFCA and others). Third countries, international organisations, and other public and private partners are also associated.

128 An Garda Síochána (2021) [GNPSB formally establish Organised Prostitution Investigation Unit](#) [press release], 2 February

As already mentioned, in June 2021, the first conviction under the relevant human trafficking legislation was secured in the case of *DPP v. Edosa, Enoghaghase and Osaighbovo* with two women found guilty of trafficking women from Nigeria to Ireland for the purpose of sexual exploitation,¹²⁹ which the Commission welcomed. It is significant that two of the accused in the Mullingar case were also convicted of organising prostitution offences.¹³⁰ These offences, which involve some, though not all, of the elements of trafficking have been referred to elsewhere as 'trafficking-related' offence.¹³¹

Such offences (trafficking-related offence) are important to consider for a number of reasons, both in the context of trafficking for sexual exploitation but also in the context of trafficking for other forms of exploitation such as for forced labour.¹³² While these related offences are of course not a substitute for a charge of human trafficking, 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. As already explained in section 'Definition and Offences', the possibility of charging trafficking-related or lesser offences in cases of exploitation make investigations easier to start and maintain.

There are a number of trafficking-related offences that attach to sexual exploitation and trafficking for forced criminality. The absence of same for forced labour complicates the definition, arguably, making the offence harder for police to investigate, harder for prosecutors to prosecute, and harder for judges, juries and defence lawyers to work with, as well as harder for accused persons, victims and members of the public to understand. Somewhat relatedly, there is a failure to criminalise slavery, servitude and forced labour as separate offences in Irish law.¹³³

129 Department of Justice (2021) [Minister Naughton welcomes the first convictions for Human Trafficking handed down today](#) [press release], 11 June. The women were also found guilty of money laundering and organisation of prostitution offences. The offences occurred between September 2016 and June 2018. The victims were recruited from Nigeria, and on arrival in Ireland were forced into prostitution. The victims testified to having been issued false IDs, having their earnings withheld, suffering threats, and being moved around the country. McCárthaigh, S. (2021) ['Two women guilty of human trafficking in first conviction of its type'](#) *The Irish Times*, 11 June [accessed 22 April 2022].

130 Section 9 of the *Criminal Law (Sexual Offences) Act 1993*, which also criminalises living on the earnings of prostitution in section 10 and, brothel-keeping in section 11.

131 Such as: 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*.

132 Where trafficking involves labour exploitation in the form of begging, it may be possible to charge lesser offences such as directing or organising begging and living off the proceeds of begging which are criminalised by sections 2, 5 and 6 of the *Criminal Justice (Public Order) Act 2011*. Equally, the offence of trafficking in organs under the *European Union (Quality and Safety of Human Organs intended for Transplantation) Regulations 2012* could be charged together with trafficking for the removal of organs.

133 As currently constituted, there is a failure to criminalise slavery, servitude and forced labour as separate offences in Irish law. Under section 4(1) of the 2008 Act, a person who trafficks another person for the

The Commission highlights as a potentially good practice, the inspection of the policing response to human trafficking in England and Wales.¹³⁴ In the absence of a similar review here, it is difficult to ascertain the exact shortfalls in the investigation process. Nonetheless, in preparations to the present Report, the Commission has identified potential barriers to prosecutions, which include, but are not limited to, the following:

- Trafficking offences are complex and the interaction of the various elements is difficult to understand. Specialist training is required to understand this complexity, yet not all front-line police have this understanding.
- Securing the cooperation of victims and witnesses appears to be a persistent problem. Despite the undoubted progress made in establishing DPSUs in all Garda Divisions and the protections available via sections 10 and 11 of the 2008 Act and the Criminal Evidence Act 1992.
- The immigration aspect continues to play central part in the fight against human trafficking. Although investigation by the HTICU has been transferred out of the Garda National Immigration Bureau (GNIB), GNIB retains the decision-making power with respect to identification of victims under the Administrative Immigration Arrangements.
- Reportedly, Gardai are often slow to interview victims and to make identification decisions. A reasonable-grounds decision — which should take days at most — can take weeks or months. Given the established deficits in other areas of protection and support to victims, the shortfalls in investigations and prosecutions need to be considered alongside the broader failing of the NRM system.

The Commission welcomes the commencements of the inspection to establish how effective the Garda Síochána are at preventing transnational crime, and

purposes of the exploitation of the trafficked person is guilty of an offence if, in or for the purpose of trafficking the trafficked person, the trafficker employs any of the means listed in section 4(1)(a)-(e). The act of trafficking defined in section 1 is framed more broadly in Ireland than in EU or international law, so that while it includes the action elements of the core definition, it incorporates other actions not found there, including causing a person to enter or leave the State or to travel within the State and providing the person with accommodation or employment. At the present, these are criminalised only indirectly: when a person subjects another to forced labour, he commits the offence of human trafficking insofar as he harbours the person, takes custody of the person or provides the person with employment and/or accommodation (the action) by means of coercion for the purposes of forced labour. In Counsel's opinion, this situation is unsatisfactory for as it is incompatible with Article 4 of the European Convention on Human Rights, which requires criminalisation of slavery, servitude and forced labour: see *CN v. United Kingdom*, no. 4239/08, ECHR 2012; *Siliadin v. France*, no. 73316/01, ECHR 2005. For a full discussion, see, Keane D., (2013). *Abolitionist in Heart but not in Action: Slavery, Servitude and the Status of Article 4 ECHR in Irish Law*, Irish Jurist Vol. 50, pp. 166-198

134 In October 2017, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services ('HMICFRS') published a report called [Stolen freedom: the policing response to modern slavery and human trafficking](#).

disrupting and dismantling transnational organised crime groups¹³⁵ (which includes trafficking), but given the systemic problems with Garda investigations and identification of victims of human trafficking, the Commission is concerned that this may not sufficiently meet the needs in the anti-trafficking area.

- » **The Commission recommends that the criminal justice approach to human trafficking be reviewed by the State, with the involvement of An Garda Síochána and the Office of the Director of Public Prosecutions at a minimum, as a means of identifying and reducing any potential barriers to prosecution. The Commission further recommends the Garda Inspectorate consider launching a standalone inspection (review) of the police response to trafficking in human beings.**

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.

135 Garda Síochána Inspectorate (2021) [The Garda Síochána Inspectorate has commenced a self-initiated inspection: Transnational Organised Crime – A Review of Structures, Strategies and Processes in the Garda Síochána](#) [press release], 18 June. Under section 117(7) of the *Garda Síochána Act 2005*, the Inspectorate is independent in the performance of its functions, which include, under section 117(2), inspections in relation to any particular aspects of the operation and administration of the Garda Síochána. The Inspectorate can initiate an inspection of its own motion if it considers it appropriate to do so, or it may be required to do so by either the Minister for Justice or the Policing Authority. Its inspection reports may contain recommendations, and measures taken in relation to such recommendations may be monitored and assessed by the Minister and the Authority.

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:

- the acts are a criminal offence at the place where they were performed; or
- 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

Article 10 requires that each EU Member State enact laws that criminalise trafficking offences that are committed in their territory in whole or in part (Article 10(1)) or where the offence is committed by one of their nationals. Given the cross border nature of trafficking, Member States can impose extraterritorial jurisdiction by informing the European Commission when the trafficking offence has been committed against one of its nationals or against a person who is habitually resident in their territory; when the offence is committed for the interests of a legal person established in its territory or when the perpetrator has his or her habitual residence in its territory (Article 10 (2)).

Irish law can be said to comply with the obligations of Article 10 of the Directive. Trafficking offences apply to an Irish Citizen (or Ordinary Resident) when such acts are committed outside the State¹³⁶ and also where such acts are committed *upon* an Irish Citizen (or Ordinary Resident) outside of the State.¹³⁷ Sections 7(3),(4),(5) and (6) of the 2008 Act criminalises the inchoate offences of where a person conspires with, or incites, another person to traffic a child for exploitation, to traffic a person other than a child, or to traffic a child for sexual exploitation.¹³⁸ Additionally, section 7 (7) of the 2008 Act makes 'attempts' at making the aforementioned an offence.

Furthermore, Criminal Law (Sexual Offences) Act 2017 section 42 (1) states that "where a person who is an Irish Citizen or Ordinarily Resident in the State does an act against a child in a place other than the State that, if done in the State, would

136 *Criminal Law (Human Trafficking) Act 2008*, s.7(1)

137 *Criminal Law (Human Trafficking) Act 2008*, s.7(2)

138 Section 7 of the *Criminal Law (Human Trafficking) Act 2008* criminalises such acts where: 9(3) a person in the State conspires with, or incites another to commit such acts outside the State (4) an Irish citizen (or ordinary resident) conspires with, or incites another to commit such acts in another State (5) a person in the State conspires with, or incites another to commit such act upon an Irish Citizen in another State (6) a person conspires with, or incites an Irish citizen (or ordinary resident), in another State to commit such acts in another State.

constitute rape, sexual assault an offence under section 4A,¹³⁹ 5(1)(a)¹⁴⁰ or section 5A(1)¹⁴¹ of the Act of 1998, or an offence under section 2,¹⁴² section 3¹⁴³ or section 3A¹⁴⁴ of the Act of 2006, he or she shall be guilty of that offence.¹⁴⁵

Cross-border human trafficking

In addition to the above outlined jurisdictional powers of the State, a crucial component of tackling trafficking and organised crimes is an effective cross-border response. In recognition of the significance of the cross-border nature of organised crime and trafficking, Ireland's investigating authorities utilise the facilities of Eurojust, Europol, and Mutual Legal Assistance¹⁴⁶ to support ongoing criminal investigations and prosecutions in cross-border cases. In 2019 the Garda Síochána and the Police Service of Northern Ireland (PSNI) established the first Joint Investigation Team to advance the cross-border investigation of a shocking and brutal attack on one of the senior executives of a large business organisation in the region. Utilising these cross-border mechanisms should continue to be prioritised. More recently, the important role of cross-border cooperation is evident in the Garda response to the war in Ukraine, where the GNPSB reported that the Gardaí were being updated "on an almost daily basis" by a European multidisciplinary team which is monitoring the threat of trafficking from Ukraine.¹⁴⁷

Between Ireland and the UK, highly organised and transnational criminal groups operate.¹⁴⁸ Irish, Brazilian, Romanian, Egyptian and Nigerian perpetrators have

139 Organising etc. child prostitution or production of child pornography inserted by *Criminal Law (Sexual Offences) Act 2017*, s.11

140 (1) Subject to subsections (3) and (4) of section 6, a person who (a) knowingly produces any child pornography, Substituted by *Criminal Law (Sexual Offences) Act 2017*, s. 12

141 A person who (a) causes, incites, compels or coerces, or (b) recruits, invites or induces, a child to participate in a pornographic performance, or gains from such participation, shall be guilty of an offence.

142 Defilement of child under 15 years of age.

143 Defilement of child under 17 years of age.

144 Offence by person in authority.

145 The *Criminal Law (Sexual Offences) Act 2017* s.42 (2), (3) and (4) deals with participation offences of conspiring with, or inciting another to do an act against a child in a place other than the State that, if done in the State, would constitute rape, sexual assault, an offence under section 4A, 5(1)(a) or 5A(1) of the Act of 1998, or an offence under section 2, 3 or 3A of the Act of 2006, he or she shall be guilty of an offence. Section s.42(3) makes it an offence for an Irish Citizen or a person Ordinarily Resident in the State to conspire or incite another to do 'an act' (Rape, sexual assault, an offence under section 4A, 5(1)(a) or 5A(1) of the Act of 1998, or an offence under section 2, 3 or 3A of the Act of 2006) against a child in another State. Section 42(4) makes an 'attempt' to commit such offences an offence also.

146 *Criminal Justice (Mutual Assistance) Act 2008 (amended)*

147 Kelly O. (2022) '[Gardaí liaise with Europol over potential human trafficking from Ukraine](#)' *The Irish Times*, 4 April

148 Chance, A. (2022), [Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared](#)

been identified by An Garda Síochána over the last few years.¹⁴⁹ These perpetrators operate on the island seeing the territory as a single market and taking advantage of the common travel area, including the unique jurisdiction and policing conditions between the countries, trafficking victims for the purposes of sexual and labour exploitation, and forced criminality.¹⁵⁰ Whilst Ireland does not formally record when formally identified victims have been trafficked both in the country and overseas, in 2020 76% victims were solely exploited in Ireland.¹⁵¹ Victims are moved easily and often across the border.¹⁵² With regard to trafficking for sexual exploitation especially, traffickers have expanded their client base across the border through online advertisement, the dark net and the use of legal and well-known holiday accommodation platforms (Airbnb, Booking.com), creating temporary brothels.¹⁵³ Traffickers maintain operating bases in both jurisdictions and use the extensive air and sea connections between the UK, Ireland and Europe.¹⁵⁴

On a positive note, north-south cooperation on organised crime continues to take place under the Joint Agency Task Force, led by senior officials from An Garda Síochána, the Revenue Commissioners, the PSNI and United Kingdom Revenue and Customs.¹⁵⁵ The cooperation has remained functioning post-Brexit and is of 'practical value' in combating organised crime, including trafficking in human beings.¹⁵⁶ Lines of cooperation and communication between the Gardaí and the PSNI are well established, and are particularly effective in the areas of combatting organised crime and child protection. The Commission highlights the importance of maintaining a high-level cross-border criminal justice cooperation between the UK and Ireland, particularly in relation to the open border and common travel area, through the grounding of such cooperation in the fundamental rights enshrined in the European Convention on Human Rights and the *EU Charter of Fundamental Rights*.¹⁵⁷

[*understanding of a shared threat*](#). Dublin: The Azure Forum for Contemporary Security Strategy, p. 4

149 Chance, A. (2022), [*Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat*](#). Dublin: The Azure Forum for Contemporary Security Strategy, p. 26

150 Chance, A. (2022), [*Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat*](#). Dublin: *The Azure Forum for Contemporary Security Strategy*, p. 26

151 Chance, A. (2022), [*Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat*](#). Dublin: The Azure Forum for Contemporary Security Strategy, p. 24

152 Chance, A. (2022), [*Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat*](#). Dublin: The Azure Forum for Contemporary Security Strategy, p. 26

153 Chance, A. (2022), [*Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat*](#). Dublin: The Azure Forum for Contemporary Security Strategy, p. 26

154 Chance, A. (2022), [*Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat*](#). Dublin: The Azure Forum for Contemporary Security Strategy, pp. 26-27

155 Parliamentary Questions, [*Written Answers by Department of Justice and Equality, Thursday 8 July 2021*](#).

156 Parliamentary Questions, [*Written Answers by Department of Justice and Equality, Thursday 8 July 2021*](#).

157 Kramer A., et al. (2019). [*Evolving Justice Arrangements Post-Brexit*](#). Irish Human rights and Equality Commission and Northern Ireland Human Rights Commission, p. 98

Trafficking for the purpose of forced criminality

Cannabis cultivation is present in both the UK and Ireland. In 2021, no victim of trafficking for forced criminality was formally identified in Ireland. However, when raiding grow houses An Garda Síochána have encountered potential victims of this form of trafficking from Vietnam and China. A potential reason for the lack of formal identification might be victims' reluctance to engage with law enforcement and the fear of repercussion. *County Lines* or the expansion of drug supply from cities to suburban and rural areas through the exploitation of vulnerable people is a notorious phenomenon present in the UK. It appears that such a phenomenon occurs but to a lesser extent in the Irish context.¹⁵⁸ The exploitation of vulnerable people in the drug trade in Ireland and Northern Ireland has been documented by law enforcement in both jurisdictions. Examples include the grooming of vulnerable children from certain communities into criminal networks in Ireland¹⁵⁹ and the case of a Lithuanian organised crime group that recruited drug dependents and other vulnerable people to act as drug dealers in Belfast, Dublin and other cities in the Republic.¹⁶⁰

In relation to cross-border human trafficking, the Commission has a number of observations:

- A cross-border and collaborative approach is essential and must be maintained between Ireland and the UK to build understanding of cross-border human trafficking operating on the open land border and common travel area.
- Data collection on the exploitation of victims across both jurisdictions is necessary to coordinate an effective response to cross-border trafficking.
- A better understanding of trafficking for labour exploitation and the labour conditions of both jurisdictions could assist to challenge the advantage taken by perpetrators of this particular form of exploitation.
- Given the similar approach to regulation of prostitution on both sides of the border, a collective approach is imperative.

Since the trafficking for forced criminality in Ireland often involves the exploitation of migrants and children from certain communities, a child and cultural informed approach by law enforcement could assist with the identification of potential victims.

158 Chance, A. (2022), [Exploring Serious and Organised Crime across Ireland and the UK: Towards a shared understanding of a shared threat](#). Dublin: The Azure Forum for Contemporary Security Strategy, p. 28

159 Naughton C. and Redmond S., (2017) [National Prevalence Study: Do the findings from the Greentown study of children's involvement in a criminal network \(2015\) extend beyond Greentown?](#) Limerick: University of Limerick School of Law, p. 15, p.20

160 Police Service of Northern Ireland (2020) [Chief Constable's Report to Northern Ireland Policing Board](#), 3 December

In the context of Brexit, the State, in particular via the work of the Department of the Taoiseach, Department of Justice and Department of Foreign Affairs must ensure that cross-border justice arrangements comprehensively preserve judicial and police cooperation, data sharing arrangements, prosecutorial cooperation, and continued alignment on commitments to human rights contained in EU law (such as the EU Charter of Fundamental Rights and the Victim's Rights Directive).¹⁶¹

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

161 Kramer A., et al. (2019) [Evolving Justice Arrangements Post-Brexit](#). Irish Human rights and Equality Commission and Northern Ireland Human Rights Commission, pp. 7-8

4. Assistance and support of victims of trafficking (Article 11)

- » **Conditions of assistance (Article 11.1, 11.2, 11.3)**
- » **Mechanism for Early Identification (Article 11.4)**
- » **Informed consent (Article 11.5)**
- » **Safe accommodation (Article 11.5)**
- » **Material assistance (Article 11.5)**
- » **Medical/ psychological assistance (Article 11.5)**
- » **Information on International Protection (Article 11.6)**
- » **Attending to victims with special needs (Article 11.7)**

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 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.

Section 4 considers, in detail, the Directive's provision for assistance to victims, outlined in Article 11. These obligations contain numerous elements and aspects that require implementation measures to give effect to them. Article 11 includes: certain conditions in provision of assistance; the system for early identification; a comprehensive list of elements of practical assistance (informed consent, safe housing, material assistance, medical and psychological assistance, provision on information and interpretation), and; provision for victims with special needs deriving from their age, pregnancy, disability, type of exploitation and others.

The provisions of Article 11 contain multiple elements, which are addressed chronologically in this section. Overall, such assistance and protection is provided in Ireland through an informal consortium of statutory and non-governmental entities.

Among them, the HSE AHTT plays an essential role in fulfilling (or facilitating the fulfilment) of the assistance obligations set forth in Article 11, and for this reason merits greater attention. The HSE AHTT is part of a single service which includes also the HSE Women's Health Service (WHS).¹⁶² As such, the AHTT operate a gender-specific approach to meeting the needs of victims, as provided for in Article 1 (discussed in detail above). Importantly, and not surprisingly, the AHTT are listed as one of the entities forming part of the proposed new NRM.

“But the caseworker I had from the HSE has been really really helpful. Before my children came, she was the person I was going to most of the time. She's very very friendly person and her name is X and I was always calling her about everything...”

“[talking about the HSE AHTT]... they are human so there is only so much they can do. They have a lot of cases going. I would love to be in a position to help somebody. The woman from the HSE, she's really been helpful, very helpful...She's helpful but I think she has a lot of people so sometimes the response didn't come quickly. They need more support workers so they don't have that many cases that would be good. -

Survivor

The HSE AHTT is responsible for providing individual care planning to victims of trafficking for sexual, labour and forced criminality. This includes, referrals by the AHTT to: safe accommodation; health services; support on family reunification;

162 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.

liaison with Gardaí regarding investigations; PPS number allocation; granting of a medical card; material assistance and social welfare supports; referral to legal assistance; referral and facilitation of access to education and training; support for repatriation, and; other forms of support as necessary. The combined HSE AHTT and WHS service takes a holistic healthcare management approach and provides a non-judgemental environment where service users can attend to their health and wider support needs, including specific needs of potential victims of trafficking. The Commission notes that the WHS service is open at the point of access and operates irrespective of nationality and immigration status, meaning that undocumented persons can attend the service without fear of consequence, which is a positive feature that is welcomed by the Commission.

- » **The Commission recommend the HSE Anti-Human Trafficking Team, due to its victim-centred approach, play a clear role in the National Referral Mechanism with increased importance and responsibilities in the identification of victims of human trafficking. In that regard, the Commission recommends the Anti-Human Trafficking Team be appropriately staffed and its expertise across all forms of human trafficking maintained and expanded, where necessary.**
- » **The Commission recommends the establishment of a ‘roadmap’¹⁶³ to track the support and integration needs of each victim and how these are met both by the State and NGOs services.**
- » **The Commission recommend the HSE Anti-Human Trafficking Team maintain clear disaggregated data, aligned with the requirements for data protection that is informative in discerning trends in arising needs and recovery of victims of trafficking of different forms of exploitation, and with a view to informing costs and future investments.**

In addition to the services provided by HSE AHTT, specialist NGO’s also provide a number of direct services and supports to victims of trafficking. Depending on the organisation, these may include: counselling, court accompaniment, accommodation support, legal services, survivor-led peer support, mentoring, education and training to State and other agencies, as well as the private sector. Better known independent services include Ruhama, Migrant Rights Centre Ireland (MRCI), Immigrant Council of Ireland (ICI), Cork Sexual Violence Centre, MECPATHS, and Doras, as well as other NGOs offering viable assistance to victims of trafficking. Their work greatly assists the State’s implementation of the Directive vis-à-vis support and assistance to victims of trafficking. In 2021, specialist NGOs supported around 200 victims of human trafficking, while 45 of

163 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, [‘Supporting a Victim’s Journey’](#)

these have been new victims of trafficking referred to or encountered by them. A more complete account of their work and the funding received is presented in [Section 7](#), [Appendix 4](#) and [Appendix 5](#).

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 combined provisions of the first three subsections of Article 11 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.

Taking into account the significant cost of human trafficking relative to the investment in victims' assistance and recovery, Articles 11.1, 11.2 and 11.3 urge EU Member States to be expeditious with the commencement of assistance, and be generous with the duration of its provision. Any discontinuation of services could have a significantly negative impact on victims, making them more vulnerable to re-trafficking. Predictably, receipt of early assistance is also closely linked to early identification and referral to services. Additionally, Recital 33 states that the Directive evokes the Charter of Fundamental Rights of the EU, which include the principle of equal treatment.

Given the clear direction provided by Articles 11.1 and 11.2, the Commission observes that the State has put in place a system that endeavours to secure early assistance to victims. Nevertheless, inherent issues within the system often preclude or limit access to services. The required involvement of An Garda Síochána in the referral process continues to act as a systemic impediment to accessing supports for some victims. In effect, the Gardaí are the 'gatekeepers' to State services for some victims, most especially to non-EEA nationals. While the Commission acknowledges that every effort is made to expedite access to

services, procedurally the process may be cumbersome and poses an undue burden on An Garda Síochána's resources and the victims

- » **The Commission recommends that the new National Referral Mechanism relieves An Garda Síochána of the duty to be a central reference point for early provision of assistance and support to victims.**

“IPAS are supporting asylum seekers but are not supporting victims of trafficking to move out and find accommodation. They said that they cannot do anything for us because they don’t have the blue card, like the other ones have and so, it’s not their job to look for accommodation for us... IPAS staff say that they have no obligation to help us because we are not asylum seekers and if, they [IPAS] are [helping they are] just giving us a favour, they are doing a favour to us to letting us stay there, because I should not be there.” - Survivor

Presently in Ireland, the duration of assistance to victims is closely linked to their participation in criminal investigations and requires their cooperation with law enforcement. This does not comply with the obligations in Article 12.3. The approach disproportionately affects third country nationals as cooperation is a prerequisite for extending their eligibility for assistance as a victim of trafficking. The current operating policy, the AIA, explicitly requires such cooperation for the purposes of the issuing (and renewal) of a Temporary Residence Permit for victims of trafficking, which, in turn, creates a conditionality that sets them apart from other victims in the State.¹⁶⁴ Thus, Temporary Residence Permits act to regulate victims' access to assistance and entitlements that are vital to their recovery.

According to solicitors and advocates who work directly with victims, the procedure for extension (or continuation) of services for such victims is not sufficiently standardised and takes varying lengths of time. The procedure requires members of An Garda Síochána to provide written statements and recommendations to extend assistance. It is of deep concern to the Commission that decisions relating to the duration of assistance a victim receives does not appear to be based on the individual recovery needs of the victim. As such, the current approach cannot be said to be trauma informed or victim-centred.

¹⁶⁴ It also contravenes Principle 4 of the OSCE Handbook: “All NRM procedures and services for victims of trafficking are non-conditional. The principle of non-conditionality in international law is paramount. Therefore, identification, protection, individual support and social inclusion should not depend upon victims' co-operation in criminal investigations or proceedings”, see OSCE/ODIHR (2020), [National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons](#). Warsaw: OSCE Office for the Democratic Institutions and Human Rights, p. 20

- » **The Commission recommends that the condition requiring victims of trafficking to cooperate in investigations in order to be referred to assistance and support is removed in the new National Referral Mechanism for all victims as a matter of principle in the State.**
- » **The Commission recommends the the new National Referral Mechanism removes the requirement that third country national victims cooperate with the investigating authorities in an ongoing investigation as a precondition to the issuing and renewing of their Temporary Residence Permits.**
- » **The Commission recommends that the State ensures that specialist support services, both statutory or non-governmental, are in a position to provide recommendations relating to the extension (or continuation) of trafficking-specific supports, and that these recommendations are taken into consideration for the renewal of Temporary Resident Permits, where necessary.**

The Commission is concerned about the equitable treatment of victims, regarding their access to assistance under the current AIA and Guide for Procedure for Victims of Trafficking in Ireland.¹⁶⁵ Pressure on third country nationals to cooperate with investigations in exchange for continuation of assistance that was set out above is one such example. Another example is the inability to formally identify victims of trafficking who are seeking International Protection, or who are Irish or EEA nationals. International Protection applicants who cannot be formally identified as a victim of trafficking are rendered ineligible for training and job assistance.¹⁶⁶ Similarly, EEA nationals who are victims of trafficking may not be able to satisfy the Habitual Residency requirements thus making them ineligible for State assistance.¹⁶⁷

165 Department of Justice and Equality (2015), [Guide to Procedures for Victims of Human Trafficking in Ireland](#)

166 It is acknowledged that recent changes allows individuals seeking International Protection to seek employment after 5 months from the expected first instance decision, which can potentially benefit victims of trafficking. See Department of Justice, [‘Labour Market Access Permission’](#)

167 Department of Social Protection, [‘Operational Guidelines: for Deciding Officers and Designated Persons on the determination of Habitual Residence’](#)

The Case Study of Amelia

The inability to give statements to An Garda Síochána due to the profound mental trauma was continuously raised by survivors. A trauma-informed approach demands that assistance to third country national victims not be conditional on cooperation with law enforcement.

Amelia is a young woman from East Africa. She grew in poor family and received little formal education. As a child she suffered sexual abuse at the hands of a family member. A local woman offered her a housekeeping job overseas and organised the trip. Amelia was compelled to give an oath to obey the lady and her associates, to promise to not tell anyone and to pay back the money for the travel arrangement. She never worked as a housekeeper. Instead she was forced into prostitution in Libya, Italy and Ireland. Her trafficking for sexual exploitation lasted five years. During her exploitation, Amelia was forced to have an abortion in Italy and suffered severe physical injuries for which she never received medical attention. The pain continues today. In Ireland, Amelia's movements were restricted by the traffickers. HSE AHTT is supporting Amelia since July 2021, including with psychological interventions. She used to self-harm. Amelia has applied for International Protection and because of this cannot be formally identified. With the help of her solicitor, Amelia entered the NRM. Amelia is unable to give a statement to An Garda Síochána at the moment due to mental health. Presently, Amelia continues her recovery and hopes one day to find work.

(Courtesy of HSE AHTT)

- » The Commission recommends 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 recommends that the proposed new National Referral Mechanism incorporate 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 recommends that the Department of Social Protection explicitly exempt EEA-national victims of human trafficking from the Habitual Residence condition in accessing statutory assistance.

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

The lack of a proactive approach to victim identification and the absence of a clear National Referral Mechanism (NRM) attracts ongoing criticism of Ireland's approach to human trafficking.¹⁶⁸ Although, there appears to have been some progress in 2021 with the announcement of Government approval for a new NRM for victims of trafficking. According to the Minister, the new NRM will include measures to identify victims and facilitate their access to advice, accommodation and support.¹⁶⁹

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, it has been suggested 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. Approval has also been given for the drafting of legislation to place this new mechanism on a statutory footing.

The Commission welcomes these proposals, which, if delivered upon, have the potential to significantly enhance the State's ability to identify and support victims of trafficking. The Commission is of the view that the implementation of these proposals should be considered as a matter of urgency by the State and takes note that this legislation is already delayed.

- » **The Commission recommends that the establishment of a new National Referral Mechanism is progressed as a matter of utmost priority for the State.**
- » **The Commission recommends the identification procedure (that is the centre of the referral mechanism) be made applicable to all suspected victims 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 appeal process.**

168 US Department of State (2021) [Trafficking in Persons Report](#), p. 302; 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; GRETA (2017) [Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#). France: Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA and Committee of the Parties) Council of Europe, p. 29

169 Department of Justice (2021) [Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports](#) [press release] 11 May

- » **The Commission recommend that the new National Action Plan 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.**

States' efforts to proactively detect victims of trafficking

It is well recognised that reliance on self-reporting by victims is an inadequate response.¹⁷⁰ Best practice involves systematic proactive measures to detect potential victims as a precursor to the formal identification process. In 2021, the State has undertaken various steps to detect victims of trafficking. 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. While there are some positive examples in this regard, there are also gaps that need to be remedied. The following accounts will present the efforts made by various State agencies to proactively search for victims of trafficking in their operational environments.

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

Workplace Relations Commission's role in screening for victims of trafficking for forced labour

In its report under the 3rd evaluation of the Council of Europe, the Commission presented the existing safeguards to labour exploitation, which rely heavily on the operations of the WRC¹⁷¹, its labour inspectorates¹⁷², and its capacity to identify and flag potential cases of labour exploitation, including human trafficking. The Commission notes that the WRC will be part of the new NRM, which is both logical and potentially beneficial for the system of identification of victims of human trafficking.

170 For a range of reasons, including lack of understanding of his / her legal rights, mistrust or fear of national authorities, and/or a lack of country of destination language skills, it is rare for victims to self-report their victimisation. See European Migration Network (2014) [Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures](#). European Commission, p. 20

171 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

172 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*.

While the overall capacity of the WRC is increasing, it has not yet reached the projected target.¹⁷³ The WRC informed the Commission that around two thirds of the inspectors are trained in recognising the indicators of trafficking and refer any cases where such indicators are present to the GNPSB. It is also positively noted that in 2021, the WRC carried out inspections of high-risk sectors for human trafficking,¹⁷⁴ which included nail/hair and beauty salons (243 inspections), construction industry (71 inspections), agriculture (57 inspections, including 32 carried out as part of the “Rights for all Seasons” campaign), hospitality industry (38 inspections in hotels, 763 inspections in food-production/service and 58 in beverage service activities), fishing industry (28 inspections), domestic work (2 inspections).¹⁷⁵

The WRC reported that in 2021, the Labour Inspectorate investigated five cases where indicators of trafficking for labour exploitation were identified, all of which were notified to GNPSB. As disaggregated data on these cases was not available, it is not known whether any or all of the five cases were ultimately referred into the NRM and/or formally identified as victims of trafficking. In line with its role in the enforcement of the Employment Permit Acts 2003/2004, the WRC prosecuted 64 employers for employing workers without employment permits but it is unclear, if any of the 64 pertained to suspected cases of human trafficking.

In 2021, the WRC carried out 2,722 inspections, and completed 4,432 cases. 61% of the inspections were unannounced. The WRC could not disaggregate between remote and in-person inspections. Of these, 57 joint inspections were carried out with GNIB, Revenue, and the Department of Social protection. In comparison, during 2020 WRC carried out 7,687 inspections, of which 5,202 were unannounced and 147 joint with An Garda Síochána and other State bodies, which indicates that the effort in 2021 fell by more than 50%. Frontline specialist NGOs and others have raised particular concerns around joint inspections with Gardaí as this may undermine the confidence of a non-EU national who is working illegally to report

173 The Workplace Relations Commission currently employs 60 inspectors, which is an increase of 7 since 2021 and represents a positive development. There are a further 6 inspector vacancies, approval has also been secured for recruitment of another 10 inspectors in 2022, and while this is less than the target of overall 90 labour inspectors in the State set by the Office of the Taoiseach in 2006, it certainly represents a trend in the intended direction. See Department of the Taoiseach (2006), [Towards 2016: Ten-Year Framework Social Partnership Agreement 2000-2016](#). Dublin: Stationary Office, p. 93

174 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)

175 There is evidence that the WRC develops sectoral specialisation of the inspection work, which is necessary and helpful due to the diverse environments. For example, a team of 8 inspectors are assigned to carry out inspection activity within the Fishing Sector to enforce the Atypical Worker Permission Scheme for Non-EEA Workers engaged on certain Irish-registered whitefish fishing vessels as well as ensuring compliance by employers with employment law obligations. Furthermore, inspectors are assigned to carry out inspections in the meat-processing sector. Between 2015 and 2020, 61 inspections were carried out, with 27 found to be non-compliant. Almost €184,000 in outstanding wages were recovered for workers concerned.

an exploitative employment situation to a WRC Inspector.¹⁷⁶ The Commission is not aware of specific firewalls between labour and immigration authorities to ensure that the principle of non-punishment of suspected victims of trafficking is upheld.¹⁷⁷

- » **The Commission recommends that in light of the crucial and unique positioning of the Workplace Relations Commission in the State's human trafficking response, the Workplace Relations Commission data is examined in terms of its value to the overall gathering of human trafficking data, and the Workplace Relations Commission procedures amended accordingly. At the minimum, the Commission recommends that the Workplace Relations Commission:**
 - » **Keeps records of whether the inspections were in-person or remote, and their respective outcomes.**
 - » **Keeps disaggregated data on the potential victims of trafficking they uncover and report to An Garda Síochána.**
- » **The Commission recommend the Workplace Relations Commission ensure all inspectors are trained on trafficking in human beings and identification of victims, and that considerations be given to the sectoral expertise, language skills, and cultural competence needed for efficient sectoral screening.**
- » **The Commission recommends that the introduction of robust firewalls between immigration enforcement and the broader provision of public services, including labour inspections, policing and victim support.**

An Garda Síochána – screening for victims of trafficking for sexual exploitation

Prior to the enactment of the Sexual offences Act (2017), the response to trafficking for sexual exploitation was unnecessarily marred by the continued criminalisation of the sale of sex. While more proactive identification of victims

176 Arnold S, et al. (2017) *Illegal Employment of Non-EU Nationals in Ireland*. Dublin: the Economic and Social Research Institute, p. 33

177 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.

continues to be desired, 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.¹⁷⁸ An example of this new approach is the National Days of Action conducted by An Garda Síochána. The intelligence-led operations were carried out across divisions, nationally, both urban and rural, to target the demand for prostitution and to enforce the legislation that criminalises the purchase of sexual services. Alongside such actions, An Garda Síochána carry out safeguarding visits nationally with individuals who are involved in the sex trade, with a view to identifying those who are potentially being sexually exploited or trafficked. The HTICU coordinates the EMPACT Days of Action in coordination with local investigations and DPSU, throughout Ireland.¹⁷⁹

National, intelligence-led operations such as these are of course necessary for detecting perpetrators of trafficking but most importantly they are *essential* in proactively detecting and identifying victims of trafficking. Proactive investigations of the online sex-trade must also be considered equally as important as offline operations.¹⁸⁰

The importance of welfare checks, building trust and raising awareness have all been highlighted by the Gardaí as being key to the protection and detection of victims of trafficking; the majority of whom are women, in the sex trade.¹⁸¹ While recognising that such measures will take time, the Commission acknowledge that considerable action has been taken by An Garda Síochána to increase specialisation, build trust and to embed training across the whole of the force.¹⁸²

Screening for victims of trafficking within the International Protection system

Given the increased vulnerability, systematic screening for indicators of trafficking by trained staff of the International Protection system is considered best practice.¹⁸³ The obligation to carry out Vulnerability Assessments, in line with the recast EU Reception Directive, is a viable tool for early screening for potential victims of trafficking among the asylum seeking populations¹⁸⁴.

178 See 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

179 Cross reference with EMPACT (See [Section 4](#), AGS Screening for victims of trafficking for sexual exploitation in p. x of the report)

180 For more on the digital dimensions see Section 7

181 See 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

182 See *Training* section for full details (Section 7)

183 European Migration Network (2014) [*Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures*](#). European Commission, pp. 21-22

184 It is also a means of ensuring that victims' are allocated appropriate accommodation and access to specialist

IPAS has piloted a Vulnerability Assessment since December 2020.¹⁸⁵ From 1st February – 31st December 2021, the assessment was extended to all new applicants. The Vulnerability Assessment administered by IPAS during 2021 assessed a total of 686 applicants, of which 438 were identified as having some form of vulnerability. Of those deemed as vulnerable, 3%, (13 adults), were identified under the category of 'victims of human trafficking'.¹⁸⁶

The Commission was informed by IPAS that training on Vulnerability Assessment to the Resident Welfare Team, who are responsible for carrying out such assessment, was rolled out in October 2021. Two NGOs were contracted to deliver training for staff conducting the Vulnerability Assessments to allow them to ask the questions in a respectful and empathetic way, while also ensuring all necessary and relevant information was obtained. Although, it must be noted that this training did not include any specific training on trafficking. It is also not known what specific training the Social Workers who conduct secondary stages of assessment have received.

» **The Commission recommends that training to the personnel conducting Vulnerability Assessment include human trafficking competence and basic identification skills, at a minimum.**

Tusla - screening for child victims

The Commission is aware of only one trafficking-specific screening procedure that is systematically embedded into Tusla's procedures. This is used exclusively for unaccompanied minors who undergo screening through the *Risk Assessment Matrix on Separated Children at Risk of Trafficking*.¹⁸⁷

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.

185 IPAS's Vulnerability Assessments begins with an initial interview with a Vulnerability Assessment Officer (VAO) from the Resident Welfare Team. 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 (VAOs) and interpretation as required. The questions relate to age, disability (both physical and non-physical), pregnancy, childcare 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, or a student social worker under the supervision of the IPAS social work team leader. See Department of Children, Equality, Disability, Integration and Youth (2022), [Written answer to Parliamentary Question: International Protection](#) (8 March 2022)

186 See Department of Children, Equality, Disability, Integration and Youth (2022), [Written Answer to Parliamentary Question: International Protection](#) (3 February 2022)

187 For more detail section on *Operational response to child trafficking*, page 96

The Commission has also been informed that a retrospective screening process is being undertaken in cooperation with An Garda Síochána for uncovering human trafficking among the child protection cases, which is welcome but is distinct from the recommended proactive screening.

In relation to screening activities, the Commission observe that despite the provided examples of proactive identification actions, there is an over reliance on once-off, post-factum and pilot initiatives. Days of action are of course an important awareness-raising tool but these actions should pave the way to systematic, integrated procedures that are embedded into every relevant State agency or body who may potentially come into contact with victims of trafficking.

- » **The Commission recommends the adoption by relevant State agencies and frontline services of trafficking-specific systematic screening tools to facilitate the detection of potential victims of trafficking.**

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.

Article 11.5 clearly outlines the components of assistance that must be provided to victims of trafficking on a consensual and informed basis. These include safe accommodation and material assistance, medical and psychological assistance, counselling and information, and translation assistance. The following subsections review the implementation of each of these components separately.

Informed consent (Article 11.5)

The issue of informed consent to services is generally considered core to the work of anti-trafficking organisations providing supports to trafficking victims.¹⁸⁸ Where this issue is overlooked, it can reinforce patriarchal and gender inequalities by perpetuating a form of discrimination against vulnerable people, removing their ability and right to choose.¹⁸⁹

188 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

189 Bindel J. et al. (2012) [Breaking down the barriers: A study of how women exit prostitution](#). Eaves and

From the Commission's consultation with frontline agencies and NGOs it appears standard practice for victim to be offered a consent form when accessing services. Consultations with survivors indicated that in certain instances they have been unsure about the services they are being offered, for example the assistance pertaining to potential compensation claims. The existing operational linking of provision of assistance with a referral by An Garda Síochána potentially conflicts with the notion of consent (and respectively the withdrawal of consent) required by victims prior to their accessing State provided assistance.

- » **The Commission is of the view that if the key referring role in the new National Referral Mechanism is assigned to an agency that focuses on support rather than crime investigation, the process of obtaining of informed consent will be improved.**

Safe Accommodation (Article 11.5)

The majority of victims of human trafficking are homeless migrants.¹⁹⁰ The provision of safe and appropriate housing is an internationally accepted priority need for trafficked victims. Safe accommodation is central to a victim's recovery both as an independent individual and to support them to give their best evidence in any criminal investigation or prosecution. Taking into account the gendered nature of trafficking, the EU Anti-Trafficking Directive requires that the accommodation to victims of trafficking is gender-sensitive.

"...I was put in X [Direct Provision facility] and the people right next door were 2 girls, I was sharing my room with another [woman from my home country], which was great, a lady and we did talk about things back home. And I had left home for almost 4 years, so it was great to have her and talk about things back home. But the people next door and because the walls were very thin you could hear everything. They invited guys into their room and especially in the evening you could hear things going on in there and coming from where I have come from that was yes...sometimes I couldn't sleep and it was just bringing memories and yes, it was really hard." - Survivor

London South Bank University

190 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 to almost full capacity (10577 resident), including 84 different centres spread around Ireland. Just 77 or less than one percent (0.7%) among them were 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 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.

“[Me] and the kids are living around so many things like, domestic violence, like men beating up women in the centre, people just getting to other people’s rooms to steal money and belongings and we are just living around all of this. Even the kids they are really really upset.” - Survivor

The implementation of Article 11(5) pertaining to gender-specific and safe housing to date has been particularly problematic in Ireland. To date, 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. This is particularly relevant given the Joint Oirachtaas 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.¹⁹¹ 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.

» **The Commission has warned that the accommodation of victims of trafficking must not be treated as a secondary issue in the process of implementation of the White Paper. However, the current reality shows that it remains a neglected matter.**

The use of Direct Provision for victims of trafficking has been roundly criticised by GRETA, Civil Society and IHREC, as well as in reports by the OSCE and the US State Department. Despite this, it continues to be the operating policy.¹⁹² It is of note that many victims of trafficking do not claim international protection and many are EEA citizens, therefore the entire International Protection System is irrelevant to their residence rights in the State.¹⁹³ The Commission is of the view that a possible explanation for placing victims of trafficking crimes in Direct Provision is that they are migrants, which demonstrates a lack of understanding of human trafficking.

191 Houses of the Oireachtas Joint Committee on Justice and Equality (2019) [Report on Direct Provision and the International Protection Application Process](#), p. 50; Government of Ireland (2020) [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#), p. 74

192 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. See US State Department (2020) [Trafficking in Persons Report](#), p. 271

193 Profile of victims of trafficking in IPAS. Of the 77 victims reported by IPAS as their residence in the month of December 10 were EEA nationals (13%), and 67 were third country nationals. Of the third country nationals, 16 held International Protection status. Four victims of trafficking held Temporary residence permit. 45 victims were claiming International Protection.

Presently in Ireland the IPAS is tasked with provision of accommodation and material assistance to all victims of human trafficking. This is in addition to IPAS's main function to house people seeking international protection.¹⁹⁴

According to consultations with IPAS, when IPAS classify a person as a suspected victim of trafficking that person will be given his/her own room, and, if possible, will be housed in a designated family unit or in single female accommodation.¹⁹⁵ As such, the only special care to victims of trafficking within IPAS is their accommodation in a single room (as opposed to shared room). However, from the Commissions consultation with survivors and review of the available data, it becomes clear that even this minimal commitment was seldom met in 2021.¹⁹⁶

Victims of trafficking are not prioritised for 'self-catering' accommodation¹⁹⁷ and there is limited staff competence in regards to in trafficking within the IPAS infrastructure. Nor does the geographical spread of specialist anti-trafficking services appear to be a guiding criterion.¹⁹⁸ In short, there is no recognition of

194 A total of 19 victims of human trafficking were referred for accommodation to IPAS in 2021. It is of note that two minors aged 1 and 3 respectively were included in this number, which most likely pertains to children accompanying mothers and not victims in their own right. The number of victims reported by IPAS for 2021 (19), differs from the official NRM number for 2021 (44), which could be explained by the fact that some victims have secured alternative housing arrangements either through independent services (such as Ruhama) or private support. The majority of the victims were referred to IPAS by An Garda Síochána, even though there were a couple who were referred by the IPAS vulnerability assessment team, which is a positive.

195 Capacity of IPAS. IPAS reported that it has a number of single-female centres in its portfolio for 2021. They include 3 centres in Dublin with the combined capacity of 74 residents as well as two further in Co Cavan and Co Kerry with combined capacity of 95. Only one female victim of trafficking has been accommodated in one of these centres, in the vicinity of Dublin. The considerable capacity of single gender-shelters exceeding multiple times the number of female victims of trafficking for sexual exploitation (44) has remained off limits for such victims.

196 Single gender arrangements. IPAS reported to the Commission that they are making efforts to accommodate female victims of trafficking safely. Of the 66 female victims residing in IPAS in December 2021, 10 are in a single gender facility. However, further scrutiny shows that only one female victim is in single gender facility and 9 are living in centres for families and singles. It is arguable that similar family centres represent safe environment on par with 'single gender' arrangements. The data shows that all but one of the female victims live in mixed gender settings.

197 Choices and individual budgeting. For only 16 of the 66 female victims, it is known that they live independently, in a sense that they have own personal budget and cook/cater for themselves. 22 still continue to live with (full board) catering arrangement, which is not conducive to recovery from coercion and deprivation of control typical for victims. For 28 it is unknown whether they live independently but it is known that the centre allows for such arrangements, and the hope is that they are. A minority of the female victims have the choice to cook and budget for themselves, which is essential for recovery.

198 Geographical location. 42 of the female victims live in Dublin or near Dublin, where most of the specialist services for human trafficking are congregated (NGOs funded by the State are located in Dublin). However, 19 female victims live in remote locations, such as Co. Kerry, Sligo and Mayo where specialist services are not available. Five victims could rely on the specialist support services in Cork. Yet, the availability of specialist support in Limerick does not appear to be utilised. While the geographical distribution of services seems to be taken into account to an extent, there is a further potential to utilise in accommodating victims in the three areas where specialist services exist.

the safety and security needs that are specific to victims of trafficking,¹⁹⁹ against whom, in many cases, a serious crime has been committed in the State and by perpetrators potentially still present in the State.

In reality, the accommodation problems experienced by victims of trafficking continue even after a person becomes formally recognised as a victim of trafficking by the State (by An Garda Síochána), which for third country national victims means that they become holders of a Temporary Residence Permit (Stamp 4 renewable residence permit). Such victims, while entitled to residence rights, remain disadvantaged even in comparison to International Protection Holders. When an applicant for International Protection receives a positive decision of any kind,²⁰⁰ IPAS arranges services for their transition out of Direct Provision and into the community. Two special charities, DePaul Charity and Peter McVerry Trust, have been contracted for the provision of this essential service and form part of the Transition Accommodation Teams with IPAS. Victims of trafficking have no access to these teams and their services. IPAS 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.

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-month duration. This is a new development in the policy that further curtails the right of victims of trafficking to move on from Direct Provision.

The Commission is deeply concerned about the resulting impact of these two policies (exclusion from the housing transition service of IPAS and local authority Homeless List) on victims of trafficking.

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

199 Including the risk of being re-trafficked. Women, young adults and children are at most risk of being re-trafficking and those trafficked under the age of 18 are often vulnerable to being re-trafficked in adult life. Especially when seeking assistance, immediately after exiting their ordeal and if returned to the source country, victims are highly vulnerable to re-trafficking, see Jobe A., (2010) [*The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database*](#). Geneva: International Organization for Migration, p. 11

200 Declared a refugee, granted subsidiary protection status or, granted permission to remain for humanitarian reasons.

service from the Department of Justice to the new Department of Children, Equality, Disability, Integration and Youth, these arrangements were discontinued and the shelter plan abandoned. A renewed procurement process has not yet taken place – almost two years later (February 2022).

On 15 of February 2022, the Minister for Justice announced plans for a new State body to oversee the GBV response in the State. The shelter infrastructure for victims of domestic violence will be further expanded.²⁰¹ The Commission reemphasises 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 have to take into consideration the wellbeing of victims of trafficking.

In light of the highly problematic and very complex situation surrounding housing of victims of trafficking, the Commission is compelled to issue a number of recommendations with the view to facilitating progress in this critical area of assistance.

- » **The Commission urges the swift establishment of the proposed pilot accommodation service for victims of trafficking and its expansion/replication as necessary to meet the needs of victims of trafficking within the State.**
- » **The Commission recommend that provision of specific accommodation for victims of trafficking must be underpinned by a gender-specific and trauma informed approach, in particular with respect to victims of sexual violence and exploitation in all accommodation options.**
- » **The Commission recommend Department of Children, Education, Disability, Integration and Youth treat the accommodation of victims of trafficking as an issue of utmost priority within the process of ending Direct Provision. This is especially important as this primary service for victims of trafficking has been severely neglected.**
- » **The Commission further recommend the Programme Board overseeing the end of Direct Provision (as outlined in the White Paper) should include at least one board member with specific expertise on human trafficking.**
- » **The Commission recommends the proofing and synchronization of the housing policies at national/IPAS and Local Authority level with a view to ensuring the interplay of such policies does not adversely affect victims of trafficking. The Commission recommend that all**

201 Bray J. and McGee H. (2022) '[New refugees to be opened as part of government plan to tackle domestic violence](#)'. *The Irish Times*, 25 January

Local authorities cease their refusal of assistance to victims of trafficking on short-term residence permits with immediate effect.

- » **The Commission recommend the National Coordinator (the Department of Justice), foster regular exchange between relevant State actors involved in assistance of victims to ensure that any change in existing policies does not adversely affect them. The Commission further recommends that a mechanism for raising concerns of potentially incompatible policies between different State authorities be established by the National Coordinator.**

In light of the fact that 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:

- » **While IPAS remains the primary provider of accommodation assistance, the Commission recommend IPAS review its capacity and devise a better strategy for accommodating victims of trafficking. In this regard, the Commission recommend IPAS utilises its gender-specific shelters for victims of trafficking who are recovering from sexual violence, giving consideration to geographical proximity of specialised anti-trafficking services and self-budgeting**
- » **The Commission recommend IPAS use the resettlement teams of the contracted housing specialists of Peter McVerry Trust and Depaul Charity to support indiscriminately all victims of trafficking moving on from Direct Provision.**
- » **The Commission recommend any and all communication between IPAS and victims of trafficking be victim-centred and trauma informed.**
- » **The Commission recommend IPAS keep annual data records on the number and profile of the victims of trafficking they provide accommodation and services to, as well as the type of accommodation and the outcome for the victims in terms of their immigration status or further housing progression.**

Material Assistance (Article 11.5)

Victims of trafficking often have little or no means of personal subsistence. Consequently, the provision of some kind of financial support and practical essentials, such as food and clothes is vital for regaining a sense of control of their

lives.²⁰² 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 would be difficult to outline exactly what material assistance victims receive. Appendix 3 illustrates one such attempt and evidences the highly divergent, complex and often inconsistent level of material assistance offered to victims.

In the Irish 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. Although, there was some evidence to suggest that survivors were not particularly clear or informed on the difference between the two systems, how they intersect, and how this may affect them.

- » **The Commission recommend 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 recommend 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)

The subsection of Article 11(5) pertaining to medical and psychological support, as an essential element of assistance to victims of human trafficking, is of particular importance. The EC study on the gendered dimension of trafficking concludes that the harms of trafficking are distinctly specific to gender and require gender-specific needs among victims. 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

202 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

related that are often different and more severe than those in domestic violence.²⁰³ Other forms of human trafficking could also lead to gender-specific harms such as unplanned and multiple pregnancies, forced and unsafe abortions, long-term chronic vaginal and pelvic pain, neck and mouth injury from forced oral sex, hepatitis C infections, severe diarrhoea, fatigue and malnutrition.²⁰⁴ 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 for such exploitation. 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.²⁰⁵ Exploitation within families could also result in similar harms, i.e. disabled women trafficked for forced marriage.²⁰⁶

“...People who are going through this kind of things are going through mental instability, because mentally you can’t even control your thoughts. You are there thinking on sometimes your thoughts are being invaded with things of the past or something that has hurt you so much, you know. And there’s no one there to listen or to help you.. - Survivor

“...I am still currently going through counselling with Ruhama...sometimes, even at this stage I left that situation in 2018 and I’m thinking by now I should be okay?...but I think now, after I have my children, it’s like I’m now going through it all over again and I’m like I’ve just come out and it’s just me. Yes, sometimes it’s really hard and I don’t have any family here, just my children so even to get someone to talk to become a problem.” - Survivor

Ireland has one of the most generous systems of medical assistance to victims of trafficking that is 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.²⁰⁷

203 Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

204 Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

205 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

206 See 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.

207 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

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 (and possibly all victims of trafficking). The medical card gives access to medical services free of charge. 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.

Other health services available free of charge are 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 and completely confidential.²⁰⁸

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). The Commission was pleased to be informed that a psychologist with expertise in human trafficking has recently joined the HSE AHTT which is a positive development. Outside of this limited psychological support, there is no dedicated specialist psychological support pathway for victims of trafficking. Instead, such support is provided through a

children.

208 The service includes screening for certain infectious diseases such as TB, Hepatitis B, Hepatitis C and HIV and checking the vaccination needs of you and your family. Any necessary follow-up medical treatment is provided free of charge under the medical card scheme.

referral by the GP into the general public service. As such, the victims enter the overburdened public mental health service. Regrettably, this has resulted in long delays for victims who are seeking support. In contrast, the experience of victims who have accessed psychological support from specialist NGOs such as Ruhama have been more positive. From the Commission's consultation with survivors it is clear that they have struggled to navigate the complex system of supports that are available:

"I had to look for emergency assistance and the whole lot of things were just too, it was too overwhelming. So I had to call Ruhama and asked for my caseworker to like, I needed to talk to someone, so for me I'm always accessing them because I think they're like the only family like I can rung to if I have, if it's mental issue like mental breakdown because we go through stress everyday so that's everything I can and do. So I always run/rung to Ruhama. They're always there to help me anytime I need it" - Survivor

The role that 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 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.

While the Commission is still awaiting the detail of the new NRM and details of whether assistance measures will be placed in statute, such a mechanism is expected to include medical and psychological assistance to victims.

Victims' access to medical care and specialist mental health support should not be dependent on location of the victims' residence (private or provided by the State, urban or rural).

- » **The Commission recommend the prioritisation of victims of trafficking for access to the public psychological support system. All persons providing psychological support to victims should be suitably qualified in supporting trafficking victims. Additionally, there should be a geographical spread of medical and mental health assistance for all victims of trafficking.**
- » **The Commission recommend increased funding be made available to frontline organisations who are providing psychological support to victims. Such funding should include additional funding for clinical supervision of support staff.**

Translation and Interpretation (Article 11.5)

Two translation services are contracted and retained by An Garda Síochána. The WRC provided information on employment rights to over 58,735 telephone callers in 2021. In addition, almost 605,000 users visited the WRC website. The Workplace Relations Commission website provides a comprehensive range of information on employment rights and redress options. This information can be provided to users in 103 languages by utilising the 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.

The HSE AHTT reported to the Commission that during the first 6 months of the year, they used translations services approx. 62 times to work with clients for whom English was not first language. Historically this work was done through phone contact but since Covid, the HSE has adapted and over half are now carried out using Attend Anywhere platform. An Garda Síochána utilise the same company and usage of the translation services is sanctioned for any intervention required.

From November 2020 – December 2021, the Department of Justice participated in an EU funded project – the INHeRE project. This project aims to improve inclusive, holistic care for migrant victims of sexual violence, regardless of their gender, age, or legal status by strengthening the capacity of multi-sector frontline professionals. The main outcomes/tools produced were intended for intercultural mediators, interpreters and health care professionals. As part of that project the existing Video Remote Interpreting System was upgraded and translated.

For practitioners of the five key professional groups (i.e. asylum and reception facilities staff, SATU staff, police authorities, psychologists, cultural mediators/ interpreters), a Massive Open Online Course (MOOC) of 8 modules on sexual violence and migration was developed, evaluated through a piloting and published by the project partners. The final version of the online training is permanently available online for all professionals to follow for free.²⁰⁹

Despite these positive developments in regards to the provision of interpretation services, the Commission's consultation with stakeholders revealed that they are not given access to interpreters as part of the current NRM.²¹⁰ They have suggested that a pool of trained interpreters would be very helpful in their work.

A multilingual phone services is offered by both the Rape Crisis and Domestic Violence 24 hour helplines. Given the intersection of trafficking and other forms

209 Department of Justice sources

210 Migrant Rights Centre Ireland sources

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 and refer potential or suspected victims of trafficking.

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.'

- » **The Commission recommend the State expand translation and interpretation services to all specialist NGOs who support victims of trafficking.**
- » **The Commission recommend that as part of the reformed NRM, a Standard Operation Procedure be drawn up that will ensure effective and accessible access to translation, interpretation and cultural mediation 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 *on 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*.²¹¹

211 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.

Nonetheless, the provision of information on the recovery and reflection period²¹² as well as the rights of victims to claim International Protection is guaranteed through the involvement of the Legal Aid Board in the provision of legal information – a similar function is also fulfilled by the solicitors of the law centre of ICI. On the basis of data provided by the IPO²¹³ and IPAS,²¹⁴ the Commission observes that only a proportion of victims of human trafficking seek International Protection in the State. For many victims, this is not a relevant legal framework or avenue to safety. This strongly demonstrates that the use of the asylum system to provide for the needs of victims is both inappropriate and irrelevant.

» **The Commission recommend 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.

All victims of human trafficking are extremely vulnerable individuals. Yet, there are those among them that have profound vulnerability due to special personal circumstances that give rise to special needs. Article 11(7) provides that the States must attend to the special needs of victims of trafficking, in particular, to needs linked to pregnancy, health, disability or a serious forms of violence suffered.

This provision is implemented in Ireland by an individual care planning approach that is undertaken by the HSE AHTT and by a range of specialist NGOs commanding significant expertise in tailored victim assistance. The HSE AHTT's individual care plan is developed based on the specific circumstances of the victim.

212 Provided for in the Administrative Immigration Arrangements.

213 The IPO shared with the Commission that seven potential victims of trafficking were referred to An Garda Síochána in 2021. All were female and Nigerian. All but one were trafficked for sexual exploitation, while in two of the cases there was also domestic labour exploitation involved in the ordeal. One victim was trafficked solely for labour exploitation in the domestic sector. One of the reported victims was granted refugee status, while the others have pending International Protection applications.

214 IPAS reported to the Commission that 9 victims applied for International Protection in 2021, which differs slightly from the 7 victims applying for International Protection reported by the IPO. The discrepancy could be attributed to the lack of specific data on human trafficking maintained by IPAS.

This includes, referrals to other State services or NGOs.²¹⁵ The care plan is guided by the OSCE standards for the care of victims of human trafficking.

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. Although the HSE AHTT offers a number of 'in-house' services to victims with special needs there is, understandably, a heavy reliance on other agencies and services. As such, long waiting lists and backlogs often result in victims waiting months to receive specialist services, or in some cases being excluded from services altogether.²¹⁶

Despite 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 the Commission's consultation. 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 violence. Similarly, the solicitors in the ICI's law centre have expertise in working with victims of crime with special needs. The Migrant Right Centre of Ireland, as indeed all specialist services, endeavour to accommodate and respond to victims with complex needs as a result of violations and combined types of exploitation.

Integrating the survivor voice into the overall anti-trafficking response is a priority for the Commission as a National Rapporteur. In June 2021, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) launched the International Survivors of Trafficking Advisory Council (ISTAC), consisting of 21 leading survivors of human trafficking from across the OSCE. This is an example of international best practice and it is notable that this is being replicated at the national level in a number of countries.

» **The Commission recommend the establishment of a dedicated Survivor Council to ensure the survivor voice inform the overall anti-trafficking response, in particular, the new NRM and NAP.**

» **The Commission recommend the HSE Anti-Human Trafficking Team**

215 Such as, safe accommodation, health, family separation, liaison with Gardai 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.

216 See section on *Safe Accommodation* above

retain its gender-specific expertise, acquired within its proximity to the HSE WSP, 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 calls on 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 with the reformed NRM.**

5. Protection in the criminal justice system (Article 12)

- » **Specific protection measures (Article 12.1)**
- » **Legal assistance without delay (Article 12.2)**
- » **Individual risk assessment (Article 12.3)**
- » **Avoiding secondary victimisation (Article 12.4)**
- » **Compensation for victims (Article 17)**

Victims of trafficking are expected to participate in criminal investigation proceedings, which brings apprehension and concerns that may compound their trauma. For this reason Article 12 sets out a minimal standards of protection for victims of trafficking in the criminal justice process. These standards include, at the minimum, provisions for anonymity, close courts, avoiding of visual contact with the defendant, individual risk assessment, legal counselling without delay, avoiding repeated interviews and unnecessary questioning concerning the private life of the victim. The implementation of all provisions outlined in Article 12 and its subsections Article 12.1 to 12.4 will be reviewed in the following sections. This section will also include a review of Article 17 that outlines the right of compensation for victims, which will be the only deviation of the sequence of articles in the Directive in this report.

Specific Protection Measures for victims of Human Trafficking (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.

Article 12(1) of the Directive clearly states that measures 'shall apply in addition to Framework Decision 2001/220/JHA'. It should be noted from the outset that this Framework decision has been superseded by the Victims of Crime Directive (Directive 2012/29/EU).²¹⁷ Therefore, it must be remembered that the protections required by the Anti-Trafficking Directive are in addition to the rights set forth in the Criminal Law (Victims of Crime) Act 2017. It is interesting to note that the only specific protection measures (known as special measures in the Irish context) are the provision for the anonymity of victims in trafficking trial²¹⁸ and the limited expansion of the remit of the Legal Aid Board to grant legal advice to a person who is an alleged victim of a human trafficking offence.

As has been detailed below, nearly all other special measures required by the Anti-Trafficking Directive are contained, not in the trafficking-specific laws and policies, but in general victims' rights provisions. In particular, the Victims of Crime Act 2017, in line with Article 12(3) provides for individual risk assessments. Similarly, the protections outlined in Article 12(4) - unnecessary repetition of interviews during investigation, prosecution or trial; visual contact between victims and defendants including during the giving of evidence such as interviews and cross-

217 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

218 Criminal Law (Human Trafficking) Act 2008, s.11

examination, by appropriate means including the use of appropriate communication technologies; the giving of evidence in open court; and unnecessary questioning concerning the victim's private life - are largely provided for in the Victims of Crime Act (and other statutes).²¹⁹

The Commission is pleased to see the expansion of victims' rights. However, the Commission would like to express disappointment that the victims of trafficking were not afforded the full ambit of protection measures they were entitled to receive until some 9 years after the coming into force of the 2008 Act. Even now, owing in part to the limited trafficking-specific approach, there continue to be gaps in the protections victims of trafficking receive.

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.

The Legal Aid Board is formally entrusted with provision of legal counselling to victims of trafficking according to the current NRM. The Commission welcomed the act of putting legal support for victims of trafficking on a statutory footing through an amendment (in 2011) to the Civil Legal Aid Act 1995.²²⁰ However, the Commission remains concerned about the use of the term 'alleged victim of a human trafficking offence'. This is not sufficiently clear and is not used elsewhere in any official working documents or policy papers on human trafficking.

Victims are usually made aware of the provision of free legal advice upon their

219 In addition to the entitlements set forth in Article 12 of the Ant-Trafficking Directive, under the Victims of Crime Act 2017, victims have the right to be kept informed of any updates in the case, the outcome of any proceedings and the DPP must provide reasons for decisions not to prosecute. While welcome, for victims of human trafficking it is especially important that such communications are provided in their own language and/or explained to them by a support person who is specifically trauma informed trained to ensure that they fully understand what is happening at all times. See *Criminal Justice (Victims of Crime) Act 2017* s. 8 (2); *Criminal Justice (Victims of Crime) Act 2017* (s. 8) which provides that a victim may request a summary of the reason not to prosecute a person for an alleged offence.

220 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 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).

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 that may (or may not) include coordination with the LAB.

The 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.²²¹

- » **The Commission recommend all potential victims of trafficking be proactively provided with adequate, early legal support in order to avoid prosecution as a result of being trafficked and in order to avail of an effective remedy and appropriate redress for any harm caused to them.**
- » **Comprehensive information should be provided to enable victims of trafficking to navigate the complex immigration process.**

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.²²² 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.²²³ 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 is concerned about the priority given to human trafficking within the LAB, evident in the limited resources allocated to this work. Presently there is a part-time solicitor and the Department of Justice allocated €44,575 to the anti-trafficking work of the LAB for 2021.

The LAB website indicates that a referral by An Garda Síochána is required in order

221 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.

222 Immigrant Council of Ireland sources

223 Immigrant Council of Ireland sources

to access legal advice. Despite this, a self-referral option appears to be available to victims of trafficking by completing and posting of an application form.²²⁴ However, this application form is not available, and the link has been redundant since late 2021. The requirement for a referral by the law enforcement indicates that only victims who are cooperating with the investigation are considered eligible for legal advice by the LAB at present, a position that is not conducive to early assistance.

- » **The Commission recommend the LAB offers information to potential self-identified victims of human trafficking, including in cases where they have not been formally referred by An Garda Síochána.**
- » **The Commission recommend all State agencies maintain an up to date websites with trauma-informed,²²⁵ accurate information and working links especially in sections intended for vulnerable populations, such as victims of human trafficking.**

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.²²⁶ These cases were part of a total of 85 ongoing cases involving human trafficking.

According to LAB, all of the 19 cases involved collaboration with the HSE AHTT.

At the time of the Commission's information request, the LAB was undertaking a case management review. As a result, detailed information was not made available to the Commission relating to the content of the legal advice provided to victims of trafficking in 2021, which would remain an area of interest

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.²²⁷ The Legal Aid

224 Legal Aid Board (2016) [Legal Advice for potential Victims of Human Trafficking](#)

225 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.

226 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.

227 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](#)

Board is precluded from providing representation to individuals before quasi-judicial tribunals and bodies²²⁸ dealing with social welfare appeals, housing issues, and employment and equality cases.²²⁹

- » **The Commission recommend the State consider expanding the remit of the Legal Aid Scheme 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 a tribunal such as the Workplace Relations Commission.**²³⁰

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. This was especially the case in regards to legal advice on compensation, where none of the survivors received any information or advice. Survivors also raised the extremely long waiting lists and difficulty in making contact with their solicitor as particular barriers that need to be addressed urgently. The substantive barriers associated with accessing compensation are addressed in section 3.8 (below), access to legal advice relating to compensation is but one of the myriad of issues associated with compensation. These will be discussed in detail in relation Article 17 pertaining to compensation possibilities for victims.

Additionally, the Commission has called for the LAB to be adequately resourced to ensure that waiting times are reduced.²³¹

- » **The Commission recommend the review of Legal Aid Scheme (due to commence this year) consider, where necessary, any legislative reforms needed to expand the remit of the Legal Aid Board to offer legal advice, assistance and representation to victims of human trafficking in all matters required.**

[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.

228 Including the Labour Court, the Social Welfare Appeals Office, and the Workplace Relations Commission.

229 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

230 IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#). Dublin, p. 7

231 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

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 are 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 needs²³² whereas adult victims will be assessed by a member of An Garda Síochána²³³ to determine their protection needs.²³⁴ The outcome of this assessment shall then be reported to a member of the Garda Síochána not below the rank of superintendent.²³⁵ The investigating Garda will then be notified of the contents of the assessment and will be directed by the superintendent (or superior) to implement or arrange the implementation of the protections measures.²³⁶ A copy of the report and the direction must be furnished to the DPP and/or the member of the Garda Síochána who is responsible for instituting and conducting a prosecution of the alleged offence in the name of the DPP.²³⁷

In addition to the above measures, and in line with the Victims Directive, the gendered protections are explicitly stated in the Victims of Crime Act 2017 as a matter that must be considered. A member of the Garda Síochána²³⁸ 'shall, when carrying out an assessment, have regard to the following matters... (d) the personal characteristics of the victim, including his or her age, gender, gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, communications difficulties, relationship to, or dependence on, the alleged offender and any previous experience of crime... (f) the particular vulnerability of victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence or exploitation and victims with disabilities'.²³⁹

232 *Criminal Justice (Victims of Crime) Act 2017*, s. 15(7)(a)

233 Or an officer of the Ombudsman Commission

234 *Criminal Justice (Victims of Crime) Act 2017*, s. 15 (1)(2)(4)

235 *Criminal Justice (Victims of Crime) Act 2017*, s. 15 (5)

236 *Criminal Justice (Victims of Crime) Act 2017*, s. 15 (8)(b)(i)

237 *Criminal Justice (Victims of Crime) Act*, s. 15 (8) (b) (ii)

238 Or an officer of the Ombudsman Commission, as the case may be.

239 *Victims of Crime Act 2017*, s. 15 (2)

It should be noted that this assessment is separate from, and bears no relationship to, the Vulnerability Assessment undertaken by IPAS for International Protection applicants.

Avoiding secondary victimisation (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:

- unnecessary repetition of interviews during investigation, prosecution or trial;
- 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;
- the giving of evidence in open court; and (d) unnecessary questioning concerning the victim's private life.

Article 12(4) of the Directive obligates States to take measures to avoid the secondary victimisation of victims of trafficking by avoiding unnecessary repetition of interviews, direct contact with the trafficker, giving evidence in open court and questioning concerning private life. This provision complements the EU Directive of Victim's Rights, 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'.²⁴⁰ There are a number of special measures that a victim of trafficking *may* be able to avail of. The aim of such is to limit the visual contact between victims and defendants. Under s.14A of the Criminal Evidence Act 1992, screening facilities can now be made available, not only to child witnesses (as was

240 "'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

previously the case) but in all cases where a person is testifying as a witness to an alleged 'relevant offence', in which trafficking offences are specially included. Thus, 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.

There are also specific provisions to safeguard 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. Like all vulnerable witnesses, victims of human trafficking can make an application to request the trial be heard in private.²⁴¹ However, there remains a number of issues concerning the disclosure of medical and counselling records.²⁴² Importantly, as noted in the O'Malley Review, the provisions that are designed to safeguard victims' right to privacy are seldom, if ever, used.²⁴³ This raises the question whether victims are receiving adequate legal counselling.

Section 16 of the Criminal Evidence Act 1992 (amended) provides that (1) 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, (2) 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 (3) 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.

The Anti-Trafficking Directive requires the State take action to limit unnecessary or repeat interviews. However, from the Commissions stakeholder engagement this appears to be particularly absent in the Irish criminal justice system with survivors detailing repeated, unscheduled, interviews with An Garda Síochána. Stakeholders and survivors also raised serious concerns around how victims were treated during the criminal trial and the profound effect this had on them.

241 *Criminal Justice (Victims of Crime) Act 2017*, s. 19 and s. 20

242 See National Women's Council of Ireland (2021) [Victim's Testimony in Cases of Rape and Sexual Assault](#).

243 O'Malley T (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), p. 78

Additionally, the protections available in s.3 Criminal Law (Rape) Act 1981 which precludes²⁴⁴ evidence or questions to be asked in cross-examination about any sexual experience²⁴⁵ of the witness, does not extend to victims of trafficking for sexual exploitation as it only relate to sexual assault and rape offences,²⁴⁶ of which trafficking for sexual exploitation is not deemed to be part.

- » **The Commission recommend a victim-centred approach to training for An Garda Síochána and the judiciary with a particular focus on their interaction with trafficked victims during the investigation and prosecution of the trafficking offences. This is necessary to avoid secondary victimisation through unnecessary or repeated interviews.**
- » **The Commission recommend a thorough review of the protections available to victims of trafficking for sexual exploitation and the possible expansion of protections to align with those afforded to victims of sexual assault and rape offences.**

“They [An Garda Síochána] did an extremely excellent job I would say... I loved the fact that everyone, they were understanding you know, they were patient. In all this...It took a toll of me, it took so much of me, I was emotional like you know, a lot of times and they were patient enough to give me time you know, to get myself back and everything you know and have control of my voice before I speak up. They were just understanding and very patient with me, their suspicions so. And it was excellent, it was excellent, they did an excellent job the Gardai yes.” - Survivor

244 Except with the leave of the judge.

245 Criminal Law (Rape) Act 1981, s. 3(1)

246 A victim also has the right to separate legal representation for s.3 applications (Criminal Law (Rape) Act 1981, s.4A)

“the first date they had my interview I spent about 5 hours 30 minute, which was the longest. I thought I could do it you know, and in my mind I’m like yes I can I can you know. But at the end of the day it, it brought back everything that was running away from, you know. But they wanted me, there was this kind of, I would say there was a force in it. Like, they wanted to have every detail as soon as possible. They scheduled me can I come for the next day to finish the interview and I said no, I can’t. They wanted me to come in the next week, I was cancelling so I had to involve my caseworker and I said at this point I don’t think I can do anything. If I ever have a chance to withdraw everything I would have, you know. So, it took about 4 weeks for me to be able to wrap up everything. And that was it for me.” - Survivor

“I remember last year I was with a particular one [a Guard] that, because of Covid we couldn’t meet one on one so she, we talked on the phone for like 3 hours and in my head I was thinking that was the, the statement given. And later on she called me and said she needed something from me and she always called at the odd time like in the late in the evening. And when she called she wanted, she wanted that things straight away, like now I’m passing through some issues I don’t want to add more. Throughout that night I was not able to sleep so I thought her because of the Covid I will not be able to meet you one on one to provide this for you...” - Survivor

Compensation of Victims of Trafficking (Article 17)

Article 17. Compensation to victims Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

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.²⁴⁷ 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.

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 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.

In the recent successful conviction of traffickers for the purposes of sexual exploitation, the Commission understand 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.²⁴⁸

To the Commissions knowledge no victim of trafficking has received compensation for the harms of trafficking, either in criminal or in tortious action.

Free Civil Legal Aid for tortious action is not part of the service the Legal Aid Board provides to victims of trafficking.²⁴⁹ Although, 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 regular channels, which as noted above, have a number of barriers for victims and there is no prioritisation of trafficking cases within the system as it currently operates.

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 difficulties satisfying the 'merit test' to qualify for free Civil Legal Aid.²⁵⁰ Moreover

247 Department of Justice (2021) [Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme](#) [press release] 20 April

248 Council of Europe (2005) [Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings](#), para. 198

249 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](#)

250 "Depending on your case, if you want civil legal aid, your case will need to satisfy a "merits test ". The

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.

Importantly, the Law Reform Commission's (LRC) Fifth Programme of Law Reform, which was approved by the Government in March 2019, includes the project *Compensating Victims of Crime*. This 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, whether that is criminal or civil, must be a priority in the proposed reform of the Legal Aid Scheme.²⁵¹

From the Commission's consultation with survivors, none had received any information/ advice from the LAB relating to compensation. Therefore, it is not surprising that there have been no successful awards of compensation to victims of trafficking.

- » **The Commission recommend the Law Reform Commission consider 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 claims, and; the use of *Section 6 Orders*²⁵² as a means of compensating victims within the criminal process.**
- » **The Commission recommend 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.**

Employment Related Compensation

It will be recalled that there is no standalone criminal offences of forced or exploited labour in Irish law.²⁵³ Instead, labour exploitation is only criminalised when

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](#)

251 See Houses of the Oireachtas Senead Éireann debate (2021) [Commencement Matters: Legal Aid](#) (17 February 2021)

252 *Criminal Justice Act 1993*

253 For a detailed discussion, see [Section 3](#) on the absence of slavery, servitude and forced labour offences

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.²⁵⁴ 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.²⁵⁵ 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 2C²⁵⁶ 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.*²⁵⁷ 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.²⁵⁸ 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. 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

where there has been no trafficking

254 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

255 *Quinn v. IBRC* [2016] 1 IR 1

256 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.

257 *t/a Lynam's Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam's Hotel v Preeti Khoosye* [2019] 12 JIEC 0408

258 Such as the WRC and the Labour Court.

are unable or unsuccessful) to pursue criminal proceedings against their exploiters.

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. Given the analysis outlined above (and elsewhere in this report) 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.

- » **With a view to fostering better possibilities for compensation for victims of trafficking for forced labour, the Commission recommends that State considers and acts upon:**
 - » **The introduction of a functioning 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.**

Case Study of Maria

Recouping of unpaid wages is a recurring theme of victims of, in particular, labour exploitation or forced labour.

Maria is a young woman and mother from Eastern Europe. Maria is from a disadvantaged background and has no English. A fellow citizen, Jo, offered Maria a job in Ireland. Jo arranged everything from tickets to accommodation. Maria was told that she would be working in a factory receiving €10 an hour and that she could pay Jo the cost of accommodation and travel once she started working.

Maria worked long hours 5 days per week but did not receive any wages as these went directly into Jo's bank account. Jo took Maria's ID and restricted her movements. There were a number of fellow 'workers' living in the same accommodation as Maria. Following an attack by Jo, Maria and a fellow 'worker' escaped. Maria managed to report the abuses to the Gardaí and made a statement. Following this Maria was identified as a potential victim of trafficking.

IPAS offered Maria accommodation and she was referred to HSE AHTT. Maria was also referred to IOM for repatriation and to LAB for legal advice. The LAB recommended referral to MRCI to recover unpaid wages. Maria received emergency provisions from State and IOM.

After being identified by An Garda Síochána Maria decided to stay in Ireland. The HSE AHTT helped her get PPS number and assistance from the Department of Social Protection. With Christmas approaching, Maria decided to return to her home country to be with her children and the IOM organised repatriation. Maria cooperated fully with An Garda Síochána and the investigation is ongoing.

(Courtesy of HSE AHTT)

6. Child Victims of Trafficking

- » Unconditional assistance (Article 13.1)
- » Age assessment (Article 13.2)
- » Individual assessment (Article 14.1)
- » Views of the Child (Article 14.1)
- » Education for child victims (Article 14.1)
- » Appointment of a Guardian (Article 14.2)
- » Child victim's family (Article 14.3)
- » Representation in criminal proceedings (Article 15.1)
- » Legal assistance to child victims (Article 15.2)
- » Interviews with a child victim (Article 15.3)
- » Video recorded evidence (Article 15.4)
- » Court hearings (Article 15.5)
- » Measures for unaccompanied minors (Article 16)

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.²⁵⁹ The Directive deals with child trafficking in four dedicated articles – Articles 13, 14, 15 and 16. The States' implementation of each of these Articles will be reviewed in some detail in this section.

Overall, child trafficking in Ireland has received very little public or political attention. There is limited research, and debates on the issue are seldom. Relative to trafficking in adults, it would appear that child trafficking remains more hidden and unknown. For this reason, the Commission is of the view that child trafficking requires particular attention and scrutiny in this report. Before embarking on a comprehensive analysis of the legal provisions of the Directive, an acknowledgment of the unique situation of children is necessary to understand how child trafficking is distinct from trafficking in adults.

Though no child trafficking victims has been identified in Ireland in the last two years, prior to this, child trafficking victim have been identified. Over the period 2013 to 2020, there were 34 victims of trafficking identified in the State, which represent 9% of all victims. This proportion is significantly lower than the EU average (22%).²⁶⁰ The lower than average trend in the preceding years, and the lack of identifications of child victims over the last two years is a cause of concern for the Commission.

259 European Commission (2020) [Study on the Economic, Social and Human Costs of Trafficking in Human Beings within the EU](#). Luxembourg: Publications Office of the European Union, pp. 27 and 41

260 European Commission (2020) [Data Collection on Trafficking in Human Beings in the EU](#). Luxembourg: Publications Office of the European Union, p. 6

Study of Daphne

(Courtesy of Tusla)

This case demonstrate the varied exploitation children of trafficking could be subjected to as well as the significant risk of re-trafficking.

Daphne was referred to the service for Separated Children Seeking International Protection (SCSIP) by An Garda Síochána, who had come across Daphne sleeping rough. On presentation she was in very poor condition and was very distressed, she presented as underweight and had extensive scarring on her body.

Over time Daphne revealed that she is from an east African country. She had been sleeping rough after had fled from the care of her Aunt. She reported that she had been smuggled into Ireland to assist her Aunt with housekeeping and to care for her Aunt's two young children following the death of her own parents in Nigeria. Daphne reported that she had been beaten by her Aunt and Uncle and had no proper bed, sleeping area or eating utensils. She was prohibited from leaving the house and she did not know the address where she had been living prior to her fleeing.

Daphne was referred to Tusla by An Garda Síochána. As Daphne could not identify her accommodation or the perpetrators of the exploitation and abuse she experienced, there were no criminal proceedings in this matter. There is no way of knowing if this was accurate or if Daphne was afraid to identify/report her Aunt for fear of retaliation. While in care of Tusla, she has been being pressurised by her family in Nigeria to earn money through prostitution. When this came to the attention of Tusla staff, all further communication with family members became supervised.

Daphne was placed in foster care where she thrived and completed her leaving cert. Today, Daphne is a mother to 2 children. She lives in private rented accommodation and still visits her previous foster carers regularly.

Definition of child trafficking

According to article 1(6) of the Directive, 'child' shall mean any person below 18 years of age. Child trafficking occurs when a child is recruited, transported or harboured for the purposes of exploitation (Article 2). Unlike in the case of adult victims, the means of deception and coercion of child victims are irrelevant. As such, the consent of the child to exploitation is legally void (Article 2.5). This is reflected in the stronger and unconditional commitment to assistance and protection in the Directive, which is contained in Articles 13 -16 of the Directive.

A child is any person who is under the age of 18 years

Types of child trafficking

Examples of suspected child trafficking situations in Ireland that have come to the attention of Tusla include child trafficking for the purpose of:

- Forced labour in the domestic sphere - a child transferred to Ireland to take care of younger children, exploited and often physically abused. It is not uncommon that the movement of the child is restricted;
- Labour exploitation - young adults working in high-risk sectors (e.g. car-washing), after absconding State care;
- Forced criminality - a child admitted into care after being rescued from a 'grow house' where the child had been working in inhumane conditions;
- Sexual exploitation - a girl under Tusla's care being pressured by her family back home to economically provide for them through prostitution.

These cases illustrate that child victims have been exposed to the same forms of exploitation as adult victims in Ireland. However, for child victims it is likely that the resulting societal and individual costs would be higher.

The extent of child trafficking is hard to establish due to the re-classification of the official data. The Commission's data synopsis in 2021,²⁶¹ showed that minor victims represent a visible minority among all victims which, in some years, has risen to 15% and 21% of all victims. However, information about the forms of exploitation and an explanation for the surges in child trafficking in some years are not available.

» **The Commission recommend the Department of Justice disaggregate child victims of trafficking data by type of exploitation in all future Annual Reports.**

» **The Commission recommend the State work 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**

²⁶¹ Based on these sources to date, it is established that at least 34 minors were trafficked in Ireland from 2013 to 2019, mostly girls (26) but also boys (8). No child victims were identified in 2021, which happens for a second year in a row and deserves attention. 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 \(GRETA\)](#). Dublin, pp. 12-13

children, in line with the recent recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children.²⁶²

Identification of child victims of trafficking

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 associated with the identification and categorisation of such victims in Ireland. One possible reason for this is the enduring confusion surrounding how *child trafficking* is conceptualised in Ireland. The combined effect of the judgment in *People (DPP) v LS & PS*²⁶³ and the Department of Justice's decision to reclassify offences pursuant to section 3(2) of the 1998 Act²⁶⁴ would appear to reduce or minimise the extent to which section 3(2) of the 1998 Act might be understood as applying to cases involving trafficking for sexual exploitation.

The Commission recognises that although some offences committed under section 3(2) of the 1998 Act do not involve an element of trafficking this does not exclude the possibility that some offences *may* include an element of trafficking. As such, there is a real risk that the reclassification of data collection since the 2017 Department of Justice Annual Report may obscure the true extent of child trafficking in the State.

» **The Commission recommend the Department of Justice (as a National Coordinator on Human Trafficking) achieves clarity regarding the reporting of offences under section 3(2) of the 1998 Act**

262 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

263 [2021] IECA 308. The Court of Appeal decision in *People (DPP) v LS & PS* effectively held that section 3(2) of the *Child Trafficking and Pornography Act 1998* includes a standalone offence of sexual exploitation of a child without a requirement that the circumstances surrounding the commission of the offence involved trafficking. However, the converse is not the case; there is no standalone offence of trafficking in section 3(2) without an element of sexual exploitation.

264 In its 2017 Annual Report on Trafficking in Human Beings in Ireland, the Department of Justice announced that it was reclassifying the reporting of data under section 3(2) of the *Child Trafficking & Pornography Act 1998 (as amended)*. Between 2009 and 2013, victims of crimes prosecuted under section 3(2) of the *Child Trafficking & Pornography Act 1998* (as amended by Criminal Law (Human Trafficking) Act 2008), had been reported as victims of human trafficking. The rationale for the reclassification since the 2017 report is stated as "reporting practice elsewhere" and "the specific details of the cases in question". This is vague and difficult to substantiate in any meaningful way. Insofar as the reclassification was motivated by the fact that charges brought under section 3(2) of the 1998 Act "relate to offences of sexual exploitation", it is unclear what relevance this has in circumstances where sexual exploitation is one of the recognised forms of exploitation pursuant to article 3(a) of the Protocol on Trafficking in Persons. Another reason given for the reclassification was that "generally, the offence has been committed against an Irish child, without the involvement of a 3rd party and without any commercial element" in circumstances where the offender is usually known to the victim and "the offence has occurred without any significant movement or 'act'...." See Department of Justice (2017) [Annual Report on Trafficking in Human Beings in Ireland](#), pp. 5-6

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.

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.²⁶⁵ 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 GRETA's recommendation.²⁶⁶

As with adult victims, the issue with child victims lies with the inadequate identification process, which in turn, is required to trigger all further child-specific intervention and assistance measures. Without successful and speedy identification, child victims are deprived of the supports needed for escaping and recovering from a trafficking situation. Furthermore, the limited identification of any child victim of trafficking for forced criminal activity or labour exploitation may also point to a more general gap in understanding of the full scope of child trafficking in Ireland. This lack of understanding may, in turn, lead to contravention of the non-punishment principle where children are criminalised for crimes they were compelled to commit as a result of them being trafficked.²⁶⁷

As with adult victims, the eligibility of a minor to be formally identified as a trafficking victim is regulated by the AIA. Despite the fact that the Recovery and Reflection period for child victims is increased to up to a year and the temporary residence permits are of flexible duration - the access to such favourable status remains problematic due to the underlying deficiencies of the current NRM. There is no separate child trafficking identification mechanism, despite the commitment to the inclusion of such in the second NAP (2016). The current interplay between three systems - International Protection, human trafficking and general child protection measures- represent an elaborate approach to assistance that is not conducive to monitoring and accountability.

265 Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#) (2016) at p. 72

266 IHREC (2016) [IHREC Submission to GRETA in Advance of its Second Evaluation Round of Ireland](#). Dublin, p. 18

267 Naughton C. and Redmond S., (2017) [National Prevalence Study: Do the findings from the Greentown study of children's involvement in a criminal network \(2015\) extend beyond Greentown?](#) Limerick: University of Limerick School of Law.; O'Hagan A., Edmundson C.J. (2021) [County Lines: The Exploitation of Vulnerable Members of Society](#). Forensic Research & Criminology International Journal [online], 9(2), pp. 47-57

Of particular concern is the position of exclusivity the AIA adopts, by solely applying to third-country national undocumented migrants who have not applied for asylum, which similarly affects potential child victims.

Similar to adult victims, child victims of trafficking may too fall foul of the AIA policy that contains a number of potential limitations. There are concerns that child victims who are Irish or EU nationals are excluded from aspects of the NRM, specifically the AIA.²⁶⁸ As such, the necessary assistance and protection measures for child victims of trafficking (including their legal guardianship and legal representation in relation to any investigations/prosecutions of the crime committed against them) are not clearly outlined in policy.

- » **The Commission recommend any new or renewed National Action Plan to Prevent and Combat Human Trafficking include, as an aim, the urgent adoption of special guidelines for identification and referral of child victims of trafficking.**
- » **The Commission recommend the new National Referral Mechanism explicitly address the special identification and referral needs of child victims of trafficking, including within the broader system of protection of separated and unaccompanied minors.**
- » **The Commission recommend those designated as 'competent authorities' and 'trusted partners' under the new National Referral Mechanism undertake Child Trafficking Training.**

Operational response to child trafficking

In Ireland, the State agency charged with responding to child victims of trafficking is Tusla. At the time of review, the agency does not appear to operate any trafficking-specific policy or procedure. Instead, 'trafficking' is subsumed into the *Child Sexual Exploitation (CSE) Procedure 2021*²⁶⁹ and the *Tusla Child Protection and Welfare Practice Handbook 2* (2018).²⁷⁰ While the Handbook is comprehensive vis-à-vis human trafficking, the Commission notes that CSE procedure does not capture other forms of child trafficking, such as forced labour or forced criminality. The Commission is not aware of any systematic or standardised screening procedure for trafficking indicators, except in the particular cases of unaccompanied minors

268 Department of Justice (2011), *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, at para. 3 reads: "This notice [the AIA] applies to a foreign national who is identified as a suspected victim of human trafficking".

269 Tusla (2021) *Child Sexual Exploitation (CSE) Procedure (includes CSE as it pertains to Child Trafficking)*

270 The CSE procedure requires that "Any concerns or suspicion that a child is a victim of child sex trafficking must be reported to The Garda Síochána using The Child Sexual Exploitation Reporting Form and Checklist Tool". Tusla (2018) [Child Protection and Welfare Practice Handbook 2](#). Dublin

who undergo screening through the *Risk Assessment Matrix on Separated Children at Risk of Trafficking*.

Tusla reported to the Commission that the information system currently maintained by them is not configured to capture and report on cases pertaining to trafficking of children. It was reported that as part of an ongoing data review project that is being undertaken in collaboration with An Garda Síochána, 11 cases of suspected child sexual exploitation were uncovered and notified to the investigation authorities. Of these 11 cases, 4 children were in care, 10 children were Irish and one was of Roma background.

Over 2021, 18 children (including young people of unspecified age) were referred to Tusla by the IPO, Border Management Unit and An Garda Síochána. In nine of these 18 cases, a social worker (guardian) was allocated. In the rest of the cases, the children were reunited with their families. There is currently one case of a potential victim of child trafficking receiving services from the Separated Children Seeking International Protection (SCSIP) unit, while placed in foster care. The Commission notes that separated or unaccompanied children in the State who do not need (wish) to claim asylum are not represented by a specialised team within Tusla. It is of further note that the Directive's provisions for children also include assistance to child victims' families.

While the recent proposal for a new NRM, outlined in earlier sections, does not explicitly address establishing a specific identification mechanism for child victims of trafficking, it is to be noted that TUSLA is listed as one of the prospective 'competent authorities' that would make up the new mechanism, which is positive.

- » **The Commission recommend Tusla amends and configures its information system to capture clearly potential cases of trafficking in children.**
- » **The Commission recommend Tusla be 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 recommend the establishment of a dedicated team within Tusla that focuses on child trafficking and exploitation (including separated/unaccompanied among them but also those united with families), which is not intertwined with International Protection.**

General provisions on child victims (Article 13)

The unique position of child victims of trafficking is explicitly recognised in the Directive, due to the high vulnerability of child victims. The need to safeguard

the *best interest of the child* is reflected in the specialised, child-specific and targeted obligations required by the Directive. Recital 8 of the Directive states that 'Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking into human beings'.²⁷¹ The Directive provides for a range of specific additional measures for identification, assistance and protection of child victims, which Ireland has largely transposed. In that regard, Article 13 raises two issues, pertaining to unconditional assistance to child victims on the one hand, and to favourable age assessment approach on the other - both discussed in this subsection.

Unconditional assistance, best interest of the child (Article 13.1)

Article 13. 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.

Unlike in the case of adult victims, the Directive provides unlimited access to assistance for child victims in Article 13.1. Moreover, the same Article requires the best interest of the child be considered as the primary consideration.

In Ireland, the assistance to child victims is unconditional (in principle) and the best interest of the child is the paramount consideration. This, understandably, remains contingent on whether or not a child is actually identified. As no child has been identified in the last two years it is difficult to fully assess the application of 13.1. The 'trafficking-specific' measures are rather implicit in the Irish context. Instead, many of the obligations under the Directive are met by application, and sometime adjustments, to general policies, practices and laws. This approach is often evident for all victims of trafficking but is particularly so for child trafficked victims where general child welfare and immigration measures are applied with limited adaptation of the particular needs and vulnerabilities of child trafficked victims. In contrast to implementing trafficking-specific measure, this method of transposition results in the subsuming of obligations to child victims into existing systems and the complex interplay between immigration, International Protection, child sexual exploitation and trafficking, which arguably falls short of the State's obligations under the Directive.²⁷²

» **The Commission recommend the State consider the need for a legislative amendment to remove the reference to trafficking in section**

271 Cancedda A., et al. (2015) [Study on High-Risk Groups for Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 15

272 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. 6; Abbit B. (2021) [Hundreds of children referred to experts during pandemic over fears of criminal, sexual and labour exploitation](#). Manchester Evening News [online] 10th October

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.²⁷³

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.

The most fundamental element of a child-specific approach lies in the assessing of an individual as a 'child', activating a number of procedural and legal guarantees in EU and human rights law.²⁷⁴ Article 13(2) requires that, where the age of a person subject to trafficking is uncertain and there are reasons to believe they are under 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Despite the importance of such assessments it was recently observed that Tusla (the Child and Family Agency) does not currently have approved internal guidelines on age-assessments for use in determining the age of unaccompanied minors or separated children referred to their service by the International Protection Office.²⁷⁵

Until 2016, the age assessment procedure in Ireland was dealt with under section 8 of the Refugee Act 1996. Despite the introduction of some improvements in the age assessment procedure under the International Protection 2015 Act (such as the requirement that the best interests of the child shall be a primary consideration) practitioners in the area have expressed concern in relation to a number of aspects of the age assessment procedure. State agencies, such as International Protection Office encountering potentially minor victims, refer cases for age assessment to Tusla. However, Tusla takes the view that any assessment undertaken by them is for the purposes of the Child Care Act 1991 only. It is therefore unclear whether the provisions of the 2015 Act in relation to age assessment are being fully observed.

273 Such a legislative amendment would have the advantage of resolving the currently fragmented nature of the statutory framework and could assist in achieving clarity regarding the data in respect of these offences.

274 Mannion K. (2016) *Child Migration Matters: Children and Young People's Experience of Migration*. Dublin: Immigrant Council of Ireland

275 Malekmian S. (2021) '[The State Has No Guidelines for Judging If Asylum Seekers Are Children, but It Does So Anyway](#)', *Dublin Inquirer* 10 November 2021

By now, rich international guidance has been developed on the issue of age assessment by, among others, EASO, UNHCR, the Separated Children in Europe Programme (SCEP) and the Fundamental Rights Agency.²⁷⁶

115 unaccompanied children were referred by the International Protection Office (IPO) to Tusla for age assessment between 2016 and 2020, just 48 were deemed to be children.²⁷⁷ This is of significance because young people assessed as over 18 year of age are assigned to adult accommodation and deprived of child-specific services. While a young person can request a review of an initial negative age assessment, in practice such reviews can take months to determine, during which time the young person remains in adult accommodation exposed to risk and contrary to the principle of the benefit of the doubt underpinning the procedure of age assessment. The confluence of factors outlined above raises serious concerns for the Commission that the State is failing to meet recognised international best practice and its obligations under Article 13(2) of the Directive regarding the age assessment of potential child victims.

» **The Commission recommend Tusla develop a national policy or approved national internal guidelines on age-assessments for use in determining the age of suspected victims of human trafficking, unaccompanied minors and/or separated children.**

Child victim-specific support (Article 14, 15, 16)

The Directive makes distinct and detailed provision on assistance and protection of child victims. They represent a set of additional measures to those already outlined in Article 11 relating to assistance and Article 12 outlining the protections in criminal proceedings, which were discussed earlier in the report. These additional child-specific measures are grouped into 3 articles: (1) child victim assistance under Article 14, (2) protection of child victims in criminal proceedings in Article 15, and (3) extra measures directed at unaccompanied child victims under Article 16.

276 See European Asylum Support Office (2018) [EASO Practical Guide on Age Assessment](#). Luxembourg: Publications Office of the European Union; UN High Commissioner for Refugees (1997) [Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum](#); UNHCR (2008) [Guidelines on Determining the Best Interests of the Child](#). Geneva. UNHCR (2009) [Guidelines on International Protection: Child Asylum Claims under Articles 1\(A\)2 and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#), HCR/GIP/09/08; Separated Children in Europe Programme (2012) [Position paper on Age Assessment in the Context of Separated Children in Europe](#); Separated Children in Europe Programme (2011) [Thematic Group on Age Assessment — Review of Current Laws, Policies and Practices Relating to Age Assessment in Sixteen European Countries](#); EU Agency for Fundamental Rights (FRA) (2010) [Separated, Asylum-Seeking Children in European Union Member States: Comparative Report](#). Luxembourg: Publications Office of the European Union; European Asylum Support Office (2013) [EASO Age Assessment Practice in Europe](#). Luxembourg: Publications Office of the European Union, p. 9

277 Malekmian S. (2021) [‘The State Has No Guidelines for Judging If Asylum Seekers Are Children, but It Does So Anyway’](#), *Dublin Inquirer* 10 November 2021

Assistance and Support to child victims (Article 14)

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 assistance and support in accordance with Article 11, in accordance with their national law.

The general elements of assistance to trafficking victims have to be strengthened to meet the elevated needs of child victims, which emanate from their younger age, stage of maturity and greater vulnerability. Article 14 of the Directive essentially contains a guide to the provision of assistance to child victims that includes: a necessary individual assessment of the special circumstances; a mandate for securing durable solutions; taking account of the views of the child; providing education (in Article 14.1); appointment of guardian at the earliest possible stage (in Article 14.2), and; supporting the family of the child victim (in Article 14.3). Given the breadth of the protections outlined these provisions will be considered below separately.

Individual Assessment (Article 14.1)

According to Article 14(1) assistance aimed at the child's recovery must be undertaken on the basis of individual assessment of the child's personal circumstances. No corresponding level of commitment is contained in the Directive relating to adult victims.

As discussed above, Tusla are responsible for carrying out individual assessments with children. Discussed above were the operational aspects of the response to child trafficking and the need for child-trafficking specific stand-alone procedures as distinct from *CSE procedure* and the *Child Protection and Welfare Practice Handbook 2*. Both of which appear to be outdated and do not present in sufficient detail, and with full clarity, the commitment to child victims – including the purpose of the assessment under Article 14(1).

The need for an individual assessment of child victims should be read in conjunction with the obligations as they relate to the section on 'Interviews of child victims (Article 15.3)'. In particular the need to limit, as far as possible, the number of times child victim needs to repeat what has happened to them.

The Commission has had positive engagement with Tusla with regard to its role in assisting suspected victims of child trafficking. The Commission is of the view that there is an expressed commitment in Tusla to addressing child trafficking, but

that the Agency remains in the early stages of developing specific systems, manuals and expertise in this area. The Commission is of the view that Tusla, like all other agencies with proposed roles in the new National Referral Mechanism, will require adequate staffing, funding and capacity building to ensure that they can contribute effectively to the new mechanism.

- » **The Commission recommend Tusla develop 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.**

Views of the Child (Article 14.1)

The principle of 'participation' is fundamental to a child-centred, rights-based approach to service delivery for children and their families and is enshrined in Article 42A of the Irish Constitution. Tusla's founding legislation, the Child and Family Agency Act 2013, places strong emphasis on partnership and co-operation with children and families in the delivery of services. The Agency must ensure that the views of the individual child are given due weight in decisions regarding his/her care, having regard to the age and maturity of the child. Tusla is also required to seek the views of young service users as a collective in relation to service planning and review. Concrete efforts, such as surveys or other forms of feedback analysis, to illustrate this approach are yet to be presented to the Commission.

- » **The Commission recommend Tusla ensure that any professional (including *guardian ad litem*, social workers, guardians, intermediaries, lawyers, judges) who come into contact with a child victim of trafficking is trained to work with child victims of trafficking.**

Education for child victims (Article 14.1)

Every person in Ireland has a constitutional right to free appropriate primary education, based on need until the age of 18,²⁷⁸ which automatically aligns with the obligations under Article 14.1.

People with refugee status or subsidiary protection and those with humanitarian leave to remain are entitled to free third-level (university or college) education if they have been living in Ireland for 3 years or more. They may also be entitled to attend the Vocational Training Opportunities Scheme (VTOS) provided they meet the normal VTOS requirements.

278 *Sinnott v. Minister for Education* [2001] IESC 63; [2001] 2 IR 505

In contrast, under Article 14 of the EU Trafficking Directive there is no mandated access to third-level. A victim of trafficking (whether adult or child) is not entitled to access free third-level no matter their length of stay, and access to SUSI (grant system) will be dependent on meeting any relevant criteria for SUSI. Unless, of course, a victim has been granted refugee status, etc. and meets the criteria on that basis. The Temporary Residency Permit issued to victims of trafficking under the AIAs is not *humanitarian leave to remain* - instead, it is a specific status issued under International Protection Act 2015 (or historically under section 3 Immigration Act 1999). This does not entitle permit holders to access educational supports that are available to those with humanitarian leave to remain status.

Thus, there is no entitlement for access to third-level or to supports for a child victim of trafficking who is in the care of Tusla by way of provision of aftercare supports, even if they meet the criteria for provision of aftercare. It is also important to note that adult victims of trafficking may too be precluded from accessing educational supports due to their Temporary Residence status.

» **The Commission recommend child victims of trafficking be afforded the same access and supports to education, training and employment as Irish Nationals.**

Appointment of a Guardian (Article 14.2)

Article 14.2. Member 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.

The appointment of a guardian and/or a representative for child trafficked victims is essential for the safeguarding of their rights and protection, especially where the child is unaccompanied or has to be separated from their parents, as Article 14.2 mandates.

In Ireland, Tusla has responsibility for all children in need of protection, including victims of trafficking and unaccompanied children, pursuant to the Child Care Act 1991. According to Council of Europe Group of Experts (GRETA) Second Evaluation Round Report 2017, the Irish authorities indicated that the appointment of a legal guardian is not automatic but that all unaccompanied children are allocated a dedicated social worker. Only unaccompanied children who are subject to a full care order are appointed a guardian, which is also the case with all identified child victims of trafficking.²⁷⁹

279 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. 153

Tusla acts in the place of a parent for child victims of trafficking in relation to their immigration status in Ireland and also in relation to their situation as a potential trafficked victims.²⁸⁰

As with so many other areas, non-EEA nationals who are children are particularly vulnerable owing, in part, to policies and procedures that have not been intentionally designed to address child trafficking. Under the International Protection Act 2015, young people under the age of 18 are not permitted to make an application on their own behalf. Instead, section 15(1)(b) of the 2015 Act allows an application for International Protection to be made on behalf of a young person by any person over the age of 18 who is “taking responsibility for the care and protection” of the young person. There is no requirement that the adult “taking responsibility” for the young person demonstrate any legal or factual basis on which they are assuming this role. The Immigrant Council of Ireland in its *Child Migration Matters* report expressed the following concern about this provision:

“There is no clarity around how the determination is made as to whether a person is taking such responsibility and the definition is not in line with UNCRC and UNHCR definitions of separated and unaccompanied children. This fails to ensure the early identification and protection of child victims of trafficking. Furthermore, the provision does not allow for self-identification of a child as an unaccompanied minor.”²⁸¹

This lack of clarity could potentially give rise to a situation whereby a trafficker arrives in the State with a child under the age of 18 but by lodging an application for International Protection (under section 15 of the 2015 Act) on the basis that they are “taking responsibility” for the child, might avoid any scrutiny as to the true nature of the relationship or any risks that may arise for the child. This does not appear to be in conformity with a child-centred approach.²⁸²

280 The UN Committee on the Rights of the Child have noted that “Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff”. See UN Committee on the Rights of the Child (2009) [General Comment No. 12 \(2009\): The Right of the Child to be Heard](#), para. 34. It added that it is a core obligation of States to “review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary feedback on the weight given to their views, and procedures for complaints, remedies or redress”. The Committee has explained that international human rights law requires States to make clear in their legislation, policy and practice that the principle of the best interests of the child takes priority over migration and other administrative considerations. In doing so, States parties should ensure the availability of information on migration procedures, risks and rights, health and mental health support, legal representation and guardianship, interviews and other processes in a child-friendly and culturally sensitive manner. See Committee on the Rights of the Child (2012) [Report of the 2012 Day of General Discussion: the Rights of All Children in the Context of International Migration](#), para. 74

281 Mannion K. (2016). [Child Migration Matters: Children and Young People’s Experience of Migration](#). Dublin: Immigrant Council of Ireland, p. 174

282 The CRC recommends the prompt appointment of a guardian or adviser to separated or unaccompanied children (Articles 18(2) and 20 (1) of the [Convention on the Rights of the Child](#)). To create the underlying legal framework and take necessary measures to secure proper representation of a separated

The Commission is concerned that the lack of clarity in section 15 of the 2015 Act concerning when an adult is entitled to “take responsibility” for a child, creates a risk that in some cases children in the International Protection process (which may include children who are victims of trafficking) are not being afforded their right to have a guardian appointed to represent them and ensure that their interests are safeguarded and their needs are met.

The Commission is also concerned about the inherent ambiguity in section 14 of the International Protection Act that reads:

14(1) Where it appears to an officer referred to in **section 13** that a person seeking to make an application for international protection, or who is the subject of a preliminary interview, has not attained the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person, the officer shall, as soon as practicable, notify the Child and Family Agency of that fact.

Although relevant to all children, in the case of trafficked children it may be more so as they may appear (or be presented as) older. It is also likely that a trafficked child will have been coached and prepared by their traffickers to appear older than they are. Without clear and sufficient guidance and training officers may be unable to recognise when a person is child, thus leaving them outside of the protections required by the Directive.

- » **The Commission recommend specific guidelines be drawn up to provide clarity on sections 14 and 15 of the International Protection Act 2015. Providing clear guidance on the criterion on which officers use to determine when a person *may* be a child, and as to when an adult is entitled to ‘take responsibility’ for a child. This guidance must be circulated to all relevant persons and accompanied by regular child and trafficking-specific training.**
- » **The Commission recommend any appointed guardian to children who are potential victims of trafficking be specifically and regularly trained as well as availing of professional supervision.**

child’s best interests, States should “appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangement until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction”. The guardian should have a role in planning and decision-making processes, including immigration hearings and efforts to seek durable solutions for the child, and ensuring that the child’s interests are safeguarded and their needs are met. See Committee on the Rights of the Child (2005), [*General Comment No. 6 \(2005\): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*](#), para. 33

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. 4. This Article shall apply without prejudice to Article 11.

Article 14.3 requires that assistance be extended to the child victim's family, provided the family resides on the territory of the EU Member State implementing the provision.

To the Commission's knowledge, there is no specific provision for assistance to the family of a child trafficked victim, apart from family search and reunification. The social work service of Tusla operates a reunification service whereby immigration authorities refer families or adults presenting with children in cases where parentage or guardianship is not apparent. The social work team of Tusla undertake an assessment that may include DNA testing. Based on the outcome of this assessment, children are either returned to their family or where there are concerns around parentage/guardianship and/or their safety and welfare the child will be taken into the care of the State.²⁸³

While the Commission welcomes family reunification of child trafficked victims the deficiencies in training and the limited understanding of the particular dynamics of trafficking remain a concern especially where children are being reunited with family members by whom they *could* have been trafficked or risk being re-trafficked.

Protection of child victims in criminal proceedings (Article 15)

Article 15 contains multiple provisions that strengthen the protections of child victims participating in criminal investigation and proceedings. These provisions require: the appointment of a representative for the child in criminal proceedings (Article 15(1)); securing legal counselling and free legal representation without delay (Article 15(2)); a range of measures in interviewing child victims (Article 15.3); video recorded evidence (Article 15(4)), and; anonymity in court procedures to protect child victims (Article 15(5)). These provisions are similar, but stronger compared with the protection of adult victims in criminal proceeding. The implementation of Article 15(1) to 15(5) will be addressed below.

283 European Commission (2021) *Country Fiches NREM Meeting 07 May 2021: Ireland*, p. 75

Before addressing the specifics of the Directive under Article 15 as they relate to the Irish context it is worth noting that there are a number of recommendations outlined in the recently published 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. While the full implementation of the O'Malley report has the potential to assist victims of trafficking for sexual exploitation, 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).²⁸⁴ In particular, the need to bring these new child sexual exploitation offences within the free Legal Aid scheme;²⁸⁵ to extend Legal Aid to parents/guardians of child victims;²⁸⁶ and; to ensure that all victims receive the same level of support irrespective of their location.²⁸⁷ This is a space that the Commission intends to follow closely.

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.

As outlined above, according to Tusla all children who are identified as victims of trafficking are subject to a full care order and are therefore appointed a legal guardian.²⁸⁸ In essence, the system of appointing a guardian (who is usually the child's social worker) fulfils the obligations in Article 15(1). The guardian will act *in loco parentis* supporting the child throughout the criminal investigations and other legal proceedings.

284 See O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), p. 45

285 O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), para 7.16

286 O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), para 7.17. Needless to say, this would not apply where the parent or adult in question was the suspected or alleged offender.

287 O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), para 9.24

288 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, p. 40

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.

Within the Irish legal system a child victim, in common with all victims in criminal proceedings, does not have a right to their own legal counsel or to legal representation in criminal proceedings. However, a child victim has the right to receive free legal *advice* from the Legal Aid Board in relation to the trafficking offence.²⁸⁹ Additionally, the Legal Aid Board, through its specialised Separated Children Seeking International Protection Unit, offers legal advice to all unaccompanied minors seeking asylum who register with its service.

Tusla's obligations to child victims of trafficking involve receiving children into the care of the social work service and ensuring they have access to legal aid and support with any interviews they might need to attend. The Commission is unsure if it is the practice of Tusla to seek early legal advice for children. The Commission remains uncertain whether there is a sufficient awareness among Tusla staff that a solicitor must be engaged in each child victim case *without delay*. Including, as Article 15(2) states, for the purposes of seeking compensation.

The Commission is also concerned that unaccompanied child victims do not always receive *early* legal counselling regarding fundamental decisions such as an application for International Protection. Failing to do so undermines the principle of working towards a durable solution for child victims, as required in Article 15.2 and Article 16 of the Directive.

- » **The Commission recommend Tusla amend its policies to ensure the engagement of legal professional for legal counselling in cases of suspected child victims *without delay*, as required in the Directive, including for the purposes of claiming compensation.**
- » **The Commission recommend Tusla consider the mandatory appointment of a specially trained legal advisor to every child suspected of being a victim of trafficking at the earliest stage.**

289 Section 26 of *Civil Legal Aid Act 1995 (as amended by section 3 Civil Law (Miscellaneous Provisions) Act 2011)* expended the remit of the Legal Aid Board to grant legal advice to a person who is an alleged victim of a human trafficking offence 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)".

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:

- interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
- 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 adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

Article 15(3) mandates special attention and parameters for the safe interviewing of child victims of trafficking. It requires that children be interviewed without unjustified delays, and that the number of interviews is limited in order to avoid prolonging anxiety and the infliction of unintended trauma. It also requires that special child-friendly premises be established for interviewing child victims. Child victims should be interviewed by trained interviewer and, if possible, the same person conduct all interviews with the child. The accompaniment of the child during interview, including by an adult of the child's choice, must be facilitated unless this is unfeasible.

The Commission is pleased to report that An Garda Síochána has made significant progress in this particular area in recent years with the establishment of dedicated interview suites located separately from Garda stations. With the primary purpose of improving the conditions for victims, (in particular children and persons with intellectual disabilities) these suites are situated in various locations across the country.²⁹⁰ These suites provide a victim-centred environment within which vulnerable victims can be interviewed and give statements which are recorded. As part of the increased specialisation through, in particular the DPSU, specialist trained Gardaí undertake interviews with child victims and with victims of sexual crimes (which is of course essential in the case of trafficking for child sexual exploitation). While this is generally the case, child victims continue to have varied

²⁹⁰ It is understood that such suites have by now been established in North Dublin, South Dublin, Cork City, Limerick City, Galway City, Waterford City, County Sligo, County Donegal and County Cavan.

experiences of being interviewed by An Garda Síochána,²⁹¹ with both positive and negative experiences.

In regards to repeated interviews, the use of recording technologies provided for in section 16 of the Criminal Evidence Act 1992²⁹² provides for the pre-recorded statement to the Gardai “by a person who is under 18 years in relation to an offence of which he or she is a victim” is admissible at trial. While this has improved the situation somewhat, the Commission remains concerned that child victims are still undergoing repeated interviews that can cause delays and significant re-traumatisation. While there are examples of good practice - such as the expansion of the Barnahus Model²⁹³ and the Joint Working Protocol for An Garda Síochána/ Tusla²⁹⁴ - the Commission remains concerned that progress is slow and implementation inconsistent.

- » **The Commission recommend that all child trafficking victims (on account of their particular vulnerabilities) be included in the ‘Barnahus model’ already operating in the State.**
- » **The Commission recommend that the recently established specialist settings for interviewing vulnerable children be made a standard in interviewing all child victims of trafficking.**

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.

The Directive’s Article 15.4 obliges Member States to establish the possibility to record all interviews with child victims (or child witness) with a view to using them in criminal court proceedings.

291 Kil Kelly U. and Forde L. (2020) [Children’s Rights and Police Questioning: A Qualitative Study of Children’s Experiences of being interviewed by the Garda Síochána](#). Centre for Children’s Rights and Family Law School of Law University College Cork

292 Amended by the *Criminal Justice (Victims of Crime) Act 2017* (s. 30)

293 The Barnahus model was launched in Ireland in September 2019 as an interagency response to child victims of sexual abuse. The pilot site for the service was situated in Galway and a second location site is planned for the South. The aim of the Barnahus approach is to coordinate forensic interviewing, medical examination and therapeutic screening of children and families affected by sexual abuse under one roof, in order to prevent children from being re-traumatised by lengthy and repetitive investigations. The Government has committed to the expansion of this model. See Department of Children, Equality, Disability, Integration and Youth (2021), [Written answer to Parliamentary Question: Child Protection](#) (31 March 2021)

294 [Joint Working Protocol for An Garda Síochána/Tusla – Child and Family Agency Liaison](#)

As outlined above, section 16 of the Criminal Evidence Act 1992 allows for video-recorded evidence to be used at trial,²⁹⁵ once certain conditions are met.²⁹⁶

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. 6. This Article shall apply without prejudice to Article 12.

Article 15.5 regulates the conducting of criminal court proceeding where child victims of trafficking are involved. It requires the possibility of closed proceedings and for facilitating the child to be heard without being physically present in the courtroom through the use of appropriate communications technologies. This article strengthens the general provision relating to protections in court hearings discussed in Article 12.

Under s. 257 of the Children Act 2001, in any criminal proceedings, when a child is called as a witness, the court may exclude from the court during the taking of his or her evidence all persons, with a few exceptions.²⁹⁷ Additionally, child victims (witnesses) are facilitated to give evidence via video link in criminal trials.²⁹⁸

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.

295 As amended by the s.30 of the *Criminal Justice (Victims of Crime) Act 2017*

296 Such a recording shall not be so admissible unless the person whose statement was video recorded is available at trial for cross-examination. Such a recording or any part of it shall not be admitted if the court is of the opinion that its admission would not be in the interests of justice.

297 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.

298 s.13 of the *Criminal Evidence Act 1992*

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.

Article 16 contains three distinct provisions that strengthen the measures for assistance and protection of unaccompanied child victims of trafficking. These provisions require that the personal circumstances guide the assistance and protection for such children (16.1); that the State directs its efforts in finding durable solution in these cases (16.2), and; that a guardian is appointed to each child (16.3). These three provisions are discussed below with reference to already discussed points on child victims of trafficking.

Article 16.1 essentially strengthens the provision of Article 14.1 by requiring that in the ongoing assessment (in the short and long term) due regard be taken of the special personal circumstances of the unaccompanied child victims. It must also be acknowledged that provisions for family reunification are strengthened where the child is an unaccompanied minor; in accordance with Tusla policy.²⁹⁹ Though it should be noted that this obligation derives from their status as an unaccompanied minor and not by virtue of them being a child victim of trafficking. For further information on implementation, please refer to Article 14.1(a).

Article 16.2 places an obligation on the Member States to identify and secure durable solutions for the future of unaccompanied child victims; based on the child's best interest. In this regard, the Immigrant Council of Ireland study *Child Migration Matters* noted that a person aged 18 or over can apply to change their status when they have held a Temporary Residence Permit for three years, or when the investigation into the trafficking offences is complete. The result is that children trafficked under the age of 15 are required to wait for a longer period of time before becoming eligible for a change of status. This may be particularly relevant to trafficked children who are unaccompanied, and appears contrary to Article 16.2 that mandates for a more permanent (durable) solution for minor victims.

The decision to apply for International Protection will be made by the child's guardian, which in the case of unaccompanied minors will likely be a Tusla social worker. Despite the fact that early legal advice is considered crucial to victims of trafficking, there is no requirement that the Tusla social worker seek immediate legal advice on behalf of the child in deciding whether and when International Protection could be sought. This decision may have serious and long-term ramifications for an unaccompanied child victim running counter to the requirement to find a durable solution directly required by Article 16.2.

In recognition of the compounded vulnerabilities of unaccompanied children Article 16.3 of the Directive sets out specific protections. As stated above, Tusla has a

299 Tusla, [Separated Children Seeking International Protection](#)

dedicated procedure and specialist service for unaccompanied minors. This procedure includes a Risk Assessment Matrix on Separated Children at Risk of Trafficking. At present, all unaccompanied children are allocated a dedicated social worker. Only unaccompanied children who are subject to a full care order are appointed a guardian as is the case with all identified child victims of trafficking.³⁰⁰

- » **The Commission recommend the NRM remove 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 recommend Tusla ensure 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.**

Prevention of Child Trafficking

According to the 2020 Global Report on Trafficking in Persons³⁰¹ produced by UNODC,³⁰² the number of child victims of trafficking tripled over the last 15 years and one in every three identified victims is a child. An in-depth examination of cases shows that certain cohorts of children are particularly at risk of trafficking.³⁰³ Traffickers target irregular migrants and teenagers with difficult upbringings, those in desperate need of employment, and children living in extreme poverty. High proportions of child-trafficking cases involve platforms with higher levels of anonymity such as social media sites, whilst cases where the victim is an adult are more likely to involve the use of freestanding webpages and other platforms involving open advertisements.³⁰⁴

- » **The Commission recommend trafficking (as a serious form of child abuse) be specifically included in Children First Guidelines and all associated training.**

In addition to the recommendations outlined elsewhere in this report as they relate to the prevention of human trafficking and given the unique vulnerabilities of children, a multifaceted strategy is essential to prevent child trafficking.

300 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, para. 153

301 UN Office on Drugs and Crime (UNODC) (2020) [Global Report on Trafficking in Persons 2020](#). Vienna: United Nations

302 United Nations Office on Drug and Crime

303 UN Office on Drugs and Crime (UNODC) (2020). [Global Report on Trafficking in Persons 2020](#). Vienna: United Nations, p. 23

304 UN Office on Drugs and Crime (UNODC) (2020). [Global Report on Trafficking in Persons 2020](#). Vienna: United Nations. p. 15

- » **The Commission recommend the State adopt a multi-faceted strategy in preventing child trafficking that includes:**
 - » **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 children³⁰⁵**
 - » **education and awareness-raising amongst the private sector and civil society³⁰⁶**
 - » **strengthened co-operation and co-ordination among relevant authorities³⁰⁷**
 - » **prosecute the misuse of ICT³⁰⁸ to recruit or facilitate access to children**
 - » **promote age and consent verification technologies³⁰⁹**
 - » **encouraging ICT to prevent the distribution of and take down CSA³¹⁰ content online**
 - » **specialized training on ICT for frontline workers³¹¹ to combat all forms of child trafficking³¹² and broaden the scope of frontline responders to identify child victims of trafficking and other sexual exploitation.³¹³**

305 Including crimes committed in another country.

306 Priority should be given specially to the tourism industry given the risks it represents for child trafficking.

307 These include law enforcement and immigration and border management officials.

308 Information Communication Technology, including social media companies.

309 For a full discussion on the need for both age and consent verification, see 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](#)

310 Child Sexual Abuse.

311 Border officials, law enforcement officials, judges, prosecutors, immigration and other relevant officials as well as teachers and health professionals, as appropriate.

312 Including other sexual exploitation of children

313 OSCE (2017) [Decision No.7/17 Strengthening Efforts to Combat all Forms of Child Trafficking, Including for Sexual Exploitation, as well as Other forms of Sexual Exploitation of Children](#), MC. DEC/7/17. Vienna. See also, OSCE (2018) [Decision No.6, Strengthening Efforts to Prevent and Combat Child Trafficking, Including of Unaccompanied Minors](#), MC. DEC/6/18. Milan.

7. Prevention of Human Trafficking

- » Prevention measures (Article 18.1 and 18.2)
- » Training government officials (Article 18.3)
- » Reduction of demand that fosters Human Trafficking (Article 18.4)
- » The digital dimension of Human Trafficking
- » Funding

Article 18 of the Directive contains specific provisions on prevention. Focused, in particular, on awareness, training and education to reduce the risk of people becoming victims of trafficking crimes. Moreover, the Directive sets out measures to reduce the demand that fosters all forms of exploitation through education, awareness raising and direct penalisation of users. It is essential here to recall that Article 1 requires a gendered approach be adopted in prevention efforts, where necessary.

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 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 (Article 18.1 and 18.2)

Prevention is a priority aim in the EU Strategy on Combatting Trafficking in Human Beings 2021-2025;³¹⁴ particularly in relation to reducing the demand that fosters all forms of exploitation. Some of the essential prevention measures required by the Directive include education and awareness raising that address the role of the internet in the facilitation of trafficking, and training of frontline workers. In brief, the Anti-Trafficking Directive aims to reduce the risk of people, especially women and children, of becoming victims of this crime as well as to reduce demand that fuels human trafficking.

314 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

Awareness Raising

Over the years, specialist NGOs and the State (either separately or jointly) have undertaken a number of important anti-trafficking awareness campaigns both nationally and regionally. Examples of such campaigns include:

- **Stop Traffick** – An EU-funded transnational project led by the Immigrant Council of Ireland from 2012-2014. The Campaign focused on the prevention of human trafficking by reducing the demand that fosters the exploitation of female victims of trafficking through prostitution, by conducting international research on users of service.
- **Turn Off the Red Light** (2011-2017)– The campaign comprised of over 70 NGOs and Trade Unions with the aim of raising public awareness about the harm of prostitution and sex trafficking. The campaign also lobbied of the introduction of legislation to end the exploitation of women, men and children in the sex industry.
- **Forced Labour and Trafficking Campaign** (2012-214) – Coordinated by Migrant Rights Centre Ireland, the campaign aims included raising awareness of this situation in of forced labour and trafficking in Ireland and changing the law on forced labour.
- **The International Transport Workers' Federation (ITF)** has been running a decade long campaign to raise awareness of trafficking within the commercial fishing industry (an internationally recognised high-risk sector for human trafficking). The campaign seeks to improve migrant fishers' working lives in Ireland. .
- **#anyone** - The 2020 campaign is led by the International Organisation for Migration and the Department of Justice., The aim of the campaign is to raise awareness and to empower the public to recognise the signs of human trafficking.
- **Know the Signs** – The campaign is part of the overall Blue Blindfold Campaign that is coordinated by the Department of Justice. The campaign aims to raise awareness of trafficking in Ireland.
- **We Don't Buy It** - The 2020 campaign was the combined effort of Ruhama, SPACE International, the Sexual Violence Centre Cork, and the Men's Development Network. This campaign challenged the myths surrounding prostitution and the justifications made by those who buy sexual services.
- **ASSIST: Assisting Trafficked Women**, is a campaign that is part of an international project led by the Immigrant Council of Ireland. The campaign produced tools for gender-specific assistance to female victims of trafficking for the purposes of sexual exploitation.

- **Cork Against Human Trafficking (CAHT)** – An enduring campaign led by a consortium of partners, including Cork Sexual Violence Centre, NASC, MECPATHS, The Gardai, The Legal Aid Board, HSE, UCC and Kevin Hyland (Irish expert to the Council of Europe GRETA). This campaign raises awareness of the signs of human trafficking focussing, in particular, on the raising awareness amongst the general public of the scale of human trafficking in Ireland.
- **Get the Full Picture** - The campaign was launched by Ruhama in 2021. This is an innovative campaign that has been developed in collaboration with survivors of human trafficking. It aims to highlight the prevalence of human trafficking for sexual exploitation throughout Ireland and tells the stories of those who are impacted by it. Using outdoor advertising, national radio advertisements, digital media and regional workshops to raise awareness and tell survivor stories.
- **Beyond Exploitation** - Launched in 2021 Beyond Exploitation is Ireland's Civil Society Campaign for equality and freedom from sexual exploitation. The campaign is led by the National Women's Council, with partner organisations Ruhama and ICI, the campaign supports the most vulnerable and silenced people in prostitution to have a voice and a choice. The campaign focusses on the need for exit pathways out of prostitution.

While the gendered nature of trafficking for sexual exploitation is recognised in these campaigns, there is a lesser focus on child trafficking. In addition, there appears to be a lack of sufficient awareness around trafficking for lesser-known or novel forms of exploitation such as trafficking for forced criminality or labour exploitation. A full outline of training and awareness raising campaigns led by specialist NGOs is available in Appendix 3.

Education in Schools/Education Settings³¹⁵

To tackle the demand that drives trafficking, education and prevention modules that include all forms of exploitation and human trafficking must be integrated into relevant subjects in primary, post primary and tertiary education programmes. Given the reforms that are currently underway, there is a scope for the inclusion of trafficking and exploitation education within the reformed Social, Personal and Health Education (SPHE) and Relationships and Sexuality Education (RSE) programmes.³¹⁶

315 'Education and knowledge of trafficking in persons among all members of society are key to beating human traffickers. You have to use all of the means at your disposal to raise awareness about the crime, its nature, causes and damage to victims - Governments, civil society, the press, private companies: each and every entity must work toward promoting knowledge of this issue.' Dr Chutikul UN Office on Drugs and Crime (2017) [Awareness and Education are Key to Beating Human Trafficking](#). [Website].

316 O'Higgins S., Galvin M. and Kennedy C (2007) [The Implementation of SPHE at Post-Primary School Level: A Case Study Approach](#). Social, Personal & Health Education Support Service (Post Primary); Department of Education and Skills (2013) [Looking at Social, Personal and Health Education: Teaching and Learning in Post-](#)

While *consent* may be an aspect of education and intervention programmes, a failure to include basic analysis of inequality, coercion and exploitation will fall short of the standards required to combat behaviours and attitudes that foster demand for trafficking.

Younger people are particularly attuned to awareness appeals,³¹⁷ to harness this energy national media campaigns, such as *We Don't Buy It*, should be adapted to be rolled out in schools and education settings.

At present, human trafficking is not a standardised part of the curriculum for social worker graduates in Ireland - with the exception Maynooth University, which includes a taught module on trafficking in the Social Work Master's programme. The Commission welcomes the introduction of trafficking-specific modules as part of professional qualifications, especially so for persons who are likely to come in to contact with persons who may have been trafficked, or those who are at risk of trafficking. It is the Commissions understanding that some Higher Education Institutions are considering the development of a post-graduate training course on Human Trafficking, which is a welcome development.

- » **The Commission welcomes the embedding of accredited trafficking training into professional qualifications and recommend that other relevant professions who are likely to work with, or encounter victims of trafficking adopt this approach.**
- » **The Commission recommend the reform of SPHE and RSE to include the necessary information raising awareness about human trafficking, which address the notion of the demand that drives various types of exploitation as well as the risk factors that make people susceptible to becoming a victim of this crime.**
- » **The Commission recommend that awareness raising campaigns aimed at younger audiences be rolled out nationwide.**

Training government officials (Article 18.3)

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.

[Primary Schools](#). Dublin: Evaluation Support and Research Unit Inspectorate Department of Education and Skills.

317 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), pp. 42-60.

From the Commission's consultations, it is clear there is great variation between the levels and type of training that frontline workers receive – most especially amongst those who are likely to encounter victims of human trafficking. Of those who encounter victims, many frontline workers take it upon themselves to avail of training and education opportunities when they arise. Frontline personnel are deeply committed to meeting the needs of victims they work with. However, with the exception of An Garda Síochána (DPSU and NPSB), there appears to be limited formal requirement or standardised training for frontline staff. Examples of training initiatives among State bodies are outlined below:

- **An Garda Síochána** - The HTICU provide human trafficking training which is embedded into the core-training curriculum of the Garda Training College.³¹⁸ Beyond core curriculum, specialised human trafficking training is also provided. As of the end of 2019, one thousand, four hundred and eighty-nine members of An Garda Síochána underwent this training³¹⁹. The HTICU members have received specialist training from Europol, Interpol, CEPOL, the European Commission and the FBI, as well as partaking in joint human trafficking training activities with the UK authorities and the Police Service of Northern Ireland.
- **Office of the Director for Public Prosecutions** - In November 2020, the Office of the Director for Public Prosecutions collaborated with the U.S. Embassy for a number of Human Trafficking webinars hosted by the U.S. Department of Justice's Human Trafficking Prosecution Unit.
- **Port Authorities and the Border Management Unit (BMU)** - Irish Port Authorities received online introductory training on human trafficking during 2021.³²⁰ New recruits of the BMU receive a module on detecting cases of human trafficking at ports of entry as part of their induction training. BMU's existing officers also participated in human trafficking sessions over 2021, including an e-learning module to understand, identify, and respond effectively to human trafficking at the border. Additionally, staff attended a training session on modern slavery and exploitation delivered by the UK Border Force and UK National Crime Agency. BMU officers ran a safeguarding operation in Dublin Airport at the end of 2021, for which they undertook an online human trafficking module and information session regarding potential indicators of trafficking. This operation aimed to develop awareness on human trafficking among officers and to offer insights into potential indicators of human trafficking.

318 By the end of 2019, a total of four thousand, nine hundred and sixty-three members of An Garda Síochána had been provided with core curriculum human trafficking related training. However, due to the COVID-19 pandemic and during 2020, a large number of trainees and instructors were deployed to frontline duties.

319 Due to the COVID-19 restrictions, this specialised training was also impacted and could not be provided to new members in 2020 and 2021.

320 The training included the introduction of the issue, prevention and protection responses, labour exploitation and labour migration. Department of Justice sources.

- **International Protection Accommodation Service (IPAS)** – The Commission is aware that members of the Resident Welfare Team received training on carrying out Vulnerability Assessments³²¹ covering a range of relevant skills, but specific module on trafficking could not be discerned from the information provided.³²² It is important what to clarify what specific training the social workers who conduct Stage Two Assessments receive.³²³
- **Workplace Relations Commission** - To date, 45 inspectors have been trained in identifying signs of human trafficking. Of the 15 remaining inspectors, the majority have or will receive general trafficking in human beings awareness training as part of their induction. To the Commission's knowledge, around two-thirds of inspectors are trained in the indicators of human trafficking. The WRC is intending to carry out trafficking in persons training for all inspectors by An Garda Síochána in 2022.
- **Tusla** – To date, 945 Tusla staff have completed the Child Sexual Exploitation (which includes trafficking) e learning module. While this is a positive development, the Commission is not aware of any trafficking-specific training that is *mandatory* for Tusla staff in general or for those who are working with, or who are likely to encounter, child victims of trafficking. Despite this obvious gap, the Commission is pleased to note that Tusla have begun training staff specifically in child trafficking, most importantly in response to the increased risk of child trafficking for children who are fleeing the war in Ukraine.
- **Department for Social Protection** – While not training *per se*, the Department for Social Protection have risen awareness among frontline staff in Intreo Centres through the dissemination of Circular 11/18.³²⁴ The document advises staff on the crime of human trafficking, the indicators and signs of human trafficking, additional resources of information and contact details to report the and suspicion.³²⁵ The Commission is not sure whether the Circular is supported by any other measures or is intended to be issued on a repeated basis.

321 The Commission has been informed that IPAS developed and rolled out training on Vulnerability Assessment to the Resident Welfare Team in October 2021. Two non-governmental organisations were contracted to deliver training for staff conducting the Vulnerability Assessments to allow them to ask the questions in a respectful and empathetic way, while also ensuring all necessary and relevant information was obtained. The training received by the Resident Welfare Team included interview skills, de-escalation skills, the psychological impact of experiencing traumatic events in the context of war and migration and medical and health-related perspective on survivors of violence. IPAS sources.

322 SPIRASI provided training that covered: Psychological impact of experiencing traumatic events in context of war and forced migration with Anne Carpenter, Psychotherapist; Survivors of Violence: A medical and Health-related Perspective with Dr Máirtín Ó Maoláin; Intercultural Awareness & Effective Psychosocial Assessment & Barnardos provided training that covered: Interview skills; De-Escalation skills

323 At present, there is only one social worker who is supported by two student social workers. There is no option for a person to specify a preferred gender of the social worker; this is not victim-centred.

324 Department of Justice sources

325 Department of Justice sources

- **Other State Bodies and Agencies** - Members of the Legal Aid Board attended a number of human trafficking seminars and webinars throughout 2021 organised by different organisations, including IOM Ireland and TRALIM (Training of Lawyers on European Law Relating to Asylum and Immigration).³²⁶ The Immigrant Council of Ireland provided the Legal Aid Board with online training on Anti-Human Trafficking. The Commission also learned that staff at the Legal Aid Board are aware of online training opportunities and have undertaken courses in human rights and gender and domestic violence training organised by the Law Society.³²⁷ Ruhama provided online training on sex trafficking and prostitution to members of the Department of Justice focusing on the identifiers and supports necessary when working with persons who have been exploited through sex trafficking and prostitution. The training provided an understanding of the issues faced by victims of sex trafficking and prostitution and how to respond appropriately.

At present, the Commission is not aware of any human trafficking specific training requirements for other State agencies or bodies.

Specialist NGOs such as Ruhama, Immigrant Council of Ireland, MRCI, Doras, Cork Sexual Violence Centre and MECPATHS are invaluable in providing training, education and support not only to victims of trafficking but also to the State. The Commission welcomes the State's increased funding of initiatives to prevent and raise awareness of human trafficking by a range of CSOs. Funding is being provided in the areas of specialist services, advice and support; awareness raising; and frontline training.³²⁸ Increased funding is particularly important in the context of proposals for a new NRM, which will incorporate several State agencies and Civil Society Organisations (CSOs) as 'trusted partners'.³²⁹ It can be observed that increased funding to NGOs led to an increase in capacity to offer additional training.³³⁰ Despite these positive steps, organisations stressed to the Commission that the demand for training continued to outpace the organisations capacity. A lack of coordination of training available was also highlighted by NGOs as an issue that needs particular attention. More recently, owing to the war in Ukraine, requests to frontline specialist NGOs to provide training to State agencies on trafficking has increased, which has to be taken into consideration for funding allocation. . For full details of funding and specialist training provided by NGOs and CSOs please see 'Funding', below. A more detailed list of the rich and varied training initiatives undertaken by NGOs is available in Appendix 3.

326 Department of Justice sources

327 Legal Aid Board sources

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

329 Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#).

330 See [Section 7](#) (Funding, page x of the report)

Reduction of demand that fosters Human Trafficking

Demand is a root cause of trafficking in human beings.³³¹ €29.4 billion was the estimated annual profit from trafficking in 2015 at the European level.³³² Art. 18.1 of the Anti-Trafficking Directive establishes an obligation on States to take appropriate measures to discourage and reduce the demand that fosters all forms of exploitation,³³³ and Art 18.4 focusses on the causes of demand that fuels trafficking.

Criminalising users of services (Art.18.4)

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.

It is a legal obligation of the Anti-Trafficking Directive to change the wider environment in order to reduce the incentives for trafficking by targeting demand. According to Art. 18(4), Member States have an obligation 'to at least consider criminalising those who knowingly use the services of victims of trafficking'. Those who directly use and abuse the victims, as well as those who act as promoters, facilitators, the profiteers and those who create and contribute to creating an enabling environment (the users) must be addressed in the national response in order to successfully prevent trafficking. The 'user' of exploited services in the context of trafficking for forced labour is often many degrees separated from the trafficking victim. Whereas in the context of sexual exploitation, the end 'user' is in direct and intimate contact with the victim. Therefore, it is reasonable to pursue efforts to criminalise 'users' in the context of trafficking for forced labour within the supply chains³³⁴ and to criminalise the user (the buyers) of sexual services, respectively.

While various approaches exist in different EU Member States,³³⁵ Ireland has opted

331 Committee on the Elimination of Discrimination against Women (2020). [General recommendation No.38 \(2020\) on Trafficking in Women and Girls in the Context of Global Migration](#), CEDAW/C/GC/38, p. 7

332 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

333 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

334 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

335 European Commission (2016) [Report from the Commission to the European Parliament and the Council](#),

for the criminalisation of the knowing use of 'services' of a trafficked person of sexual services.³³⁶ Limited to trafficking for sexual exploitation, the Act provides for a defence where the defendant can "prove that he or she did not know and had no reasonable grounds for believing, that the person in respect of whom the offence was committed was a trafficked person".³³⁷ The introduction of this provision saw the shifting of the burden of 'knowledge' from the State to the accused person (the 'user'), through the Criminal Law (Sexual Offences) Act 2017, potentially strengthening the effect of this position.

Trafficking for sexual exploitation³³⁸

As stated above, the demand that drives trafficking for the purpose of sexual exploitation involves the 'direct and intimate contact' of the end user (the buyer) with the victim.³³⁹ Buyers are disproportionately men paying to access women for sexual gratification. As such, these buyers are the direct drivers of the demand that fosters trafficking for sexual exploitation.³⁴⁰ The estimated annual revenue from trafficking for sexual exploitation in the EU is €14 billion.³⁴¹ Online advertisement platforms act as an additional enabler of this form of exploitation, with the majority of victims being women and children.³⁴² Online advertisement facilitates both the supply of trafficked victims for sexual exploitation and the demand for those services, since it reduces the risks for buyers by affording them anonymity and privacy.³⁴³ These platforms also benefit traffickers who are able to further

[assessing the impact of existing national law, establishing as a criminal offence the use of services, which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 \(2\) of the Directive 2011/36/EU](#), COM (2016) 719 final. Brussels: European Union.

336 *The Criminal Law (Sexual Offences) Act 2017* decriminalised the selling of sexual services, and introduced a new offence of purchasing of sexual services. The legislation also introduced a specific offence penalising the use of sexual services from trafficked victims in s.5(2A) *Trafficking Act 2008*

337 *Trafficking Act 2008*, s.5(4)

338 Trafficking as a form of GBV, the environment of prostitution, Sexual Offences Bill, Evaluation

339 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

340 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, pp. 18-19

341 European Commission (2016). [Report from the Commission to the European Parliament and the Council, assessing the impact of existing national law, establishing as a criminal offence the use of services, which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 \(2\) of the Directive 2011/36/EU](#), COM (2016) 719 final. Brussels: European Union, p. 6

342 OSCE Office of 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. 14; Europol (2018). [Criminal networks involved in the trafficking and exploitation of underage victims in the European Union](#). The Hague, p. 7

343 OSCE Office of 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](#)

conceal their criminal activities and reduce risks by distancing victims from law enforcement and anti-trafficking service providers.³⁴⁴

The Criminal Law (Sexual Offences) Act 2017 is the most comprehensive legislation that aims to reduce the demand driving commercial sexual exploitation. The legislation also strengthens the national legal framework on trafficking in human beings with regard to online grooming of children for sexual exploitation and by strengthening the provisions penalising the use of sexual services from trafficked victims. The importance of this legislation in the detection of trafficking and sexually exploited victims has already been discussed in detail above³⁴⁵. The Commission welcomes the increased attention paid to the high-risk environment of the commercial sex trade³⁴⁶ that was brought about through the introduction of Part IV of the Criminal Law (Sexual Offences) Act 2017 and urges the completion of the planned review of this new law.

- » **The Commission recommend the State 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.**

[analysis of technology tools](#). Vienna, p. 13

344 OSCE Office of 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. 17

345 See [Section 4 Mechanism for Early Identification \(Article 11.4\)](#). In particular AGS – screening for victims of trafficking for sexual exploitation, at p. x of the report.

346 In particular through intelligence-led investigations, public awareness campaigns and increased prosecutions.

The Digital Dimension of Human Trafficking

Evidence suggests the Covid-19 pandemic may have actually assisted in the expansion of trafficking in persons, particularly so through the increased use of digital technologies.³⁴⁷ Traffickers use social media platforms and dating applications to recruit victims simultaneously³⁴⁸ often in different countries. Technology is also used to exert control through digital monitoring and spyware.³⁴⁹ Intimate images, videos and private information are also used to coerce victims into exploitation, often through deploying the 'lover boy' technique. Technology is also used to keep victims entrapped.³⁵⁰ In trafficking for labour exploitation, victims are mainly recruited through online job advertisements published on traditional job-seeking engines, social media apps and mutual aid groups.³⁵¹ In child trafficking, evidence suggests an increase in the use of 'live web cams' and 'pay-as-you-go' video chat applications.³⁵² As such, technology companies play a significant role in preventing trafficking by implementing self-initiated measures and that which is required by law.³⁵³

In Ireland, it is estimated that more than 650 women are typically advertised for prostitution online every day,³⁵⁴ in addition to the likely presence of more hidden subgroups and private markets of coerced and trafficked women within the Irish sex trade.³⁵⁵ A fundamental feature of trafficking for sexual exploitation³⁵⁶ is the

347 In Hotline.ie's [2020 Annual Report](#), quarter of reports received from the public related to cases involving 'hundreds and thousands' of child sexual abuse images and videos. There was a 142 per cent increase in the amount of child sexual abuse material which appeared to have been 'self-generated' and, 1 in 2 child sexual abuse sources included video content, marking a 55% increase in child sexual abuse video content over 2019 figures of same. The report noted that 42% of child sexual abuse reports related to content that was indicative of being in commercial nature with Hotline.ie believing that it had been produced or was being used for the purpose of financial gain by the distributor. Last year, the organisation traced child sexual abuse material to 31 countries worldwide, with 56% of the content hosted in Europe. Emerging evidence from NGOs suggest that traffickers are using webcams, social media and online games to access potential child trafficking victims.

348 Council of Europe Group of Experts on Action against Trafficking in Human Beings (2022). [Online and Technology-Facilitates Trafficking in Human Beings](#), p. 11

349 UNODC (2019) [Education for Justice Initiative, Module 14: Technology facilitating trafficking in persons](#)

350 Europol Operations Directorate (2020). [The Challenges of Countering Human Trafficking in the Digital Era](#), p. 3

351 GRETA (2022), [Online and Technology-Facilitates Trafficking in Human Beings](#), p. 12

352 GRETA (2022), [Online and Technology-Facilitates Trafficking in Human Beings](#), p. 12

353 According to OSCE, the following initiatives are good practices to prevent technology facilitated trafficking: safety by design; age and consent verification; regulation.

354 Cross Party Group on Commercial Sexual Exploitation (2021) [Online Pimping. An Inquiry into Sexual Exploitation Advertising Websites](#), p. 15

355 This is a demonstration paper for the In-Use Paper titled [Using a Knowledge Graph to Combat Human Trafficking](#) by Szekely p. et al. presented at ISWC 2015

356 In 2020, the popular adult site *Pornhub* withdrew more than nine million videos and sexual images following an investigation that concluded that the vast majority of the individuals featured were underage and trafficked for the purposes of providing sexual content; See Buckley C. (2021) ['Criminalising Online Sexual](#)

use of digital technologies in the advertising of 'sexual services' of victims to buyers. The Criminal Law (Sexual Offences) Act 2017³⁵⁷ combined with aspects of the Harassment, Harmful Communications and Related Offences Act 2020³⁵⁸ go some way in addressing cyber-enabled trafficking. Both the Online Safety and Media Regulation Bill³⁵⁹ and the Communications (Retention of Data) Bill 2017 represent a significant opportunity to aid in the investigation and prosecution of technology-facilitated trafficking. Particularly so through the incorporation of a statutory mechanisms for collecting and storing online evidence, and accessing electronic devices which will be extremely important in securing prosecutions of trafficking offences..³⁶⁰ These Bills (and subsequent Safety Codes) has the potential to disrupt traffickers' operations. Safety Codes must specifically address all forms of trafficking, with a particular focus on trafficking for sexual exploitation. The sex trafficking industry is estimated to spend about \$30 million on online advertising each year on hundreds of websites.³⁶¹

[Abuse in Ireland: A Further Step Towards Ensuring the Protection of Human Rights](#), *Human Rights Pulse*, 23 February

357 The Criminal Law (sexual Offences) Act 2017 introduced a number of new offences relating to child sexual exploitation and child sexual abuse. In particular, the Act introduces a specific offence relating to the use of communications technology to facilitate the sexual exploitation of a child. The offence includes offences relating to online grooming of children whereby communicating, via communication technologies, with a child for the purpose of the sexual exploitation of that child is criminalised. So too is the sending of sexually explicit material to a child. The law introduced new offences and strengthened existing offences relating to child pornography. Among these is an offence of attending a live pornographic performance involving a child, including attendance via the use of information and communication technology. The provisions contained in Part IV of the Criminal Law (Sexual Offences) Act 2017 relating to the purchase of sexual services from a prostitute and a trafficked person have the potential to significantly disrupt demand for such 'services'. Despite the fact that publishing or distributing any advertisements for brothels or prostitutes in Ireland is prohibited this does not cover advertisements located (hosted) outside the State, which has resulted in the main website advertising prostitution in Ireland being located outside the jurisdiction.

358 The introduction of Coco's Law (Harassment, Harmful Communications and Related Offences Act 2020) marks another important legislative change in regards to tackling online abuse and harm. The Act provides for new offences to deal with the non-consensual distribution of intimate images. It is an aggravating factor for the purposes of sentencing if the perpetrator of the offence is or was in an intimate relationship with the victim of the offence. In recognition of the multiple ways that communication technologies are used to threaten, exploit and control victims of trafficking for the purposes of sexual exploitation, this law should be amended to ensure that victims of trafficking are explicitly recognised.

359 The Online Safety and Media Regulation Bill 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 Bill will, *inter alia*, establish a new regulator, the Media Commission to which an Online Safety Commissioner will be appointed. The Media Commission will be responsible for overseeing updated regulations for broadcasting and video on-demand services and the new regulatory framework for online safety created by the Bill. The Media Commissioner will govern 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 The Commission Submission Online Safety and Media Regulation Bill, March 2021

360 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](#), p. 3

361 Whilst few women from Africa and Asia are advertised online for the purposes of prostitution in Ireland

- » **The Commission recommend the State consider steps to criminalise and target technology-facilitated trafficking. In particular, the online advertising and coordination of prostitution-related activities that predominantly target women, girls and children for sexual exploitation³⁶².**

An individual complaints mechanism must be included in the Online Safety and Media Regulation Bill I. From the perspective of trafficked victims, the removal of online content that was created during their exploitation may be a fundamental part of their recovery. It is also of the utmost importance to ensure that victims are not re-victimised through the continued use of their digitalised exploitation.

The Anti-Trafficking Directive outlines that 'those responsible for investigating and prosecuting...should also have access to the investigative tools used in organised crime or other serious crime cases'.³⁶³ These tools include 'the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations'. In this regard, the enactment of the Communications (Retention of Data) Bill 2017³⁶⁴ is particularly significant to the investigation and prosecution of all criminal cases, including trafficking offences.³⁶⁵

- » **The Commission recommend the Communications (Retention of Data) Bill 2017 be progressed as soon as possible and that An Garda Síochána be given the necessary resources to be able to undertake proactive investigations of the online sex trade to better identify trafficked and exploited individuals.³⁶⁶**

Trafficking for labour exploitation (supply chains)

In contrast to sexual exploitation, in trafficking for labour exploitation the end user is not (generally) in direct contact with the victim.³⁶⁷ To prevent trafficking

in comparison to those from other regions of origin, these women are presenting to frontline services having experienced sexual exploitation. This suggests the existence of hidden subgroups and private markets within the Irish sex trade that are not advertised in this typical way; Breslin R (2020). [Exploitation 'as Usual': Emerging Evidence on the Impact of Covid-19 on Ireland's Sex Trade](#). Dublin: UCD SERP

362 Immigrant Council of Ireland (2021). [Comparative Report: Disrupt Demand](#). Dublin, p. 36

363 EU Anti-Trafficking Directive, p. 15

364 ['The Graham Dwyer Case – How will it affect Communication Service Providers in Ireland?'](#) *iTrust Ethics*

365 The Bill was introduced on foot of the High Court challenge by Graham Dwyer to the indiscriminate capture of mobile phone data by An Garda Síochána which is provided for in the *Communications Act 2011*

366 Giommoni L. and Ikwu R. (2021) [Identifying Human Trafficking Indicators in the UK Online Sex Market](#). Trends in Organized Crime

367 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

for labour exploitation the focus must be on supply chains, especially for those identified as high-risk industries/environments that often rely on people in a vulnerable situation to sustain operations.³⁶⁸ In Ireland, high-risk industries for trafficking for labour exploitation³⁶⁹ include domestic work (particularly au pairs), the fishing industry, agriculture, the restaurant industry, car washing and others.³⁷⁰ As discussed in Section 2 (Article 5 and 6), the Commission is following with interest the developments surrounding the Private Members' *Labour Exploitation and Trafficking (Audit of Supply Chains) Bill (2021)*³⁷¹ that would require Irish businesses to report on the measures taken to guarantee products free of human trafficking and exploitation of children. Under the proposed Section 3 (Transparency in Supply Chains) the Minister can make regulations requiring businesses to publish a labour exploitation and trafficking statement. This is an area of priority in the evaluation of the Anti-Trafficking Directive as part of the EU strategic cycle.

Another welcome prevention measure was undertaken by the WRC in 2021 through the EMPACT campaign, which consisted of 2 joint 'Days of Action'. The campaign ran 2nd -3rd June and was supplemented by WRC inspections during the weeks of 31st May – 6th June and 7th -13th June. A total of 79 employers were inspected and 134 contraventions of legislation were detected. Other issues detected that fell outside of the WRC remit were referred to relevant State agencies.

Atypical Working Scheme for non-EEA crew in the Irish fishing fleet

In relation to the fishing sector specifically,³⁷² the Commission notes the degree to which trafficking represents a problem within the industry is disputed,³⁷³ but is of

368 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. 7

369 IHREC (2022) [Contribution to the 4th Progress Report on the Fight against Trafficking in Human Beings in the European Union](#). Dublin, p. 6

370 A Private Members' Labour Exploitation and Trafficking (Audit of Supply Chains) Bill was introduced last year to the Oireachtas. 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). The EU Strategy for Combatting Trafficking in Human Beings 2021-2025 has identified such measures as a priority. Dáil Éireann Debates [Labour Exploitation and Trafficking \(Audit of Supply Chains\) Bill 2021: First Stage Thursday 1 April 2021](#)

371 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. 7.

372 The Workplace Relations Commission carries out periodical inspections of Irish vessels, aiding to detect potential victims and to prevent the trafficking for labour exploitation in the Irish fishing industry.

373 Department of Justice Press Release, 1 July 20201, 'Department of Justice disappointed Ireland's ranking not upgraded in latest 'Trafficking in Persons' Report'; ITF(2021) *Statement to Oireachtas Committee for Enterprise, Trade and Employment* on 15 October 2021; Murphy, et al. (2021) [Experiences of Non-EEA Migrant Workers in the Irish Fishing Industry: Working Conditions Immigration Status and Enforcement](#), Maynooth

the view that further scrutiny of the industry is necessary to identify and redress any instances of labour exploitation, including in cases where these amount to human trafficking. In particular, the Commission expresses concern that the Atypical Working Scheme for non-EEA crew in the Irish fishing fleet, as currently framed, does not effectively prevent trafficking in persons for the purpose of forced labour. The current AWS could tie migrants to potentially abusive employers making it difficult for them to leave which may compound their vulnerability. One fisher explained to the Commission that the work permit system gave employers all of the power, leaving fishers with little choice but to endure long hours and low pay.³⁷⁴ The position of passivity of the potential employees in the process of application and renewal of an atypical work permit has to be addressed.

Evidently, new mechanisms are needed within the existing work permit regulation framework³⁷⁵. Such a mechanism should allow for a transparent fast-track recruitment and employment of third country nationals on salary levels reflecting the special skills and risks associated with the particular occupation (of a crew member in this case), and that provides for mobility within the sector of employment. Simultaneously, the WRC must prioritise and inspect the sector as a high-risk environment.

The Commission welcomes the review of the Atypical Working Scheme (AWS)³⁷⁶ for non-EAA fishers. The Government along with employers groups, legal representation of applicants of the scheme and the International Transport Workers Federation are carrying out the review,³⁷⁷ which will include consideration of human trafficking allegations.³⁷⁸ However, the Commission is concerned that the review is already delayed and urges its swift completion.

» **The Commission recommend the State consider the issuing of occupation-specific work permits (including for the Irish fishing industry), removing the control/dependence of migrant workers on one employer and allowing mobility within the occupational sector.**

University Department of Law. Casey, R. (2019) "[We hide: Abused migrants say Irish fishing reforms will fail](#)" *Reuters* [online] 13 June

374 Once a fisher's work permit is granted, he is eligible to work for only that employer, effectively tying migrant fishermen, their livelihood and immigration status to such employer and allegedly giving excessive power to potentially abusive employers over workers. AWS permit holders can only change employer after a period of 12 months has passed on their first employment permit in the State. Should a permit holder wish to change employer prior to 12 months on their first permit in the State they must provide information that the employment relationship has fundamentally changed, i.e. redundancy, unfair treatment or abuse, or significant changes in hours of work or location.

375 Department of Enterprise, Trade and Employment, [Employment Permits](#)

376 Department of Justice, [Atypical Working Scheme](#)

377 Department of Justice and Equality (2022) [Written Answers to Parliamentary Question: Departmental Reviews \(22 February 2022\)](#)

378 Department of Justice sources

Procurement

An important aspect of ensuring human trafficking and exploitation-free labour is the national regulation of procurement. The Commission has previously recommended the State undertake a comprehensive human rights-led revision of the State's procurement practices³⁷⁹. The National Public Procurement Policy Framework (2019)³⁸⁰ aligns with EU standards that include human trafficking as grounds for exclusion of potential suppliers.³⁸¹ However, it does not include specific measures regarding human rights due diligence. As such, the degree to which, in practice, notice is taken of human rights compliance by tenderers during the procurement process remains unknown. Including where links to human trafficking and forced labour are concerned. The Commission highlights again the important publication in 2021 of new EU Guidance on Due Diligence for EU Business to address the risk of forced labour in operations and supply chains.³⁸²

- » **The Commission recommend that the Department of Public Expenditure and Reform's Office of Government Procurement update its National Public Procurement Policy Framework to clearly outline human rights due diligence requirements, including a requirement for demonstrable engagement by businesses with the new EU Guidance on Due Diligence in Addressing the Risks of forced labour in business operations and supply chains.**
- » **The Commission recommend the State conduct a comprehensive human rights-led revision of the State's procurement practices in the wider context of the UN Guiding Principles on Business and Human Rights and the State's National Action Plan on Business and Human Rights³⁸³ as well as in the context of its obligations under section 42 of the Irish Human Rights and Equality Commission Act 2014.³⁸⁴**

379 The Commission (2016) [The Commission Submission to GRETA in advance of its Second Evaluation Round of Ireland](#)

380 Office of Government Procurement (2019) [National Public Procurement Policy Framework](#)

381 Office of Government Procurement (2019) [National Public Procurement Policy Framework](#), p. 5. Directive 2014/24/EU of the European Parliament and of The Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (goods, services and works); Directive 2014/25/EU of the European Parliament and of The Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; Directive 2014/23/EU of The European Parliament and of the Council of 26 February 2014 on the award of concession contracts. It is not known the degree to which, in practice, notice is taken of human rights compliance by tenderers during the procurement process, including where links to human trafficking and forced labour are concerned. The Commission notes the publication in July 2021, of new EU guidance on due diligence to address the risk of forced labour in business operations and supply chains, see European Commission (2021) [Guidance on Due Diligence for EU Businesses to Address the Risk of Forced Labour in Their Operations and Supply Chains](#).

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

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

384 The [Public Sector Human Rights and Equality Duty](#). Public bodies, in the performance of their functions, are required under this section to have regard to the need to eliminate discrimination, promote equality of opportunity

Prevention in the Context of the War in Ukraine

The Commission reacted swiftly to the unjust war waged against Ukraine. The Chief Commissioner issued a statement 11th of March that read:

"The unprovoked attack on Ukraine by the Russian military has devastated people's lives, destroyed families, and left the people fleeing for their lives open to exploitation and abuses.

"The response to the Ukraine war from Ireland's communities, civil society organisations and our Government has been overwhelmingly positive. Ireland is in a key geopolitical position within the UN, EU and Council of Europe to ensure that human rights and equality are placed at the heart of our global response over the hard months and years ahead.

"This is moment for Ireland to stand up for our common humanity with the people of Ukraine, but also to consider the people already seeking International Protection with us, and to plan for those who will, sadly due to war and persecution follow with bags and children in hand to our shores."

Experience shows that criminal gangs take advantage of the most vulnerable in war-induced refugee crises. The Commission highlights the importance of transnational initiatives, (such as the EU Common Anti-trafficking Plan on Ukraine which Ireland is a part of) ³⁸⁵ as well as the Recommendations of the OSCE to enhanced anti-trafficking prevention amid mass migration flows. ³⁸⁶

Given the urgency 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 recommend the State:

- Launch and coordinate a nationwide, targeted anti-trafficking campaign raising awareness of the specific risks for those fleeing Ukraine. As part of that campaign, every Ukrainian arriving in Ireland 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).
- Provide immediate housing with extra attention paid to the gender-specific,

and protect human rights.

385 EU Anti-Trafficking Coordinator (2022) [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](#)

386 OSCE (2022) [Recommendations of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings \(SR/CTHB\) on the Need to Enhance Anti-Trafficking Prevention amid Mass Migration Flows](#), SEC. GAL/39/22

age-specific and trauma oriented needs of refugees, so far as this is possible.

- Offer material and psychological assistance to eliminate the potential involvement of bogus and exploitative assistance to refugees in Ireland.
- Centralise and coordinate the response by means of national registers, coordination of existing hotlines and central points of contact in appropriate language (involve the resident Ukrainian community as much as possible).
- To avoid compounding the hardship and trauma, ensure Ukrainian families are not separated due to diverging nationalities.
- Raise awareness of the employment rights of refugees on Temporary permits and alert the labour inspectors to be vigilant to high-risk sectors, loopholes and all forms of exploitation.
- Monitor the pornography, sex and escort websites, where Ukrainian women have traditionally been objectified. Proactively investigate situations of exploitation (taking advantage) that can leave people, especially women and children, vulnerable to trafficking due to the enhanced vulnerabilities.

Funding

The data indicates that over 2021, the State stepped up its efforts to prevent human trafficking by increasing the funding to CSOs for awareness raising and training. In particular, for the provision of specialist support services to victims of trafficking. Table 1 illustrates the funding provided by the State to CSOs for the purposes of training activities on human trafficking. Table 2 shows the funding provided by the State to CSOs for the purposes of service provision to victims of human trafficking, highlighting the year-to-year increase from 2019 to 2021.

The noticeable increase in the range of State funding to prevent human trafficking and alleviate its effects on victims is a welcome development. According to CSOs, multiannual funding would improve the impact of prevention work. Improved planning and coordination would also help to increase the impact of prevention work by facilitating communication, sharing resources and learning across stakeholders working in the field of Anti-Trafficking. Immigrant Council of Ireland observed the need to train all frontline professionals who are likely to encounter victims of trafficking on trafficking indicators, awareness raising and the supports available to assist victims from a gender and trauma informed approach. MECPATHS highlighted the interest amongst universities to include human trafficking on courses related to social work, social policy, education, criminology,

human rights and international justice.³⁸⁷ MRCI emphasized the need for funding to be directed towards raising awareness among hard-to-reach sectors,³⁸⁸ such as the fishing industry. Ruhama noted how awareness raising campaigns bring conversations about the hidden and pervasive phenomenon and show the public the harsh realities of the harms of trafficking.³⁸⁹

Table 1. Department of Justice funding distributed for awareness raising and frontline workers training

Awareness raising and Frontline training	2021	Description of training/awareness
Ruhama	57,500	Delivering training sessions on knowing the signs of human trafficking and trauma informed practices (€6,500). Coordinating and running the awareness raising campaign 'Get the Full Picture' (€51,000)
MRCI	28,754	Developing information resources and training on awareness of human trafficking for labour exploitation
ICI	35,000	Development and delivery of introductory and advanced online training modules on awareness raising of human trafficking in Ireland
MECPATHS	20,398	Development and delivery of online education and awareness raising of human trafficking in Ireland to frontline professionals and students within the hospitality, services sectors and the aviation sector
DORAS	23,552	Development and delivery of training and information resources on awareness raising of human trafficking aimed at frontline staff and volunteers to build capacity
IOM	30,000	Awareness campaign
Total for 2021:	€195,204	

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Table 2. Department of Justice funding specialist NGOs providing services to victims of Trafficking in Human Beings³⁹⁰

The table presents the funding provided by the State to CSOs for the purposes of service provision to victims of human trafficking, highlighting the year-to-year increase from 2019 to 2021.

Services to victims of trafficking	2019	2020	2021	Comments
Ruhama	€350,000	€433,060	€609,868	Services to victims of trafficking for sexual exploitation ³⁹¹
MRCI	€84,500	€88,754	€83,500	Services to victims of trafficking for forced labour and criminal activities
Immigrant Council of Ireland³⁹²	0	0	€120,000	Legal Aid to victims of trafficking and GBV ³⁹³
IOM Ireland	unknown	unknown	€250,000	Cultural mediator service ³⁹⁴
	Total for 2019	Total for 2020	Total for 2021	
	€434,500	€521,814	€1,063,368	
		Increase of 17%	Increase of 50%	

390 Department of Justice and Equality (2019), [Trafficking in Human Beings in Ireland Annual Report 2019](#), pp. 26-27; Dáil Éireann Debates, [Written Answers by Minister for Justice, Tuesday 11 May 2021](#). Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#). Funding recipients include Ruhama, the Migrant Rights Centre Ireland, the International Organisation for Migration, Dublin Rape Crisis Centre, Doras Luimní, and MECPATHS; Dáil Éireann Debates, [Written Answers by Minister for Justice, Wednesday 24 March 2021](#).

391 An additional funding of €27,620 was granted for provision of Exit Pathways from the sex trade.

392 For legal services.

393 The funding also includes legal services to migrant victims of domestic violence.

394 The funding provided to IOM is to build the capacity of State professionals who work with or for migrants, to identify and address the needs of victims or potential victims of gender based violence and trafficking more effectively and to provide culturally sensitive support to them. It will also provide victims of gender based violence and trafficking better access to information and allow them to effectively engage with support and referral services. It will also promote a culturally sensitive approach to victims, through the use of cultural mediators.

Appendices

- » 1. Key respondents
- » 2. Sentences on trafficking- related offences
- » 3. Categories of victims of trafficking
- » 4. Education and training by NGOs
- » 5. Data factsheets

Appendix 1. Key respondents

Initialism	Full name	Description
AGS	An Garda Síochána	An Garda Síochána is Ireland's National Police and Security Service. The Garda Commissioner is responsible for the general direction, management and control of An Garda Síochána and is appointed by Government. The Minister for Justice is responsible to the Government for the performance of An Garda Síochána. The core functions of An Garda Síochána include the detection and prevention of crime and overseeing the State's security.
BMU	Border Management Unit	BMU is under the auspices of the Department of Justice and is the unit responsible for undertaking frontline immigration services at Dublin Airport only. Immigration Officers determine whether non-EEA nationals should be granted leave to land and gain entry to the State.
DoJ	Department of Justice	Department of Justice is the National Anti-Trafficking Coordinator. In collaboration with other Government Departments and Agencies the Department of Justice is responsible for developing and coordinating the Government's response to human trafficking. The Department ensures the State's compliance with international obligations and is responsible for the development, delivery and implementation of the National Action Plan. The Department also undertakes awareness raising campaigns through the Blue Blindfold website and publishes an annual report detailing the efforts and progress in combating human trafficking. The Department leads the development of the Third National Strategy on Domestic, Sexual and Gender-Based Violence, and will be responsible for its implementation. Additionally, the Department provides annual funding to specialist Anti-Trafficking organisations.
DPSU	Divisional Protective Service Units	Under the Divisional Protection Services Bureau (An Garda Síochána), there are ten DPSUs across nine Garda Divisions. Each are equipped with specialised knowledge, skills and expertise in the protection and treatment of victims of all forms of Domestic, Sexual and Gender-Based Violence, including human trafficking and child sexual exploitation.
DSP	Department of Social Protection	DSP provides income supports, employment and other support services. Deciding officers and designated persons are responsible for overseeing, among other areas, the Habitual Residence requirement. Certain conditions must be satisfied for a number of social welfare payments such as Carer's Allowance, Child Benefit, Disability Allowance, Guardian's Payment, and Jobseeker's Allowance, among others). The HSE AHTU notifies the Department when a person has been identified as a potential victim of human trafficking. Under the AIA for the Protection of Victims of Human Trafficking, potential victims may be granted the Reflection and Recovery period in Ireland and Temporary Residence which in most instances, satisfies the Habitual Resident Condition for a specified period of time.
GNIB	Garda National Immigration Bureau	Garda National Immigration Bureau is the section of the Garda Síochána that investigates illegal immigration (which may include human trafficking), patrols borders and carries out deportations. Importantly, GNIB are responsible for the formal identification of victims of trafficking.
GNPSB	Garda National Protective Bureau	Garda National Protective Bureau, under An Garda Síochána, provides advice, guidance and assistance to Gardaí investigating human trafficking offences. The bureau liaises with Government Departments, State Bodies and voluntary groups to achieve a multi-agency approach to tackle human trafficking and gives primary consideration to the protection and welfare of victims, ensuring proper investigations.

HSE	Health Service Executive	The HSE Anti-Human Trafficking Team (AHTT) is part of a single service with two remits, including the HSE Women's Health Service (WHS) ¹ and plays essential part of the existing NRM in assisting victims. The HSE has responsibility for delivering health and personal social services through a network of Local Health Offices, health centres and clinics at community level.
HTICU	Human Trafficking Investigation and Coordination Unit	HTICU sits within the GNPSB (An Garda Síochána) and focuses on, in particular, investigating organised prostitution offences. All new human trafficking related incidents recorded on PULSE (data system used by An Garda Síochána) are assessed by the HTICU. HTICU is responsible for policy development, coordination and implementation of policing methods and the management and coordination of investigations within the unit and division throughout the country.
IPAS	International Protection Accommodation Service	IPAS is a division of the DCEDIY tasked with administering Direct Provision and with the provision of accommodation and material assistance to all victims of human trafficking. This function comes in addition to IPAS's main function to house people seeking International Protection in the State.
IPO	International Protection Office	IPO is an office within the Immigration Service Delivery (ISD), responsible for examining and processing applications for International Protection.
LAB	Legal Aid Board	Legal Aid Board is the statutory body responsible for the provision of Civil Legal Aid in accordance with the provisions of the Civil Legal Aid Act, 1995. Its mission is to provide a professional, efficient, cost-effective and accessible legal aid and advice service. LAB provides potential victims with free legal advice in relation to the Administrative Immigration Arrangements (AIA) and leave to remain in the State; seeking redress through employment protection legislation; information (and in some instances legal representation) on criminal trials for victims/witnesses; information on compensation; voluntary return home and criminal matters related to trafficking offences.
IIS	Irish Immigration Service	IIS is responsible for the administrative functions (for example issuing Recovery and Reflection periods and granting Temporary Residence Permission), of the Minister for Justice in relation to asylum, immigration (including visas) and citizenship matters.
Tusla	Tusla Child and Family Agency	The agency is responsible for providing services and support to child victims of trafficking and to unaccompanied children who are identified as a potential or suspected victim of trafficking.
WRC	Workplace Relations Commission	The overall objective of the WRC is to deliver a workplace relations service and employment rights framework for employers and employees. The Inspection & Enforcement Division of the WRC is responsible for monitoring and enforcing compliance by employers with obligations under certain employment law statutes and employment permits legislation.

¹ 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.

NGO/Civil Society Organisations

Initialism	Full name	Description
Doras	Doras Promoting and Protecting Human Rights	Doras is an NGO that works with suspected victims of trafficking since 2011 providing outreach to Direct Provision centres in the Limerick region, advice and information, as well as integration support. Doras initiate referrals to other organisations, with fully informed consent from the individual and have supported individuals in the Limerick region following referrals from other statutory and non-statutory organisations. Doras also delivers training to frontline services on the legal and policy frameworks of human trafficking and practical information on recognising, responding and referring potential or suspected victims.
ICI	Immigrant Council of Ireland	ICI is an NGO and independent Law Centre Regulated by the Law Society of Ireland. ICI provide information and legal assistance to migrants and their families, prioritising vulnerable groups such as victims of human trafficking. It has accumulated extensive expertise in direct legal representation, policy interpretation and strategic litigation, being gender-specific in their work and have provided training to frontline State officials in human trafficking, including awareness, the gender dimension of trafficking, the indicators and the supports available. ICI has also trained survivors of trafficking on service delivery to victims of trafficking and advocacy.
IOM	International Organization for Migration	IOM is part of the United Nations system as the leading inter-governmental organization promoting humane and orderly migration for the benefit of all. IOM has designed a training on cultural mediation in assistance to victims of human trafficking.
MECPATHS	Mercy Efforts for Child Protection Against Trafficking with the Hospitality Sector	MECPATHS is an NGO which focuses on child trafficking by delivering training to frontline and emerging professionals. Current training/ workshops developed/delivered include those for: Hospitality Staff/ Management, Aviation, Security Personnel, Social Workers, Social Care Workers, Private Recruitment, Criminology graduates and Social Policy Professionals. The organisation collaborates with private, statutory and non-statutory organisation to counter human trafficking, including An Garda Síochána and the Department of Justice.
MRCI	Migrant Rights Centre Ireland	MRCI is an NGO working with migrants and their families in Ireland to promote justice, empowerment and equality. MRCI is a national assessment centre for trafficking for labour exploitation and part of the current NRM. MRCI provides free, reliable and confidential information to thousands of people through their national Drop-In Centre, on immigration, trafficking for labour exploitation, employment and housing. Through their frontline services and casework, MRCI document trends, generate data, and identify opportunities for strategic litigation. MRCI also offer training on trafficking and coordinate the Migrant Against Exploitation (MAX) initiative.
Ruhamá	Ruhamá Supporting women affected by prostitution	Ruhamá is an NGO that assist victims of trafficking for sexual exploitation, including: casework support; education and development support; support in accessing employment opportunities, and; counselling and psychotherapy supports. An individual assessment is conducted to ascertain the needs of the individual and a mutually agreed care plan is prepared. Ruhamá also provides ongoing training on recognising the signs of human trafficking and offering a trauma-informed, gender-specific response to other frontline services providers, including An Garda Síochána. Its advocacy work is rooted in the experiences of women impacted by commercial sexual exploitation.
SVCC	Sexual Violence Centre Cork	The primary focus of the Centre is to work towards the elimination of sexual violence in society. The Centre engages with a range of community and statutory bodies, alongside second and third level students in their colleges and schools. Services include a freephone helpline, counselling, accompaniment to court or the Sexual Assault Treatment Unit and training.

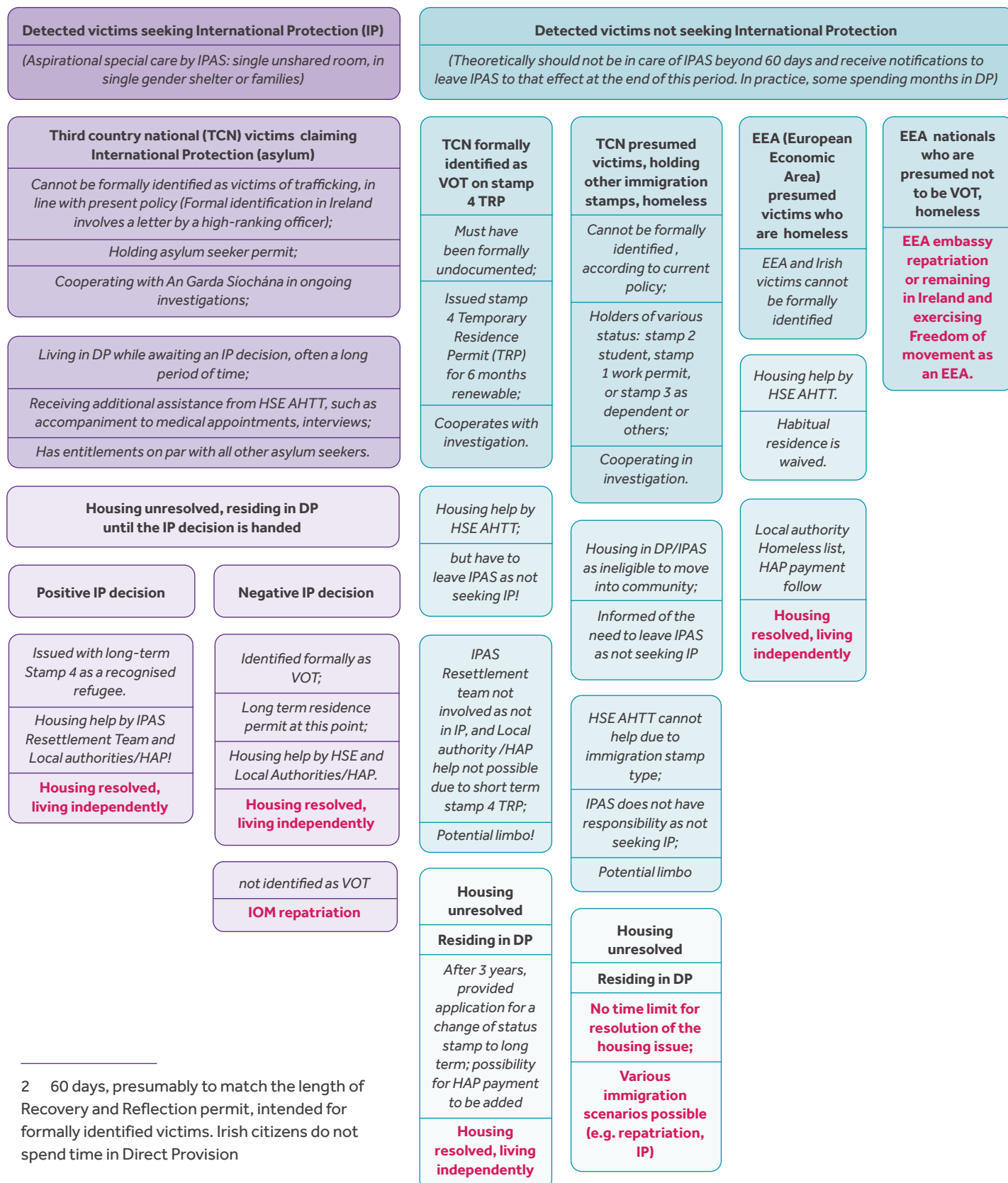
Appendix 2. Sentences on potentially trafficking-related offences

Offence	Penalty on summary conviction (first offence)	Penalty on conviction on indictment (first offence)
Soliciting <i>s 7, Criminal Law (Sexual Offences) Act 1993</i>	A fine not exceeding €317.43	
Organisation of prostitution, <i>s 9, Criminal Law (Sexual Offences) Act 1993</i>	A class A fine (up to €5,000) or imprisonment for a term not exceeding 12 months or both	A fine or imprisonment for a term not exceeding 10 years or both
Living on earnings of prostitution <i>s 10, Criminal Law (Sexual Offences) Act 1993</i>	A class A fine or imprisonment for a term not exceeding 12 months or both	
Brothel keeping <i>s 11, Criminal Law (Sexual Offences) Act 1993</i>	A class A fine or imprisonment for a term not exceeding 12 months or both	A fine not exceeding €13,000 or imprisonment for a term not exceeding 5 years or both
Begging <i>s 2, Criminal Justice (Public Order) Act 2011</i>	A class E fine (up to €500) or imprisonment for a term not exceeding one month or both	
Directing or organizing begging <i>s 5, Criminal Justice (Public Order) Act 2011</i>	A class A fine or imprisonment for a term not exceeding 12 months or both	A fine not exceeding €200,000 or imprisonment for a term not exceeding 5 years or both
Living off the proceeds of begging <i>s 6, Criminal Justice (Public Order) Act 2011</i>	A class A fine or imprisonment for a term not exceeding 12 months or both	
Possession of a controlled drug (cannabis) <i>s 3, Misuse of Drugs Act 1977</i>	A fine not exceeding €390	A fine not exceeding €650
Cultivation of cannabis plants <i>s 17, Misuse of Drugs Act 1977</i>	A fine not exceeding €1,300 or, at the discretion of the court, imprisonment for a term not exceeding twelve months, or both	A fine of such amount as the court considers appropriate or, at the discretion of the court, imprisonment for a term not exceeding fourteen years, or both
Possession of controlled drugs for unlawful sale or supply <i>s 15, Misuse of Drugs Act 1977</i>	A fine not exceeding €1,300 or, at the discretion of the court, imprisonment for a term not exceeding twelve months, or both	A fine of such amount as the court considers appropriate or, at the discretion of the court, imprisonment for life or such lesser period as the court shall determine, or, at such discretion, both
Possession of controlled drugs with value over €13,000 <i>s 15A, Misuse of Drugs Act 1977</i>		Imprisonment for life or such shorter term as the court may determine and, at the court's discretion, to a fine of such amount as the court considers appropriate. A minimum sentence of 10 years imprisonment must be imposed unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, it would be unjust in all the circumstances to do so

Employment as a non-national without a work permit <i>s 2, Employment Permits Act 2003</i>	A fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both	A fine not exceeding €250,000 or imprisonment for a term not exceeding 10 years or both
Failing to produce documents <i>s 7, Immigration Act 2004</i>	A fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both	
Failing to provide information to an immigration officer <i>s 11, Immigration Act 2004</i>	A fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both	
Using a false Irish passport <i>s 20 Passports Act 2008</i>	A fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both	A fine or imprisonment for a term not exceeding 10 years or both
Giving false information to Gardai / wasting Garda time: <i>s 12 Criminal Law Act 1976</i>	A fine not exceeding €650 or imprisonment for a term not exceeding 12 months, or to both	Imprisonment for a term not exceeding 5 years

Appendix 3. Categories of Victims of Trafficking and Entitlements

All presumed victims of trafficking (VOT) can rely on emergency accommodation in Direct Provision (DP) for 60 days²



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

Appendix 4. Education and Training by NGOs to State Agencies/ Government Officials

This appendix is a brief overview of the NGOs with expertise in trafficking and a synopsis of the training and education designed and delivered to State agencies in 2021 by specialist NGOs.

Ruhama

The full offering of Ruhama services are available to all victims of trafficking for sexual exploitation on referral to Ruhama. These include casework support, education and development support, support in accessing employment opportunities and counselling and psychotherapy supports. Upon referral to Ruhama, a caseworker will meet with an individual and conduct an assessment to ascertain their needs across this range of support services and a care plan is prepared in accordance with mutually agreed care plan goals.

In the specific case of victims of human trafficking, this can include measures such as:

- Support in reporting crimes
- Support in accessing appropriate crisis accommodation
- Psychotherapy and counselling to support individuals with trauma
- Accompaniment to appointments with other agencies
- Court accompaniment
- Assistance in regularising immigration status
- Supporting in returning to country of origin

Ruhama provides ongoing training to other frontline service providers, An Garda Síochána and other stakeholders on recognising the signs of human trafficking and responding in a trauma informed way. Over the course of 2021, funded by the Department of Justice, Ruhama ran eight training sessions consisting of two modules each. All of these sessions were oversubscribed showing a clear need and demand for training in this area.

The Ruhama advocacy team works in close consultation with the frontline service provision team to ensure the advocacy platform is reflective of the needs and wants of service users. Ruhama provides ongoing training to other frontline service providers, An Garda Síochána and other stakeholders on recognising the signs of human trafficking and responding in a trauma informed way. Over the

course of 2021, funded by the Department of Justice, Ruhama ran eight training sessions consisting of two modules each. All of these sessions were oversubscribed showing a clear need and demand for training in this area.

All of Ruhama's advocacy work is rooted in the experiences of women impacted by commercial sexual exploitation. The Ruhama advocacy team works in close consultation with the frontline service provision team to ensure the advocacy platform is reflective of the needs of service users.

Ruhama provides a comprehensive training programmes consisting of module sessions on recognising the signs of human trafficking and offering a trauma-informed, gender-specific response to trafficking.

Immigrant Council of Ireland

The Immigrant Council of Ireland (ICI) is a charitable non-governmental organisation (NGO) and an Independent Law Centre regulated by The Law Society of Ireland. ICI provide information and legal assistance to migrants and their families, while we prioritise vulnerable groups, in particular, victims of human trafficking, migrant women experiencing gender-based violence and unaccompanied children. In particular, ICI provide legal services and lead integration and policy campaigns benefitting migrant women trafficked for the purposes of sexual exploitation (or any other type of exploitation that also involves sexual violence).

ICI are gender-specific in their work and have accumulated extensive expertise in direct legal representation of trafficked women, of policy interpretation and strategic litigation in this area. We are also a preferred media commentator and a participant in various consultations, organised by the Irish Government and other national and international forums.

The ICI has also provided training to frontline State officials on human trafficking,³ including Anti-Trafficking awareness raising to staff of the border management function of the Department of Justice.⁴ The training included the gender specific dimensions of human trafficking, the indicators of human trafficking and the supports that referral pathways which may be available to ensure that a potential or confirmed victim of human trafficking can reach support.⁵ In 2021, ICI also

3 Approximately 200 frontline professionals were trained with the demand for training far outstripping capacity. In addition, the Immigrant Council engaged in two separate EU level projects that have a focus on the integrated support of victims of human trafficking and allowed the Immigrant Council to draw best practice from other European Countries. One of these projects was finalised in 2021, with the resources launched at national level and made available online. Immigrant Council of Ireland sources.

4 Immigrant Council of Ireland sources.

5 ICI also participated in two EU projects focused on the integrated support of victims of human trafficking

trained survivors of trafficking on service delivery to victims of trafficking and advocacy as part of a pilot project funded by the EU.⁶

MRCI

MRCI is a national organisation working with migrants and their families in Ireland to promote justice, empowerment and equality. MRCI is a national assessment centre for trafficking for labour exploitation and part of the current NRM. MRCI provides free, reliable and confidential information to thousands of people through their national Drop-In Centre, on immigration, trafficking for labour exploitation, employment and housing. Through their frontline services and casework, MRCI document trends, generate data, identify opportunities for strategic litigation.

During 2021 MRCI (Migrant Rights Centre Ireland)⁷ provided content for an e-learning module on trafficking for Citizens Information Centres (CIC) and trained staff at CIC Dublin South.⁸ MRCI are also coordinated the Migrants Against Exploitation (MAX) initiative.⁹

Doras

Doras has worked with suspected/ potential victims of trafficking since 2011 providing outreach to Direct Provision centres in the Limerick region, advice and information, as well as integration support. Doras initiate referrals to other organisations, with fully informed consent from the individual. Doras have also supported individuals in the Limerick region following referrals from other statutory and non-statutory organisations.

In 2021, Doras¹⁰ designed and delivered training to people working in frontline services in the Limerick region to raise awareness on human trafficking. This training included an overview of the legal and policy frameworks around human trafficking and practical information on how to recognise, respond to and refer potential or suspected victims of trafficking. A series of information resources

Immigrant. Immigrant Council of Ireland sources.

6 Immigrant Council of Ireland sources.

7 For more information, see <https://www.mrci.ie/>

8 Migrant Rights Centre of Ireland sources.

9 An innovative pilot training model to engage community leaders and connectors to identify and tackle trafficking for labour exploitation. The aim of the MAX project is to prevent and combat human trafficking for labour exploitation by empowering migrants to learn about their rights as workers. This is done by providing relevant information to migrant leaders and supporting them to better understand this phenomenon, how it manifests and how to prevent even the most severe forms of exploitation and trafficking.

10 For more information, see <https://doras.org/>

were also developed to compliment the training and to serve as a guide for frontline staff following the training sessions.

MECPATHS

MECPATHS is a social justice response to the growing prevalence of human trafficking (also known as Modern Day Slavery) and the exploitation of people, in Ireland. MECPATHS collaborate closely with private, statutory and non-statutory agencies and organisations working to counter human trafficking including An Garda Síochána and The Department of Justice. MECPATHS have a special focus on Child Trafficking.

MECPATHS work focuses on delivering training to frontline professionals and emerging professionals. Current training/workshops developed/delivered include those for: Hospitality Staff/Management, Aviation, Security Personnel, Social Workers, Social Care Workers, Private Recruitment, Criminology graduates and Social Policy Professionals.¹¹

IOM

The International Organization for Migration (IOM) is part of the United Nations System as the leading inter-governmental organization promoting since 1951 humane and orderly migration for the benefit of all

The IOM has been funded to design a training on cultural mediation in assistance to victims of human trafficking. More information about this novel initiative will be provided in later evaluation.

¹¹ MECPATHS sources.

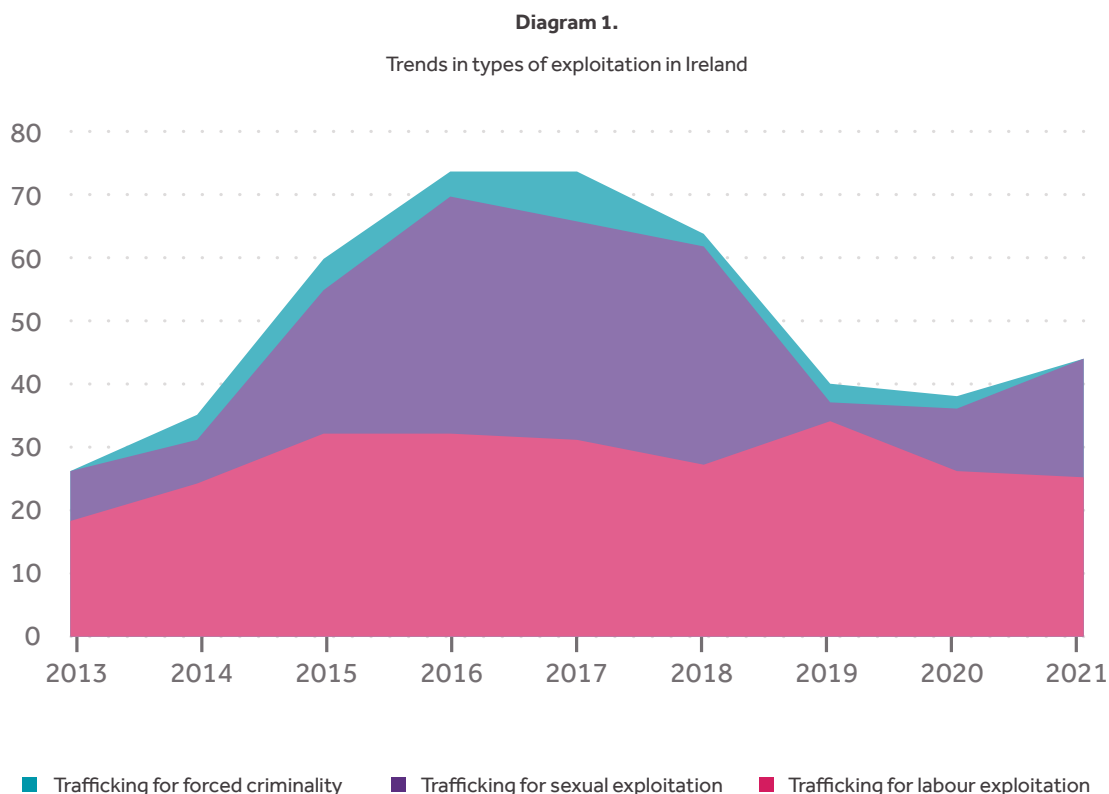
Appendix 5: Data Fact Sheets

Factsheet 1 Official Data at a Glance: Trends in human trafficking 2013-2021

The diagrams are based on official data regarding victims of trafficking referred into the National Referral Mechanism (NRM). The period includes data since 2013 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.

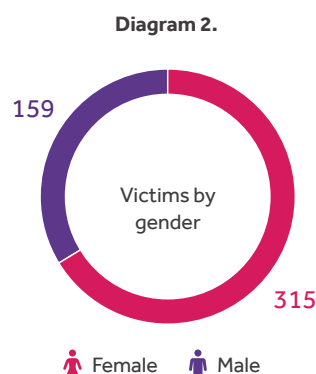
Types of Exploitation

The most often encountered form of exploitation is trafficking for sexual exploitation (TSE), followed by trafficking for labour exploitation (TLE) and to a lesser extent by trafficking for criminal activities (TCA). Trafficking for labour exploitation. TSE maintains a steady pace of over the years. TLE experiences surges linked to business operations, and it seems to be on the increase after a very low period. TCA sees reduced levels, with no victims recorded in 2021. (Diagram 1)



Gender Dimension

Human trafficking is highly gendered. This is particularly evident in TSE, where over 95% of the victims are women. TLE is also gendered but to a lesser extent (69% are male). (Diagram 2)



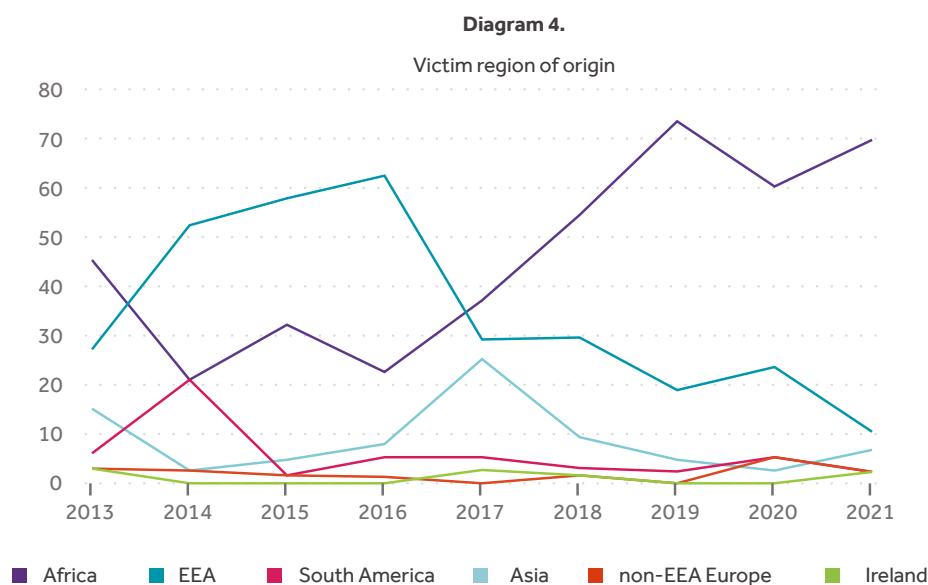
Age of Victims

Children represent 9 % of all victims - significantly less than the EU average (22%). Minors among the victims for TSE and TLE, were 8% and 5% respectively. Annually the percentage of minors have reached as high as 21%. No child victims were identified in 2020 and 2021. (Diagram 3)



Origin of Victims

Africa, the European Economic Area (EEA), Asia and to a lesser degree Latin America represent the main regions of origin for victims of trafficking in Ireland. The prevalence of Africa among victims of TSE is on the rise. Asia is clearly present among victims of TLE, alongside Africa and EEA. Isolated cases of Irish nationals



Factsheet 2 Official Data at a Glance in 2021

The diagrams* illustrate the official data of the State, based on the victims of trafficking in the National Referral Mechanism (NRM). Sex trafficking remains the dominant type of exploitation but with a marked increase in the number of labour trafficking victims compared to last year. Human Trafficking is a gendered crime, which affects migrant women disproportionately. Africa and the EEA are the dominant regions of origin for victims, while Asia also matters for labour. The high-risk sectors for labour trafficking are: fishing industry (7 cases), food production (6 cases), agriculture (3 cases), domestic work (2). Trafficking for sexual exploitation remains traditionally positioned within prostitution (25 cases). No cases of trafficking for criminal activities were reported in 2021, a declining trend. For a second year in a row, no child victim has been identified.

* In absolute numbers, unless stated otherwise



Diagram 5.

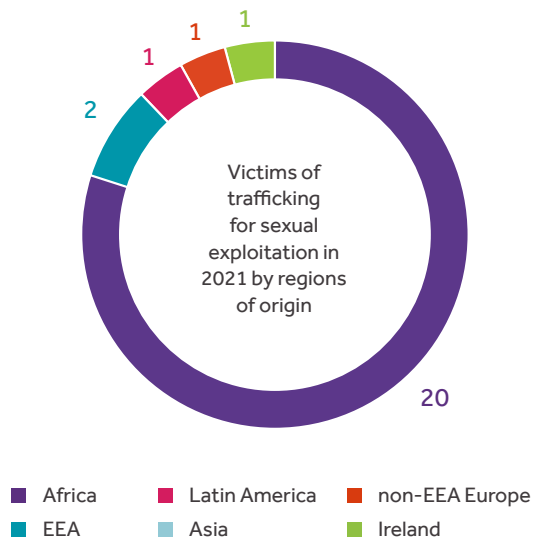


Diagram 6.

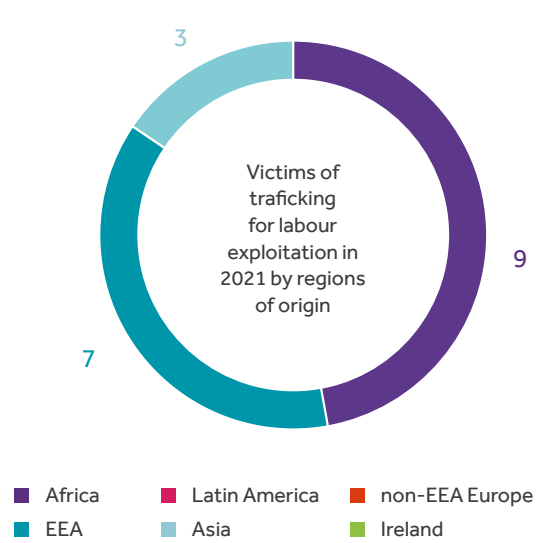


Diagram 7.

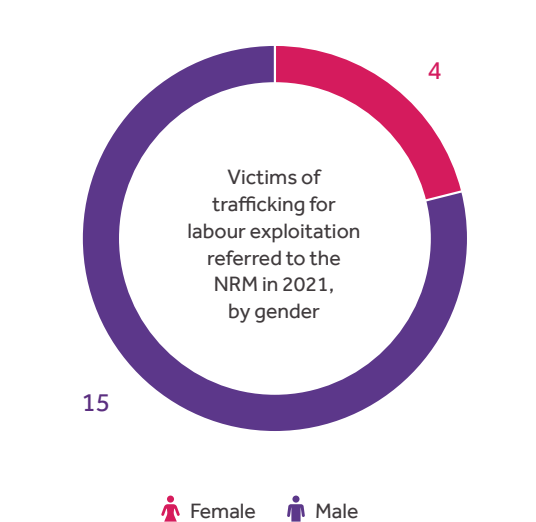


Diagram 8.



Factsheet 3 NGO Data at a Glance in 2021

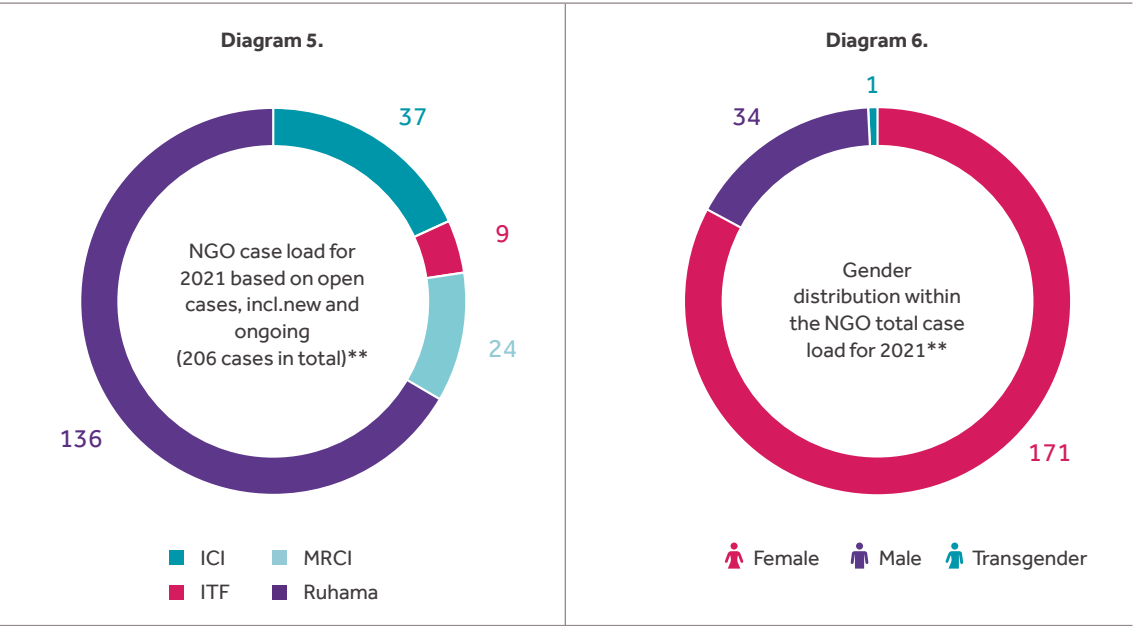
The diagrams illustrate the data submitted by specialist non-governmental organisations (NGOs) for 2021. These included Ruhama (trafficking for sexual exploitation/exit routes), Immigrant Council of Ireland (ICI) (licensed law centre), Migrant Rights Centre of Ireland (MRCI) (trafficking for labour exploitation and criminal activities), International Transport Federation (ITF) (international union umbrella). The first three NGOs are partners in the National Referral Mechanism (NRM) for victims. The data shows that NGOs have worked with more cases of trafficking for sexual exploitation. It also shows that trafficking affects more women than men. Prevalent regions of origin of victims were Africa, EEA and Asia. The data mirrors the trend in the official data.



The combined number of new cases taken up by NGOs for 2021 was 48, which involved 40 individual victims due to the fact that NGOs worked jointly on some cases. Based on the NGO reports, it was estimated that 30 cases were referred directly by the NGO or by another entity into the NRM, which is managed by the State. The NRM included 44 cases for 2021. This difference is not uncommon. The Commission is of the opinion that with the expected improvement of the NRM by clarifying and formalising the roles of NGOs as ‘trusted partners’ in the process of identification and referral of victims, the (numerical) differences will be further reduced.



Diagram 5 and 6 show the entire case load of the NGO community for 2021 and its gendered dimension.



*in absolute numbers, joint work on cases taken into account
** in absolute numbers, joint cases not taken into account

Comprehensive Data Table

	Adults & Children	TSE	TLE	TFB	TCA	TSE +TLE	TSE +TLE +TCA	Unknown Exploitation	Total by Year	Minor Victims		Annual percentage of minors
2013	Female	18	6			1		5	30	Girls	4	
	Male		2					1	3	Boys	1	
	Total	18	8			1		6	33	Total	5	15%
2014	Female	23	3	1		1			28	Girls	2	
	Male	1	4		4			1	10	Boys	2	
	Total	24	7	1	4	1		1	38	Total	4	11%
2015	Female	30	8		1	2			41	Girls	6	
	Male	1	15		4				20	Boys	1	
	Transgender	1							1	Transgender		
	Total	32	23		5	2			62	Total	7	11%
2016	Female	32	6			1			39	Girls	1	
	Male	0	32		4				36	Boys		
	Total	32	38		4	1			75	Total	1	1%
2017	Female	28	11	1	5				45	Girls	3	
	Male	3	24		3				30	Boys		
	Total	31	35	1	8				75	Total	3	4%
2018	Female	26	7						33	Girls	3	
	Male	1	28		2				31	Boys	2	
	Total	27	35		2				64	Total	5	8%
2019	Female	33	2		3				38	Girls	7	
	Male	1	1				2		4	Boys	2	
	Total	34	3		3		2		42	Total	9	21%
2020	Female	24	8		1				33	Girls		
	Male	2	2		1				5	Boys		
	Total	26	10		2				38	Total		0%
2021	Female	24	4						28	Girls		
	Male	1	15						16	Boys		
	Total	25	19						44	Total		0%
2013-2021 Total	Female	238	55	2	10	5		5	315	Girls	26	8%
	Male	10	123		22		2	2	159	Boys	8	5%
	Transgender	1							1	Transgender		
	Total	249	178	2	32	5	2	7	475	Total	34	9%

TSE

trafficking for the purposes of sexual exploitation

TLE

trafficking for the purposes of labour exploitation

TFB

trafficking for forced begging (legally part of labour)

TCA

trafficking for the purposes of forced criminal activities



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